



The Great Taking

David Rogers Webb

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The Great Taking

by David Rogers Webb

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For Dad

In memory of David

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Prologue

I count false words the foulest plague of all.

Aeschylus, *Prometheus Bound*

If you prefer, consider this a work of fiction, or the ravings of a madman. Perhaps I am crazy.

I know that you will not hear what I am struggling to tell you—not yet. But, perhaps as things unfold, this writing will offer some explanation of what is happening.

In my mind as I write this is the small hope that my children might one day come to understand me a little, and, perhaps, forgive me for being who I have been. It has been unavoidable for me to see and know about unpleasant things, which are now becoming manifest.

Presently, as we well know, families are divided. People are experiencing a kind of isolation, perhaps not physically, but in spirit and mind. This has been made to happen through the dark magic of false news and narrative. This alone has been a great crime against humanity. The tactical purposes are many: to confuse and divide; to cause disengagement; to demoralize; to instill fears and to introduce false focal points for these fears; to manipulate the historical narrative; to create a false sense of the present reality; and ultimately, to cause people to acquiesce to what has been planned.

Facing this onslaught how can one know anything? Direct knowledge acquired through ones own experience and the personal experiences of others may be used to pierce these false narratives. Living memory contains clues. What has been done before can be done again.

If exposure of the personal history in this Prologue grows tedious, please go to the meat of the matter in the chapters ahead. But if you will continue reading here, perhaps you might discover that I am a human being, like you. Perhaps it will be of some use to you, to know that I have worked a lifetime to understand the forces hurting us.

For me, “being known” has never been a wise or desirable objective, unless it has been to accomplish some essential purpose. And now my purpose is this: it is so that what I am trying to tell you might be heard and understood. We are in danger. And so I will risk telling you my personal story.

How have I come to know what I am trying to tell you?

I am old enough to remember the JFK assassination. I was sitting in the little basket in the front of a shopping cart at Fazio’s grocery store on Lee Road when the announcement was made over the speaker. A woman standing nearby burst into tears.

Within a few years of the assassination, we were living the industrial collapse of the U.S. For a boy in a family of engineers, in the crane and hoist business, in Cleveland, the years ahead would be very much like living through the Great Depression. In the summer of 1966, a portion of the city was burned in the Hough Riots. The National Guard was called in and placed machine gun nests on roofs. On top of the riots, little Webb Equipment was being targeted by the Teamsters Union; windshields were smashed with baseball bats. Due to the threat of Molotov cocktails, records were moved out of the office, and roofs were hosed down at night. It was like living in a war zone, and it was going to get much worse. There would never be a “recovery.” There would be complete destruction of everything we had known.

Our extended family had been benevolent, close and happy. In just a few years, death consumed the entire older generation and some of the next. The patriarch, Grandpa Webb, died at 79. The following year, my father’s older brother, died of a heart attack at 51. As a young man, he had been captain of the Case Western Reserve wrestling team, and looked something like a god. He had left a successful career at ALCOA, to help his aging father in business, as had my father. Shortly before his death, he had confided in his wife of struggling to keep the men

employed, bidding for contracts near cost. He was a man who cared deeply and felt responsibility keenly.

However improbable it seems now, Cleveland had been one of the most vital industrial centers of the world. In the 19th century and into the 20th, it was like all of industrial America in one city. I remember reading that, at one time, the Cuyahoga Valley was producing 2% of the world's industrial product. The early days of the iron, steel, aluminum, chemical, automotive, aeronautics, and oil industries were all in Cleveland. Standard Oil was formed there. Rockefeller's first refinery was there. John D. is buried in Lake View Cemetery, as are both sides of my family, who were descended from early English settlers. Some of these forebears had arrived with the first settlements in Jamestown and Plymouth. William Bradford was an ancestor. The Webbs had common ancestry with John Adams, Samuel Adams, and John Quincy Adams. We had Masonic swords and little porcelain statues of Washington and Franklin dressed in their Masonic regalia. Dad, his brother, and their father and grandfather had been Masons. Despite this, it seems they did not get the memo about what was coming.

By the early 1970's, the family business, which had once had eighty men in "the shop", was down to one, Ladislaus Horvath, earlier known as "Little Laddie", being the son of the elder of the same name who had worked for my grandfather. Laddie, who had been a helicopter mechanic in Vietnam and could do absolutely everything, later told me that he had thought he would go crazy, there having been absolutely nothing even for him to do. The business activity had gone to zero.

Under extremely difficult and worsening circumstances, my father had been left without the support of his father and brother, but with full responsibility for everything, which he had never wanted. Stress was slowly killing him. He developed chronic asthma, became depressed and angry, and often stayed in bed.

Sometime after my uncle's death, my older brother nearly lost several fingers in the lawn mower. Dad then gave me the job of cutting the lawn. I was happy and proud to be entrusted with such a big job, as indeed it was. I was nine.

In the years ahead, I discovered that something in my father necessitated that I be put to work under increasingly unpleasant and even

dangerous circumstances. When I was twelve, I became seriously ill after being pressed to work when I was already ill. By thirteen, I was “the low man on the totem pole” at the shop, as described by one of the guys at my father’s funeral. It was hot, dirty, and sometimes quite dangerous. I could easily have lost fingers, my eyesight or worse. Excelling in school remained a given, but hard labor marked the remainder of boyhood.

I recall being tasked with sifting dirt from a gravel pile in the full summer sun and humidity. I was to then use the dirt to fill holes where I had pulled weeds. I was hard at work when Dad came home. Saying nothing, he kicked over the wheelbarrow, and threw tools as far as he could. There were tears in his eyes. Knowing that I had done nothing wrong, I don’t think I felt afraid so much as something else. It was my father who was in some kind of trouble. I “saw” him. I think what I felt was an intense need to understand what was happening, and why.

And so, even though Dad was hard on me, I was perhaps the only person intensely interested in what he had to say. It was the silence, and not having things explained that got to me the most. Thus, I asked questions. He was an intelligent guy, and he had filled his room with stacks and stacks of books. He was trying to understand what was happening. And so was I.

Consequently, by the age of twelve, I had become a student of the Great Depression and of the mysteries of the Federal Reserve (the “Fed”). I knew then that the Federal Reserve System had been secretly planned at a meeting on Jekyll Island, that gold owned by the public had been confiscated in the Depression, and that Nixon had recently taken the dollar off the gold standard.

Coincidentally, Dad had also been twelve at a traumatic time when, in March of 1933, they closed the banks and confiscated gold. He was named for his maternal grandfather, who, in the weeks before the Panic of 1907, the crisis atmosphere of which was used to justify the creation of the Federal Reserve System, had been shot from behind, in the neck, in the middle of the night, on the staircase of his home near Euclid Avenue. The murder was never solved. While it had been mentioned in newspapers from New York to Alaska at the time, the history had been kept from my father. Dad went down to the public

library and dug into microfiche of these old articles, which he copied. He showed me a shoebox full of them. His grandfather was described as a “wealthy coal operator.” I have seen records of his accumulation and sale in 1905 of coal rights on more than 800 acres in Mahoning County, having retained rights to drill through the coal seam for oil (which his descendents theoretically have still).

Dad was interested in what had happened on Jekyll Island, so much so that we drove there. I have the post card with a 1960’s era photograph of a large white building and the inscription, “The Club House”, with this further explanation on the obverse:

The Club House was the heart of interest of the Jekyll Island, Georgia, Club during the years 1886-1942. This was the most exclusive club in America, known as “The Club of Millionaires.” Such illustrious names as Astor, Vanderbilt, Morgan, Rockefeller, Baker and others were found among the club roster.

Paul Warburg, a member of the most prominent and ancient German banking family had led the meeting on Jekyll Island in which the Federal Reserve was planned. He later openly acknowledged that this had been done in secret. Also at that meeting was “Colonel” Edward M. House, who in subsequent years laid the groundwork for the establishment of the Council on Foreign Relations. In the quiet of Christmas Eve, 1913, The Federal Reserve Act was signed into law. The Great War followed by just seven months.

Despite boyhood years of trauma, and perhaps because of them, I went on to do some things. Early childhood formation had saved me from being crushed. This was largely thanks to Grandma Rogers, my mother’s mother. She was a Montessori School to me. By the age of three, I was sharpening knives and making tea. At night, she sat by my bedside, helping me drift off to sleep. She spoke softly in the darkness, remembering things to me from her childhood, and from the Great War. I realized only as an adult that they had been warnings.

She had gone with my grandfather into the Great War, she as a nurse, and he as a surgeon. They were not yet married. The U.S. had not yet entered the war. Their field hospital in Rouen had 3,000 beds, but the casualties were more than this each day. Even the cooks were attending

the wounded. In the darkness at my bedside she had recalled the sound of the big guns and of the shells exploding, which she could hear from the hospital tents.

She and my grandfather were married after the war, and honeymooned in Quebec City. They were the same age, thirty-eight. She had her first child, my mother, at forty-two. To have come through so much, to marry, and to have children—it must have seemed a miracle.

Grandpa Rogers was named for a cousin who had joined the army to get away from working in his father's shoe store; he ended up at Little Big Horn. Grandpa's grandfather, born in 1816, had also been a surgeon. As a boy, I was allowed to handle his grandfather's surgical kit. It is identical to one in the Gettysburg Museum. Grandpa's great uncle is buried there; he was a Cavalry officer. Surviving 50 engagements, captured when his horse was shot in the head, he later escaped through a swamp, pursued by hounds, from a Confederate prison where the men were dying of starvation and smallpox.

My grandfather taught surgery after the war until his untimely death in 1945. We had a chair in the house that someone had given to him. It was explained to me that, in the Great Depression, he did surgeries without payment, because no one had money. They had a "Dutchman" living on the third floor of the house; he had lost his job with the factory closures, and simply had nowhere else to go.

I liked Grandma and often visited her room. She had been born on the Canadian side of the lake in 1883. She told me about riding in a sleigh wrapped in buffalo robes, with bricks warmed in the fireplace under her feet. She had a picture of Queen Elizabeth on the wall in her room. With the Lakeside Unit, she and Grandpa had met King George and Queen Mary in a reception at Buckingham Palace. I learned about that from a newspaper I found among her things.

She somehow conveyed to a small boy that medicine is a profession, as distinguished from pursuits for one's own purposes, and that, in the original sense of the word, business is not a profession. I struggled with this last bit for some time, as my Dad's family was clearly in business. Nevertheless, I understood that one's work should be about something more than making money.

I was welcome in her room. One day, I wandered in as she was getting out of the bathtub. I wondered at the wrinkles. She was unperturbed—completely natural, having a quiet dignity at all times. She died of a series of strokes when I was seven. I did not understand death. Half a century later, I came to understand that I had lost then the best friend I would ever have.

I would have gladly followed the certainty she had given me, that I should become a physician, as did my brother. However, in the remaining years of my boyhood, the way before me became not only uncertain; it became the unknown. I did not know how to do it, but I needed to somehow understand and get control over what was destroying our lives. I had accepted the burden of my father.

We lived in East Cleveland, which was crumbling due to the loss of its industrial base. At about the time of my uncle's death, my older brother and his friends, playing baseball in Forest Hill Park (a former Rockefeller estate), were surrounded by a huge crowd, beaten up, and had their bicycles and baseball mitts stolen. My father reacted to this by pulling him out of the local public school and sending him to a private school. While moving out of East Cleveland was considered, it was not undertaken. So, as conditions worsened further, I eventually followed to the same private school some years later. But by this time the financial resources of the family were running thin. Each summer the uncertainty of whether I could return to school was obliquely made known to me.

Being told about bad things did not bother me so much as not being told. I needed to know. The silence was terrible. Life is more difficult if people can't talk. Things go undiscovered, or misunderstood. If it is possible to talk, outcomes might be changed. The future might be shaped for the better.

The summer before my senior year was particularly uncertain; my mother told me that my Dad would not apply for financial assistance. I had no idea if I would be returning to school. But at the end of the summer, I started back to football practice, as no one told me I couldn't. I delivered newspapers before school, worked as a busboy at night and as a janitor on the weekends, drove a delivery truck, and painted houses. I was reading business books, and missing no opportunities,

managed to set-up an internship in marketing research at a fortune 500 company.

Many years later, after my mother's death, I found a copy of the letter she had sent the school, which had apparently secured my final year. Perhaps due to some embarrassment, this had never been explained to me. Without Mom, I might have suddenly had no recourse but to complete high school in East Cleveland, which was then quite ahead of the times; they already had police and metal detectors in the hallways.

When I told my father that I was interested in studying business, he told me that this would not prepare me to do anything, and that I should study engineering. I had, however, observed that the engineers in our family hadn't seemed to fare so well. And so, against my father's advice, I chose to attend a state business school, studying finance and computer science. In my mind these pursuits were dignified with the idea that business is the science of meeting unmet human needs, and that this can only be done sustainably if it is done profitably. It later came as a difficult realization for me that people in business have no greater purpose than making money. Nothing else comes close to that, except perhaps, being important, and sexual escapades. I was an outlier. I was extremely focused on pursuing things I sensed I needed to understand. This gave me an advantage. I would come to know things that others did not know.

Coming from a family of engineers and medical people, I then knew nothing about the world of "high finance", and had no one to guide me. I invested in a subscription to the Wall Street Journal, which in those days was actually a factual business publication. Sometimes I forced myself to go through a stack of them, page by page. I noticed the "Tombstones", published to announce major deals. These were somehow important. The firms involved, were in New York, for the most part. I knew I needed to go there.

My wife, Valerie, and I were married two weeks after my graduation. Two weeks after that, I started work with a computer services firm. I had some experience with programming, and after a further 90-day training program, I chose to go to their office at 44 Wall Street, as a Technical Representative rather than as a salesman. The cost of the monthly rent and train pass were so high, and I was being paid so little,

that we could not afford a telephone or meat. But over the next year, supporting the sales teams, I was able to go into a huge number of entities in New York working with financial information—investments banks, commercial banks, brokerage firms, bond houses, investment partnerships, rating agencies, and even Depository Trust Corp. I was allowed to be there to show them how to get the information they needed, and to make it happen. I went to meetings every day and programmed applications late into the night. Eventually, I could see where I was going.

Within a year, I somehow talked my way into a Mergers and Acquisitions group, which was a client. After a series of high-stress interviews, I was told by the head of the group, Mad Dog Jeff Beck, “If you turn out to be a psychopath or a pathological liar, we give you a bonus!” Jeff knew of what he spoke. He may not have been the former, but years later he proved to have been struggling with the latter in a big way. Lies are a trap, and perhaps especially to those who tell them. It eventually destroyed him. He once said to me in a self-deprecating way, “You are a real person!”

The people my age were the son of a billionaire, the daughter of a fantastically wealthy Hong Kong family, and the son of the chairman of a fortune 500 company. I was allowed to be there for only one reason: I could figure out how to do what needed to be done. There was a bit of pressure. I had been told by a senior vice president, “You better be sure you want to do this, because if you fuck up, you’re gone.”

For the following five years, it was a regular occurrence to work seven days a week, and for several days without sleep. Our first child was born. We were then living in Brooklyn Heights, in a tiny apartment, just one subway stop from the office at 1 New York Plaza. If I had been home and had to return to the office, reaching the elevator bank my heart would start racing, because I did not know how many days I would be there without leaving.

I thought of it as a crucible. It is through reactions under uncomfortable conditions that one comes to know oneself and others. I had encountered many such reactions, and could maintain focus under great pressure and with little sleep, when a headhunter approached me to go to work for Ivan Boesky, later dubbed, “Ivan the Terrible.”

The starting compensation would have been roughly ten times what I was being paid at the time. I was considering doing it, but it was not really about the money. Through those years, I was living by Nietzsche's, "That, which does not kill me, makes me stronger." I was already working around the clock for extreme personalities; why not do it? I would have been on a three-man team sitting directly outside of an open window into Boesky's office, through which he could bark orders, but which he could close for his private and sensitive conversations. They wanted me there to do quick break-up models and valuations of big companies, which I was capable of doing overnight. Fortunately for me, that discussion suddenly went cold. He was arrested shortly after that. And so I learned a bit about the lure of money, and of being careful about one's choices and associations.

We had moved to a big old house in Chatham, New Jersey, and had invited my mother, and my wife's mother, with her youngest son, to move in with us. I was still in survival mode, and wanted to take care of everybody. The commute into the city was an hour and a half, each way, three hours a day. One twelfth of the year was commuting. I made use of that time, but little remained to simply be at home with the family.

In 1987, I had an offer to join the Mergers & Acquisitions group at L. F. Rothschild. Instead, I chose to move for half the compensation to a private equity firm. I knew about the agency side of the deal business; I needed to know about the principal side. I also somehow sensed that there would be a crash. One month later on Black Monday, the capital of L. F. Rothschild was wiped out and the firm soon ceased to exist.

I had joined what was at that time the largest private equity firm in the world, having just raised a \$1.3 billion fund (that used to be a lot of money). Most of the partners were attorneys, and were dependent upon an accounting firm to do their financial analysis. That was amazing to me, as I had experienced that the very process of doing one's own financial analysis is critical to developing an understanding. Within a few weeks, it was noticed that I could find major errors in the financial models done by the accountants.

The first year, I managed the acquisition of a long distance telephone company, building the financial model, designing and running the due diligence, negotiating the financing, and running the legal teams. It

was a complex process, requiring coordination of hundreds of people. The responsibility for all of this was crushing. The partner on the deal, having a difficult time with stress, went home and stayed in bed for six months.

Sometimes it was unavoidable that I work through the night, perhaps sleeping briefly on the floor. More regularly, I took a waiting limousine to our house in Chatham, to sleep for a few hours, only to get up again to take the train back into the city. Saturday mornings began with negotiations at 8 a.m., extending until 3 a.m. Sunday morning, and beginning again at 8 a.m. Sunday morning. This pace went on for nine months. The due diligence, filling a bank of file cabinets, and summarized in a single notebook, was selected to demonstrate the capabilities of the firm to the limited partners. This deal was to produce the largest capital gain in the history of the firm. The “deal books” fill a shelf. I signed every document. I was twenty-eight. Sometime after the closing, I was called down to the corner office and told that I could do anything at the firm.

However, my family was suffering from these many years of my intense focus. The move to the private equity side had only increased the intensity, as I could not escape the encompassing responsibility. Our second child was born in the first months of this deal. I had to be on the telephone outside the delivery room for an hour and a half, handing things off so that I could be with my wife and newborn son for two days. Some months after this deal had closed, my wife told me that if she had known that our life would be this way, she would not have signed up for it. This came as quite a blow. I had thought I was a hero to my family. I told her that we could go anywhere and do anything, and got out the road atlas of the U.S. We paged through it state by state, trying to imagine where we could be happy. Ultimately, I simply left the firm and we moved back to Cleveland in an attempt to find a more balanced way of living.

We moved to a house built in 1920 in Cleveland Heights. Two of our children were born in that house. It was within the sound of church bells I remembered from childhood visits at Grandpa Webb's house.

The intensity remained. Eventually, I started with partners in a small investment management business. I had developed the view that the

public markets offered greater inefficiencies and better opportunities to both buy and sell than the private markets. I knew how to do deep research and analysis. I needed to know how the markets and the broader financial system worked. From the beginning of my involvement, I handled all trading, and went on to develop the trading processes, strategies and teams. At first I managed long only equity, and then long/short equity. The firm grew from \$2 million to \$2 billion in assets over nine years.

While it was not then and is not now generally understood, decline in the Velocity of Money marked the beginning of the Asian Financial Crisis, eventually leading to the Ruble Crisis and failure of Long Term Capital Management. Through direct handling of all trading, I could see that something significant had changed in the internals of the market. It was plain to me that this was not just an atmosphere of crisis but the beginning of a real crisis. Few had the same sense, and this was the cause of conflict within our firm. It is best in a turbulent time to sell the peaks and buy the dips. Some people like to do it the other way around. At about this time, our third child, a pre-reader, picked up the stock listing from the newspaper and exclaimed, "This says oh no!"

On Thursday, August 27th, I left with my children for a long-weekend canoe trip in Canada, this being our only vacation for the summer of 1998. I called into the office Thursday morning from the canoe livery, and was then without access to telephones. While I was away, instructions were given to remove the entire short position protecting the hedge fund from loss, and the employees were called together to announce that I would be leaving the firm. This was all unbeknownst to me as I was enjoying a tiny bit of life with my family.

Arriving early in the office on Monday, August 31st, I was stunned to learn of what had transpired while I had been in the wilderness. To my further amazement, I was informed that there had been a "palace revolt", and that from that moment going forward I would have unquestioned, sole responsibility for the hedge fund. Perhaps this was due to the grim fact that all of the hedges had been removed, in combination with the imminent possibility of a full-blown market crash.

This day would see the largest ever point declines in all market indices, other than the Dow 30, which suffered the second highest point decline

in history. Our hedge fund would have lost 10% on the day. However, at the open, I shorted the entire value of the fund. Late in the day, I could see sheer panic selling. We were then in a position to buy into the panic. I covered the entire short position at the low. Only through these extremely stressful moves was the fund miraculously protected from loss, ending flat on the day. The NASDAQ composite finished down 8.6% on the day.

At this time, the assets in the hedge fund were approximately \$60 million. Over the next three years, this grew to more than \$1.3 billion.

By the late 1990's, I had understood that money creation by central banks was dwarfing real economic activity, and that the actions of the Federal Reserve were determining the direction of financial markets. This was considered to be conspiracy theory at the time, even by my partners.

I developed a way to anticipate changes in the direction of the financial markets based on changes in the rate of growth of the money supply. This was being driven by open market operations of the New York Fed.

By the time of the Dotcom Bubble, I knew that the velocity of money had begun collapsing; I saw incredible escalation in money creation engendering little growth. I believed that, in some great unfolding over many years, there would be a major depression, and that the only question was whether or not there would be a global war. This was prior to 9/11.

I developed a way of using hundreds of carefully selected positions on the short side, dubbed "the cream of the crap." Using this system, no one position could hurt us badly, and, if I did it right, it would work much better than an index. The long side was more concentrated. Altogether, at any moment, we typically had on more than 350 positions. Working such a large number required a specially designed trading desk and team technique. We regularly positioned on the other side of trading flows, patiently drawing size to us across the bid/asked spread. Observing and probing this many positions gave us broad, real-time market sensitivity, or "granularity." We could move size without moving the market, utilizing available liquidity across many positions. The trading desk functioned as a newsroom, seeing everything as it

was released, and conducting continuous research. If a position was moving without news, we moved to find out why with urgency.

It was necessary to carefully and continuously feed and challenge an integrated model of how the world was working, and of all of our positions. This model was not on paper; it was in my head. This allowed us to act immediately when confronted with significant developments. But it was absolutely vital to focus immediately on any information or development which did not comport with the mental model. When sifting new information, I did not focus so much on things that fit my ideas as on those that did not, that threatened my understanding.

The intuitive mind, when adequately and correctly informed, can be miraculously powerful, knowing immediately what the rational mind cannot yet see. On the other hand, if it is given bad information, and if incorrect assumptions are not surfaced and challenged, it is a dysfunctional disaster. The rational mind can be employed to inform the intuitive with vetted information, and to continuously test what the intuitive mind thinks it knows. With cooperation between these aspects of the mind, one can drill down to examine detail, zoom out to see bigger implications, and vice versa.

Ultimately, deep due diligence requires spelling out one's own assumptions and rigorously testing them. Primary source documents may provide irrefutable information. Biased sources can be used, but one must recognize the bias and account for it in vetting the information. A statement that is consistent with the bias is of little significance. However, something acknowledged which runs counter to the bias is likely factual. To really know something, one must go directly to people with immediate experience of the situation. You can't really know by talking with someone who has only read about it. If I suddenly realized that I needed to know something critical, I sometimes went directly to the airport with just the clothes on my back, flew across the country, and waited for the person with whom I needed to speak, even though I had no meeting scheduled. That actually worked rather well. It helps to hear things directly from people when they are a bit surprised and off-script.

Dad had told me that understanding terminology is the key to functioning in any field. I had found through my due diligence work that it was

possible to become conversant within a surprisingly short period of time even in technical issues with leaders in a field. It was done by doing it. After the first conversation, I was better equipped for the second. With each conversation, I was able to better hone in on the substantive questions. By the third conversation, the other person actually became interested in speaking with me, because I had just spoken with two people in their field about some interesting issues. And it built from there. I could do this with physicians, chemical engineers, and even neuroscientists. They sometimes asked if I had trained in their field.

There was a small medical device company growing at a high rate, on which I had done a great deal of deep due diligence work. We had a large position. It was thinly traded, and so I monitored the situation very carefully. I had a detailed model of the monthly sales ramp built up by the reorder rate at individual hospitals. One day, the company reported sales which missed my projection. They were still growing at a high rate, but in adjusting my model, I could see that the reorder rate must have fallen at some hospital. No one else seemed to have noticed this, and the company was acknowledging no issues. I started cold-calling into hospitals. I managed to get an OR nurse on the phone who had just come out of surgery. She told me all about why they had stopped using the device. I knew then that the sales of this company would go to zero.

I now had a big problem: how to get everybody out. Not only did the hedge funds have a big position, but also a large number of accounts for individual clients, which I still handled at that time. On top of that, close friends were also heavily in the shares, as well as a school I had supported. It took weeks to patiently work down positions and get everyone out without loss. We handled it all from our trading desk, including coordinating sales for friends and for the school. I made sure it was all done. Then the people at our desk could sell their shares. When that was done, the second to last sale was for my mother. The last shares sold were those of my immediate family. I made sure everyone on the desk saw how I had handled it. To front-run your clients and everyone you say you care about—that is trashy. Some people operate with the certainty that they should help themselves first, especially in important matters. I know it is done, but it is something I would not do. I would not allow it.

In the course of this, I flushed out certain institutional brokers at a certain prime broker who had arranged to be secretly copied on my trades and were piggybacking them. I now suspect that, toward the end, the prime brokers were allowing traders to front-run my month end liquidations.

We used the entire balance sheet. On days with big market moves, we traded millions of shares, and might have gained or lost tens of millions of dollars. Handling this required emotional calm and intense focus. I have told my wife that it was like performance art. The ego clouds judgment, and particularly when much is at stake. I made a practice of focusing outside of myself, and of *actually* placing duty and responsibility to others ahead of my own interests. For me, my work was not about making money. It had to be about more than that, or I could not have carried the immense burden of it all.

My clients included a former U.S. Treasury Secretary, a former president of the New York Federal Reserve Bank and some of the largest institutional investors. People from Switzerland flew into Cleveland. They were trying to understand the secret of how I was doing what I was doing. But there was no secret algorithm. It was a way of thinking. My mother asked what courses I had taken or books I had read to teach me to do what I was doing. I responded, "Mom, there are no books explaining this."

Busying oneself with absorbing the pronouncements of media, government officials, business executives, and such mouthpieces, creates an illusion of being informed. As Samuel Clemens said, "It's not what you don't know that kills you; it's what you know for sure that isn't so." Through hard experience, I came to know that, while it may be quite difficult to know the truth, it is fairly easy to detect lies.

People behave in disappointing ways when large amounts of money or unrestrained ego are involved. With both, there is sure to be trouble. When I discovered that I had been the target of a long-planned betrayal, I was dismayed and chose to begin again.

Starting over meant liquidating the hedge funds I had been managing. Between September 1, 1998 and November 9, 2002, when I liquidated the funds, the total return on these funds was 258%, net of fees (the gross return was over 320%). In comparison, the S&P500 and the

NASDAQ indices had declined over this period, which spanned the extremes of the dot-com bubble and bust. If there were any funds in the world that did as well through this period as did mine, they were few.

These results were audited. Further, they were now cash on cash returns, and so clients knew them to be absolutely and stunningly *real*—it's one thing to receive statements; it's quite another to actually have received the funds. One client called immediately and offered to back me with \$1 billion, explaining that I then would not need to raise money. It was an extraordinary moment for me. I was hugely flattered, but ended-up declining the offer, when I learned of a side-letter that would have put other clients at a disadvantage.

While the dot-com bust was underway, I was asked to meet with George Soros at the offices of Soros Management in New York. I carried into the meeting a single piece of paper. This was a graph showing that the growth rate of U.S. capital spending had blown through five standard deviations above the mean, having never in history broken above three standard deviations. I explained that this meant there would inevitably be a historic bust.

Soros looked closely at the piece of paper, looked up at me and said, "This is good!" He studied the paper further, looked up at me again and said, "This is very good!" He did not disagree with me about the bust, but said "*They* cannot allow the equity culture to fail." I said, "What can they do that they haven't already done." He said in answer, "You don't know what they can do." So, in such a moment, even George Soros spoke of a *they*.

He then smiled and said "Thank you!" meaning this was the end of the meeting. One of his handlers followed me out of the room and said, "How did you do that? I have never seen anyone do that!"

I was amazed and flattered to have anything to do with George Soros, and that he took me, this kid from Ohio, seriously. He certainly knew a great deal that I did not know. But on the other hand I knew things he did not know. Early in 2003, I met with him again at his office, showed him a one-page chart of the astounding growth in Asset-Backed Securities, and predicted that this would be the basis of the next bubble and crash. He said, "You're crazy." But he was very interested in how I

was doing what I was doing, and I explained it to him. He said, “You have rhythm. Other people can get rhythm too.”

I started again in January of 2003 with about \$300 million in assets and a further \$300 million in commitments, taking on twenty-four employees, which meant that no one lost their job. Through the peak of the Dotcom bubble, I had been able to “fight the Fed”, because I could see the acceleration and deceleration in their liquidity injections. I could already see that there would be another even bigger bust. I felt I had the responsibility to protect people, to keep going, and to do it again. But it would be different this time. The next couple years nearly killed me.

The markets had always functioned largely as a closed system (excepting the open market operations of the New York Fed, which I had learned to monitor and interpret). I could see flows from one sector of the market to another. In order for some areas of the financial markets to rise significantly, other sectors were being sold to provide the funds. I looked for opportunities to work opposite to these flows and rotations, buying what others had orders to sell, and selling what others wanted to buy, but drawing them through the bid/asked spread.

In March of 2003 I started seeing a phenomenon I had never seen before. On individual days, *everything* went up, with no apparent source of the fund flows. There was no rotation. All sectors went up, as did bonds. This was not being driven by open market operations because money supply growth was falling. Something unprecedented was happening in the internals of the market. The only explanation was that created money was now being directly injected into the financial markets; I wrote about this at the time. It is not understood even now that this was the actual beginning of “Quantitative Easing” (QE), more than five years before it was officially announced during the Global Financial Crisis. I saw it as an act of desperation, and again felt my responsibility to protect people.

Money supply growth was falling sharply. Commercial and industrial loans were falling. I suspected that the growth in Asset-Backed Securities and derivatives was highly unsound, and that inevitably there would be an epic bust.

By the end of the year, despite easy availability of credit, signs of economic stress were growing, but people did not understand this, with the exception of those being hurt directly. One could not have known from listening to the media narrative. And, if the stock market can be made to go up, people think things must be good.

The number of people late in paying their utility bills was increasing. Foreclosures as a percentage of total residential loans outstanding were going straight up to record levels. In the spring of 2004, I was preparing to write about this in my quarterly newsletter when I found that the DLQTFORE Index on the Bloomberg system had been changed to instead show that foreclosures were going straight down. I asked one of the guys on the desk to dig into what had been done to the data series. He called into the agency responsible for the data. Eventually he was told that, while the data series had been calculated consistently in the same way since the 1970s, the methodology had recently been changed, and that this change had been applied retroactively; indeed the methodology was now being tweaked with each data release. Doing so made it possible to publish any desired trend line.

Post 9/11, other important economic data series were being similarly corrupted to fit the script of economic strength and growing prosperity. An unprecedented level of deliberate government disinformation was being implemented. Having been a “God and Country” Republican who had voted for George Bush, I was shaken. Why would our own government work to give the public a false understanding of what was happening?

Bush gave a televised speech in a Texas warehouse, standing in front of what appeared to be shipping boxes stamped “Made in America.” The image was a fake backdrop, and so, it inadvertently symbolized the epic fraud which was then being perpetrated. I regularly called business people with insights into the real economy. Some ran industrial businesses. A bankruptcy attorney, who had been a friend since we were twelve, was handling workouts for one of the biggest middle market lenders. Viewing their database of more than 2,000 middle market companies, he told me the commonality was that they were all shutting down U.S. manufacturing as quickly as possible and outsourcing to China. Tens of percentage points in gross profit could be picked-up by

doing so. It was about chasing short-term profits; but then you've lost your industrial base and more.

In Senate testimony, Alan Greenspan was talking about the "productivity miracle" supposedly being driven by technology investment. In those days, "The Maestro" was implicitly regarded as possessing superhuman wisdom, which he, of course, used benevolently in his role as the guardian of the U.S. economy. Perhaps then he was smart enough to know that Productivity is simply calculated as Sales/Hours Worked. As Fed Chairman, and as an economist, could he have not known that this was being driven by falling hours worked, by people losing their jobs as U.S. manufacturing was being shut down and outsourced, and that spending was only being maintained through massive money creation and debt expansion. People were permitted and invited to go deeper into debt while losing their livelihoods; that was the "miracle."

While the tax bases of state and local governments were being gutted, the Fed's monetary policy was inflating a massive bubble in financial assets. In recognition of these two facts, what could The Maestro have advocated? If the objective had been to serve the interests of the public, one would have recommended taxing the windfall financial gains being driven by the monetary policy, and cycling the proceeds into fiscal support to communities, which were losing their tax base. The opposite was done. Taxes on dividends and capital gains were cut substantially. State and local governments were forced to increase taxes, while cutting services. This deliberate choice would destroy cities, towns, communities, and the people in them. This is why home foreclosures and utility delinquencies were going to record levels. And this is why the calculation of economic data was being changed, including that of the DLQTFORE Index.

What is the job of the Fed Chairman? In the case of The Maestro it seems to have been to obfuscate what was really happening. Why would he do that? Answer: The Fed chairman does not work for the public; he works for the people who own and control the Fed. You are not allowed to know who these people are. Why would the people who control the Fed wish to obfuscate what was happening?

Now we are getting somewhere. There is something much, much bigger behind this. That's what this book is about.

How was debt expanded while credit conditions were deteriorating? It was necessary to create a massive, audacious illusion: that there was no risk, specifically that there need be no concern about the ability of borrowers to repay financial obligations. The scheme worked so well that banks discontinued their risk underwriting functions, while offering mortgages for more than the purchase price of a home, so that borrowers received cash back at the closing. Loans could even be given to people who were unemployed and had no income—just what was needed.

The entire global financial system was moved aggressively to origination and securitization of loans into Asset-Backed Securities, and to filling balance sheets with these securities. With the illusion of risk-free return, demand for these Asset-Backed Securities was so high that they were sold many times over on a synthetic basis, i.e., as derivative instruments. There was a Dilbert comic in which the evil Dogbert said, “Prospectus is Latin. It means close your eyes and open your mouth.”

This was enabled with remarkable sophistry, and with Credit Default Obligations (CDOs), “miracles of modern finance”, as Greenspan called them. When questioned about the risk exposures, he said, “Presumably, the risk will be born by those best able to bear that risk.” In laying the groundwork for this, Robert Rubin and Larry Summers had joined Greenspan, billed by Time Magazine as the “Three Marketeers” and as “The Committee to Save the World.” They had presided over the repeal of key sections of the Glass-Steagall Act, which had separated commercial and investment banking since 1933. By 2002, the notional amount of derivatives outstanding had reached twice the size of the global economy; just six years later it had reached ten times global GDP. About 10% of this was Credit Default Obligations; CDOs alone had reached the size of global GDP.

Invented in the 1990s, Asset-Backed Securities were created by forming a pool of financial obligations (e.g., mortgages, credit card receivables, boat loans) and then carving up the pool into a series of tranches with ascending risk ratings. The idea was that any defaults would be absorbed by the lowest-rated tranches. This would allow the highest tranche to be rated AAA. But there was a problem. Wall Street had difficulty selling the lower-rated tranches, which bore the risk of default. This is why the Credit Default Obligation became so important. It was

the linchpin. With a swap of the default risk, the entire pool could be rated AAA.

I wondered at the time, who, in their right mind, was signing up to take any of that default risk? Eventually, it was possible to know that it had been the biggest banks themselves, and that these had been allowed (or directed) to form hedge fund subsidiaries. These entities had apparently enthusiastically taken on the default risk, knowing that they would be allowed to use valuation models at year-end showing there was no default risk, based on the simplistic logic that there had never been a default. The General Partner of one of these funds would have pocketed 20% of the resulting paper profits each year. This was being done on an enormous scale.

With a significant short side in the rising market, we were losing money, but I felt it was my responsibility to continue. I knew that if we could just be positioned when the intervention ran its course, we would be among the very few able to survive the bust. I could see that this coming global collapse would be much bigger than the dot-com bust, and I began to worry that the insolvencies would be so enormous and widespread that the prime brokers, the custodians for our hedge funds, would fail. If you are using shorts, your assets are pledged in a collateral account. There is no way to be hedged without being exposed to the failure of the prime broker. I often awoke in the middle of the night, and, knowing that I could not get back to sleep, would simply get up and continue working. I had chronic heartburn, which may lead esophageal cancer, the very disease my father had died of. Like my uncle before me, I was being crushed by my sense of responsibility.

Sitting on the trading desk, and seeing everything as it happened, I had assembled documentation of the many bizarre disconnects in the media narratives around 9/11, The War on Terror, and the economic "recovery." It was the size of a telephone book. I thinned this down to a smaller package, which I used to try to communicate with friends and neighbors; I might as well have been talking to the wall. This made me want to understand how I might get through to people. Eventually, I went door-to-door after working all day on the trading desk. People in the wealthy neighborhoods did not want to hear about it. I tried it in a place where the houses were small. I walked past a guy sitting on the front steps of a house. He seemed to be interested in what I might be

doing there (I was still in my suit). I gave him the thumbnail summary. He simply said, “Good luck, man”, in the voice of someone who had already given up.

I decided I could not go on after George Bush, instead of being repudiated, was re-elected. I did not think that possible. This is how much I had changed: In desperation I had voted for John Kerry. I went on to work as a “Team Captain” for the Obama campaign. But there was no change coming with “Change you Can Believe in” Obama, whose cabinet oddly came to conform to the candidate list of Citigroup. After that, I stopped voting.

In the aftermath of the Global Financial Crisis it eventually became known that tens of trillions in losses in derivative positions were housed in the biggest banks, which were then bailed out with newly created money. The prime brokers would have failed, but to prevent that they were made banks and also received direct injections of created money from the Fed. No one was prosecuted. On the contrary, the perpetrators were rewarded with enormous bonuses. It was almost as if it had all gone according to plan.

I had expected widespread failures of financial institutions and had watched closely for the first signs. In 2008, I noticed the failure of a small broker dealer in Florida, and I was shocked to learn that client assets owned outright with no borrowing against them were swept to the receiver and encumbered in the bankruptcy estate. I had to understand how this could possibly have happened, and eventually uncovered that ownership right to securities, which had been personal property for four centuries, had somehow been subverted. This would be born out further in the bankruptcies of Lehman Brothers and MF Global.

I had owned Swedish Government bonds since 2003, but I owned them in the U.S., and therefore had exposure to the failure of the U.S. sub-custodian. I needed to find a way to own them directly in Sweden with property rights. I flew to Stockholm in March of 2009. Without a Swedish personal number, I had to buy an apartment in order to be allowed to open bank accounts. Then it was possible to open a special securities account to which I could transfer my Swedish government bonds, and then own them directly; they could not be lost if a custodian

became insolvent. However, in the meantime, this has been subverted as well.

The Swedes were very interested in why I had made the decision to move to Sweden. In April of 2011, I was asked to speak at an investment conference in Stockholm. The title of my presentation was “Paradigm Collapse.” It was the first time that I spoke publicly about the gutting of investor protections, including ownership rights to securities, and of the context for understanding why this was happening,

I first spoke publicly in the U.S. about the subversion of property rights to securities at an investment conference in 2012. There was a tremendous response from the audience of some hundreds. When my time was up, there were shouts of “Let him keep talking.” The organizers said that had never happened before. The conference was politically connected in some way. Their head of research told me that the CIA was certainly there. The next day there was an article in the online Wall Street Journal rebutting what I had said, but without mentioning me.

My Dad’s cousin was married to a fellow named Bob, who had been in the Office of Strategic Services (OSS) during WWII, which was the forerunner of the CIA. They were unusually close members of our family, living next door to my father’s brother in Shaker Heights, and having every Christmas with us. My cousin, who played in their house as a boy, has told me of finding original photographs of German submarine pens and a Japanese military sword. Bob was in *Skull and Bones* at Yale. His roommate at Yale was McGeorge Bundy, who was also in the OSS, and went on to serve as National Security Advisor to John F. Kennedy and to Lyndon B. Johnson; he was on the Council on Foreign Relations at the age of forty.

After Bob’s wife, my father’s cousin, died young of cancer, Bob left a successful career with Cleveland Cliffs and began systematically traveling the world. Dad had said Bob would have soon been made CEO. He kept in touch with our family. He was at our house for a family dinner in 1976. He explained that he had decided to make Rhodesia his base. We asked him why, and he said, “I just like it there.” Dad, for some reason, then said openly at the table, “Bob is in the CIA.” This was followed by complete silence for some time, until Bob began speaking

again. Rhodesia became Zimbabwe three years later. Members of my wife's family were living there at that time.

Less than a month after speaking at that conference in the U.S., a man contacted me who asked to meet in Stockholm. He had been the Chairman of a U.S. political party, and had a long career related to the defense establishment. He stayed at a hotel within walking distance from my apartment. We had lunch. He suggested a pint of ale. He asked me to explain the subject of which I had spoken at the conference. I went through the evidence and implications. The odd thing is that he then asked no questions about the subject. Instead, he fixed me in the eye and said, "Does your family know you are doing this?" He said nothing more; that was the end of the meeting. I paid the bill and left. Perhaps it had been a "courtesy call." We all have to die sometime, and being assassinated must be among the most honorable ways to do it. One must have been doing something right! Made a difference! No classier way to die, really. I always wanted to be like John Lennon!

I have not wanted to write this book, or have anything to do with this, but it has become *unavoidable*. It is like exorcising a demon, which has plagued me and my family. It must be done. And then, I will be done. I am self-publishing this because I don't want to involve a lot of people. I just need to get it out. I expect that there will be efforts to criticize me personally and this work.

We have been overwhelmed with unpleasant and contradictory media "information." This is by design. It is an intentional strategy, highly effective in shutting down critical thinking. I hope not to add to this burden. And so, a goal here is to be focused and concise, so as to not sap the attention of the reader. A further and more important goal is to provide not just information, but a synthesis of key information, allowing the reader to understand what is happening, why it is happening, why it is happening now, and what grand objective stands behind seemingly unrelated developments and events.

It is important to note that what is exposed here is not conjecture. It is found in authentic primary source documents. I wish to acknowledge the important contribution of my extraordinary friend, who found key documentation of the Legal Certainty Group in one of his many sleepless nights. I thank the miraculous people who have helped me

and kept me alive. I wish to thank the many, many heroic people working to expose this global takeover, one of whom said, “Wars are not won without courage.”

You are about to be confronted with *quite* shocking, depressing material. You don’t want to know about this. I don’t even want to know about it.

Charles Dickens had his character Scrooge (an investment banker) say, when faced with his own gravestone:

Are these the shadows of the things that Will be, or are they shadows of things that May be, only?

Men’s courses will foreshadow certain ends, to which, if persevered in, they must lead . . . but if the courses be departed from, the ends will change. Say it is thus with me.

Why show me this, if I am past all hope?

It is my hope that in making this unpleasantness explicit, and doing so at this time when developments are becoming more apparent, that awareness might spread, and that the worst might be averted. Perhaps this Great Taking might not be allowed to happen if we each hold up our end—even the investment bankers—and say forcefully: we will not allow this. It is a construct. It is not real.

David Rogers Webb
Stockholm, Sweden
May 28, 2023

1. Introduction

Supreme excellence consists of breaking
the enemy's resistance without fighting.

Sun Tzu

What is this book about? It is about the taking of collateral, *all* of it, the end game of this globally synchronous debt accumulation super cycle. This is being executed by long-planned, intelligent design, the audacity and scope of which is difficult for the mind to encompass. Included are all financial assets, all money on deposit at banks, all stocks and bonds, and hence, all underlying property of all public corporations, including all inventories, plant and equipment, land, mineral deposits, inventions and intellectual property. Privately owned personal and real property financed with any amount of debt will be similarly taken, as will the assets of privately owned businesses, which have been financed with debt. If even partially successful, this will be the greatest conquest and subjugation in world history.

We are now living through a hybrid war conducted almost entirely by deception, and thus designed to achieve war aims with little energy input. It is a war of conquest directed not against other nation states but against all of humanity.

Private, closely held control of *all* central banks, and hence of all money creation, has allowed a very few people to control all political parties, governments, the intelligence agencies and their myriad front organizations, the armed forces, the police, the major corporations, and of course, the media. These very few people are the prime movers. Their plans are executed over decades. Their control is opaque. When

George Soros said to me, “You don’t know what *they* can do,” it was these people to whom he referred. Now, to be absolutely clear, it is these very few people, who are hidden from you, who are behind this war against humanity. You may never know who they are. The people you are allowed to see are hired “face men” and “face women.” They are expendable.

One might seek comfort in thinking that this must be crazy; nothing like this has ever happened before . . . but it has. The precedent for the intent, design and horrific execution of such a plan can be found by examining the early 20th century, the period of the great wars and the Great Depression. The proclaimed “Great Reset” now in progress, however, includes major innovations, which will allow unprecedented concentration of wealth and of power over humanity through deprivation. How might it come to pass that you will own nothing, as so boldly predicted by the World Economic Forum? It certainly is not about the personal convenience of renting.

With the collapse of each financial bubble and the ensuing financial crisis, a story is rolled out which should now be familiar to you. It goes like this: All of us are at fault. We just wanted too much, and we were living beyond our means. And now, our collective greed has caused this terrible global crisis. The “Authorities”, the “Regulators” had struggled mightily to protect us from our own “animal spirits”, their great and elaborate efforts having been demonstrated through decades of work. Despite their good intentions, however, they failed, and can’t be blamed (or even prosecuted) for that. After all, we are all to blame. In any case, let’s look forward. The financial system must be restarted, so that we can provide credit to you again, create jobs and get the economy growing, *whatever it takes!*

This time, what it will take is all of your property, or what you thought was your property. Here is your Central Bank Digital Currency deposited on your smart phone, so that you can buy milk. Noblesse Oblige!

Money is an extremely efficient control system. People order themselves upon money incentives, and thus difficult, dangerous and energy intensive overt physical control need not be employed broadly. But the money control system breaks down at the end of a monetary “super

cycle”, with collapse in the Velocity of Money (Velocity, or VOM). This is a multi-decade process.

Velocity is the number of times that a unit of currency is spent to buy goods and services in a period of time. This is measured by comparing the value of all goods and services produced in a period of time (Gross Domestic Product, or GDP), with the value of all cash and deposits which can be used nearly as easily as cash (Money Supply).

$$\text{Velocity} = \frac{\text{GDP}}{\text{Money Supply}}$$

Thus, $\text{Velocity} \times \text{Money Supply} = \text{GDP}$. Lower Velocity results in lower GDP.

Milton Friedman was an economist noted for the study of monetary history. In his book *A Monetary history of the United States, 1867-1960* [1], co-authored with Anna Schwartz, we find the following observation:

[W]e know enough to demonstrate rather conclusively that ... velocity [of money] must have declined sharply from 1880 to World War I ...

Collapse in VOM is exactly what was unfolding from the 19th century and leading up to the Great War. Within a few years, the Russian, Austro-Hungarian, and Ottoman empires ceased to exist, as did the Qing Dynasty. The German economy was destroyed. Then followed the Great Depression, the Second World War, and the slow collapse of the British Empire. No populations were unscathed. There were no winners. Or were there?

While there was widespread deprivation, selected banking interests took the collateral of the thousands of banks which were forced to close, as well as of a great many people and businesses large and small—the indebted. In the U.S., gold held by the public was confiscated. But most importantly, closely held secretive private control of central banks and money creation was maintained, as was the aforementioned control over society’s key institutions, including political parties, governments, intelligence agencies, armed forces, police, major corporations, and media.

The heirs to this control position have known for many decades that such a collapse in VOM would come again. They have been preparing. For them, it is an absolute imperative to remain in control through the collapse and “Great Reset”; otherwise they risk being discovered, investigated and prosecuted. They are not doing it for us. There is no noble purpose.

We are now living within a replay of this monetary phenomenon, i.e., a profound decline in VOM, which began when Velocity peaked in 1997. This was coincident with onset of a major global financial crisis, known as the Asian Financial Crisis, and it was followed within a few years by the Dot-Com Bubble and bust.

Throughout this period, I was managing long/short equity hedge funds, and I developed the insight that the Federal Reserve was influencing the direction of financial markets (this was considered conspiracy theory, even by my partners). At that time, it was done through Open Market Operations conducted by the New York Fed using repurchase agreements on treasury securities.

I began, systematically, following the rate of growth in M3, the broadest measure of money at the time (which is no longer published). I studied what was unfolding incrementally, and I saw that in individual weeks new money created was more than 1% of annual U.S. GDP. This was when it first occurred to me that the Fed was getting less “bang for the buck”, in that GDP was not responding to money creation. What it meant was that the velocity of money was inverting, and that money growth was now much higher than any GDP growth. The money being created was not going into the real economy, but it was driving a financial bubble with no relationship to underlying economic activity. I understood this, not with hindsight, but in near real-time. If I could know it, Alan Greenspan and the people he worked for knew it, too. So why did they do it? If something does not make sense, it is necessary to change one’s perspective and aim for a larger understanding. Crises do not occur by accident; they are induced intentionally and used to consolidate power and to put in place measures, which will be used later.

By the 4th quarter of 1999, when the Dot-Com Bubble was reaching extremes, I saw that the money supply was being increased at more

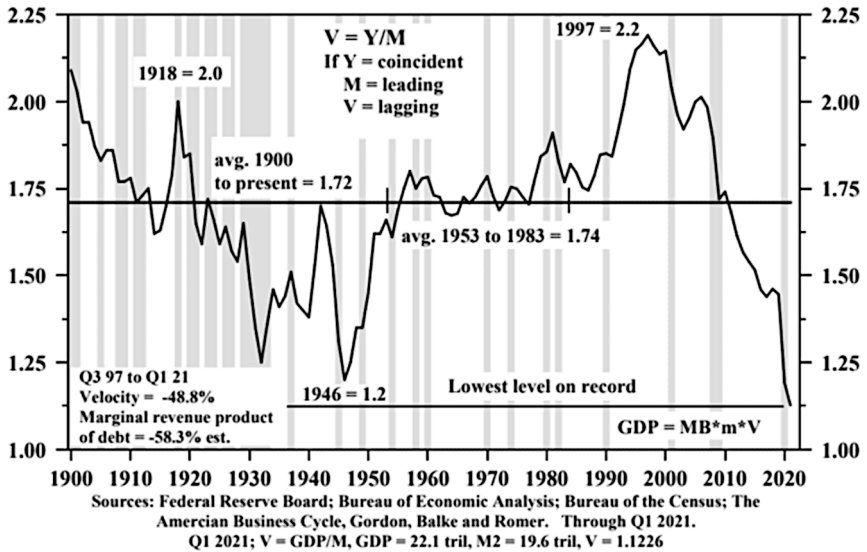


Figure 1.1 Annual velocity of money, from 1900 to 2021. Source: Hoisington Management.

than a 40% annual rate. I knew that this meant that the Velocity of Money was collapsing. Such a collapse occurs when the economy is not growing despite very high rates of money creation.

Please observe the extremely important chart in Figure 1.1, which was prepared by Hoisington Management. For once, one can see a true underlying determinant of the sweep of history.

Profound decline in VOM lead to the Financial Panic of 1907, which was used to justify the establishment of the Federal Reserve System. The Federal Reserve Act was passed by Congress in the quiet days before Christmas, 1913. Archduke Ferdinand was assassinated six months later.

Following a brief recovery in VOM during the Great War, it collapsed further, leading up to the closure of banks and the confiscation of gold in 1933. VOM recovered somewhat into the Second World War, and then collapsed to a low in 1946, unprecedented until now.

VOM has now contracted to a lower level than at any point during the Great Depression and world wars. Once the ability to produce growth by printing money has been exhausted, creating more money will not

help. It is pushing on a string. The phenomenon is irreversible. And so, perhaps announcement of the “Great Reset” has been motivated not by “Global Warming” or by profound insights into a “Fourth Industrial Revolution”, but rather by certain knowledge of the collapse of this fundamental monetary parameter, the implications of which extend far beyond economics.

Something has been planned for us, but not for the reasons you have been given. How might we come to know something about the intentions of the planners? Perhaps, by examining their preparations?

2. Dematerialization

All warfare is based on deception.

Sun Tsu

There are now no property rights to securities held in book-entry form in any jurisdiction, globally. In the grand scheme to confiscate all collateral, dematerialization of securities was the essential first step. The planning and efforts began over half a century ago. That there was some great strategic purpose behind dematerialization is evidenced by the fact that the CIA was assigned the mission.

The project leader was William (Bill) Dentzer, Jr., a career CIA operative [2]. By his admission in his own written memoir [3], he started his career working to establish anti-communist student organizations in Europe with the backing of the CIA. The CIA had arranged his draft deferment. He was then specifically assigned to the CIA and worked there openly for five years. Subsequently, he was “transferred” from the CIA to the task force which created the Agency for International Development (AID). He became Special Assistant to the first head of AID, and thereafter Special Assistant to the U.S. Coordinator of the Alliance for Progress, which was active in Latin America. He was then appointed Executive Secretary of the Clay Committee, which lobbied for Congressional appropriations for AID. After three years as Director of AID in Peru, he was named Deputy U.S. Ambassador to the Organization of American States. He states in his memoir:

Given events in the United States in the late 1960s, including the assassinations of Martin Luther King Jr. and Robert Kennedy, my

interests had begun to shift from the international to the domestic front.

Then, strangely, even though he had no background in any aspect of banking or finance, he was appointed New York State Superintendent of Banks by Nelson Rockefeller. This came after his nomination to the newly-formed New York State Council of Economic Advisors by its Chairman, former head of the World Bank, Eugene Black. Interestingly, Black's father had been Chairman of the Federal Reserve in 1933. Within two years of assuming his position as New York State Bank Superintendent, Dentzer was named Chairman and CEO of the newly formed Depository Trust Corp. (DTC), which he remained for the next twenty-two years, i.e., through the entire process of dematerialization.

In the late 1960's, something called the Banking and Securities Industry Committee (BASIC) had been formed to find a solution to the "paperwork crisis." It seemed the burdens of handling physical stock certificates had suddenly become too great, so much so, that the New York Stock exchange had suspended trading some days. "Lawmakers" then urged the government to step into the process. The BASIC report recommended changing from processing physical stock certificates to "book-entry" transfers of ownership via computerized entries in a trust company that would hold the underlying certificates "immobilized." This trust company would develop the necessary computer and other systems. I happened to meet with network engineers of DTC forty years ago, in my first job out of school.

Was this "paperwork crisis" manufactured in order to provide an imperative for dematerialization? Consider that DTC did not begin operations until 1973, and that no significant degree of dematerialization was achieved for many years. However, somehow during this intervening period, stock exchanges continued to function, in spite of escalating trade volumes, without the elimination of certificates. Especially with the aid of computerization, it could be done, and was done.

DTC eventually became the model for the Central Securities Depository (CSD) and Central Clearing Counterparty (CCP), the purposes of which will be explained later.

3. Security Entitlement

Never attempt to win by force
what can be won by deception.

Niccolo Machiavelli

The greatest subjugation in world history will have been made possible by the invention of a construct; a subterfuge; a lie: the “Security Entitlement.”

Since their beginnings more than four centuries ago, tradable financial instruments were recognized under law everywhere as personal property (perhaps that is why they were called “securities”). It may come as a shock to you that this is no longer the case.

In order to convey to you what has been done, let me start with an analogy:

Let’s say that you have purchased an automobile for cash. Having no debt against the vehicle, you believe that you now own it outright. Despite that, the auto dealer has been allowed by a newly invented legal concept to treat your car as his asset, and to use it as collateral to borrow money for his own purposes. Now the auto dealer has become bankrupt, and your vehicle along with all of the others sold by the dealer are seized by certain secured creditors of the dealership, with no judicial review being necessary, as legal certainty was previously established that they have absolute power to take your car in the event of the bankruptcy of the dealer.

Now, to be clear, I am not talking about your car! I am illustrating the horror and simplicity of the lie: You are led to believe that you own

something, but someone else secretly controls it as collateral. And they have now established legal certainty that they have absolute power to take it immediately in the event of insolvency, and not your insolvency, but insolvency of the people who secretly gave them your property as collateral. It does not seem possible. But this is exactly what has been done with all tradable financial instruments, globally! The proof of this is absolutely irrefutable. This is wired to go now.

Essentially all securities “owned” by the public in custodial accounts, pension plans and investment funds are now encumbered as collateral underpinning the derivatives complex, which is so large—an order of magnitude greater than the entire global economy—that there is not enough of anything in the world to back it. The illusion of collateral backing is facilitated by a daisy chain of hypothecation and re-hypothecation in which the same underlying client collateral is re-used many times over by a series of secured creditors. And so it is these creditors, who understand this system, who have demanded even more access to client assets as collateral.

It is now assured that in the implosion of “The Everything Bubble”, collateral will be swept up on a vast scale. The plumbing to do this is in place. Legal certainty has been established that the collateral can be taken immediately and without judicial review, by entities described in court documents as “the protected class.” Even sophisticated professional investors, who were assured that their securities are “segregated”, will not be protected.

An enormous amount of sophisticated planning and implementation was sustained over decades with the purpose of subverting property rights in just this way. It began in the United States by amending the Uniform Commercial Code (UCC) in all 50 states. While this required many years of effort, it could be done quietly, without an act of Congress.

These are the key facts:

- Ownership of securities as property has been replaced with a new legal concept of a “security entitlement”, which is a contractual claim assuring a very weak position if the account provider becomes insolvent.

- *All* securities are held in un-segregated pooled form. Securities used as collateral, and those restricted from such use, are held in the same pool.
- *All* account holders, including those who have prohibited use of their securities as collateral, must, by law, receive only a pro-rata share of residual assets.
- “Re-vindication,” i.e. the taking back of one’s own securities in the event of insolvency, is absolutely prohibited.
- Account providers may legally borrow pooled securities to collateralize proprietary trading and financing.
- “Safe Harbor” assures secured creditors priority claim to pooled securities ahead of account holders.
- The absolute priority claim of secured creditors to pooled client securities has been upheld by the courts.

Account providers are legally empowered to “borrow” pooled securities, without restriction. This is called “self help.” As we will see, the objective is to utilize all securities as collateral.

I assure you that this is not conjecture. You would be greatly mistaken in dismissing this as “conspiracy theory”, which is a common reaction to so much unpleasantness. It is possible to really know about this. The documentation is absolutely irrefutable.

In April of 2004, The European Commission Internal Markets and Services Director General proposed the “setting up of [sic] group of legal experts, as a specific exercise intended to address problems of legal uncertainty identified in the context of considering the way forward for clearing and settlement in the European Union” [4]. This became the Legal Certainty Group.

Legal uncertainty sounds like a bad thing, and legal certainty sounds like a good thing. However, the objective was merely to make it legally certain that secured creditors would be empowered to immediately take client assets in a failure of a custodian.

In March of 2006, the Deputy General Counsel for the Federal Reserve Bank of New York provided a detailed response to a questionnaire prepared by The Legal Certainty Group, which was looking to the Fed

to tell them exactly how to do it [5]. The following are excerpts from that response, which is also included in full in this book's appendix:

Q (E.U.): *In respect of what legal system are the following answers given?*

A (N.Y. Fed): *This response confines itself to U.S. commercial law, primarily Article 8 ... and parts of Article 9, of the Uniform Commercial Code ("UCC") ... The subject matter of Article 8 is 'Investment Securities' and the subject of Article 9 is 'Secured Transactions.' Article 8 and Article 9 have been adopted throughout the United States.*

Q (E.U.): *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?*

A (N.Y. Fed): *No. The security entitlement holder ... has a pro rata share of the interests in the financial asset held by its securities intermediary ... This is true even if investor positions are 'segregated.'*

Q (E.U.): *Is the investor protected against the insolvency of an intermediary and, if so, how?*

A (N.Y. Fed): *... an investor is always vulnerable to a securities intermediary that does not itself have interests in a financial asset sufficient to cover all of the securities entitlements that it has created in that financial asset ...*

If the secured creditor has "control" over the financial asset it will have priority over entitlement holders ...

If the securities intermediary is a clearing corporation, the claims of its creditors have priority over the claims of entitlement holders.

Q (E.U.): *What rules protect a transferee acting in good faith?*

A (N.Y. Fed): *Article 8 protects a purchaser of a financial asset against claims of an entitlement holder to a property interest in that financial asset, by limiting the entitlement holder's ability to enforce that claim ... Essentially, unless the purchaser was involved in the wrongdoing of the securities intermediary,*

an entitlement holder will be precluded from raising a claim against it.

Q (E.U.): *How are shortfalls [i.e. the intermediary's position with an upper-tier intermediary is less than the aggregate recorded position of the intermediary's account-holders] handled in practice?*

A (N.Y. Fed): *... The only rule in such instances is that the security entitlement holders simply share pro rata in the interests held by the securities intermediary ...*

In actual fact, shortfalls occur frequently due to fails and for other reasons, but are of no general consequence except in the case of the securities intermediary's insolvency.

Q (E.U.): *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?*

A (N.Y. Fed): *In terms of the interest that the entitlement holders have in the financial assets credited to its securities account: regardless of fault, fraud, or negligence of the securities intermediary, under Article 8, the entitlement holder has only a pro rata share in the securities intermediary's interest in the financial asset in question.*

That's how it works directly from "the horse's mouth", i.e., the most authoritative source possible—lawyers working for the Fed.

Further exposure of the purpose of the invention of the security entitlement can be found in a discussion paper concerning "legislation on legal certainty of securities holding and dispositions", prepared by the European Commission's Directorate General Internal Market and Services in 2012 [6]:

Where securities are concerned, the standard has always been that a custodian has to hold sufficient securities in order to meet all its clients' claims. In most EU jurisdictions, such a standard is guaranteed by giving investors ownership rights towards securities.

Some markets, however, treat securities like money. The US and Canada based their law on the concept that investors do not own 'securities', but they own 'securities entitlements' against their account providers instead.

The advantage of this concept is the potential increase in the amount of assets available as collateral, but critics view it as a threat to stability of the system, because the assets concerned are based on the same underlying resource.

Concern has been voiced by market participants, regulators, central banks, and international institutions about potential collateral shortages ... There is pressure to broaden the range of securities eligible as collateral.

As a result of the demand for collateral, securities are increasingly regarded by market participants as a funding tool. These trends reinforce the market trends to treat securities like money ... with significant implications for ownership.

The risk of unauthorised use of clients' assets is increased by the employment of omnibus account structures. Omnibus accounts pool assets so that individual securities cannot be identified against specific investors.

This works well until a bankruptcy occurs. If the account provider defaults, a client with a mere contractual claim becomes an unsecured creditor, meaning the client's assets are, as a rule, tied in the insolvency estate and it is obliged to line up with all the other unsecured creditors to receive its assets back. ...

[R]e-use of security interest collateral carries greater risk to the financial system because multiple counterparties may compete for the same collateral in default (so called 'priority contests').

Clearly, the European Union Directorate General Internal Market and Services, fully knew the above in 2012.

In the next global financial panic, what are the chances that there will be much of anything remaining in these pools of securities after the secured creditors have helped themselves?

There will be a game of musical chairs. When the music stops, you will not have a seat. It is designed to work that way.

It is time to ask: *cui bono*? Who benefits? It is certainly not the citizens, who have lost their property rights, who have been betrayed in this deception by their own governments.

The reason given for this legislation on legal certainty is “demand for collateral” by “market participants.” They are not referring to you and me, the public. “Market participants” is a euphemism for the powerful creditors who control governments. They have worked for many years to establish their legal certainty worldwide.

4. Harmonization

Those skilled at making the enemy move do so by creating a situation to which he must conform; they entice him with something he is certain to take, and with lures of ostensible profit, they await him in strength.

Sun Tsu

What was the purpose of seemingly out-of-control financialization? The threat of financial collapse, and the promise of continued financial profits have been used to herd the nations.

An imperative has been created that certain secured creditors must be given legally certain claims to client assets, globally, without exception, with the further assurance of near instantaneous cross-border mobility of legal control of such collateral. The global push for conformance to the U.S. model for achieving such legal certainty and mobility began in earnest more than twenty years ago in the aftermath of the dot-com bust. Financial instability and the threat of “collateral shortages” were used as justification. Deliberate efforts were sustained, globally, over many years. People were paid to do this, to betray the vital interests of their own people. It was done first in the U.S., and then demanded globally under the name of “harmonization”; perhaps the emphasis should be on “harm.”

The “Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary” [7] was drafted in 2002 and signed in 2006. It is an international multilateral treaty intended to remove, globally, legal uncertainties for cross-border securities transactions.

The Convention introduced a newly invented conflict-of-laws rule to be applied to security transactions, especially collateral transactions, namely the “Place of the Relevant Intermediary Approach” (or PRIMA). This was designed to avoid problematic national law, which might allow owners to recover their assets taken by a creditor as collateral, by setting the place of law in the account agreements with intermediaries.

One of the people most involved was James S. Rogers (perhaps a distant cousin of mine), who, according to his own biography [8],

‘served as one of the United States delegates to the Hague Conference on Private International Law project to negotiate and draft a Convention on Choice of Law for Securities Holding Through Securities Intermediaries and as a member of Drafting Group for that Convention.

Interestingly, Rogers also notes that he had

served as Reporter (principal drafter) for the Drafting Committee to Revise UCC Article 8, which established a new legal framework for the modern system of electronic, book-entry securities holdings through central depositories and other intermediaries.

Very few people were involved in the drafting of the 1994 revisions to articles 8 and 9 of the UCC. A report by the Financial Markets Law Committee (a “charity” affiliated with the Bank of England) contains this illuminating quote [9]:

Professor Rogers, Reporter to the Article 8 1994 revision Drafting Committee, recalls how “at the outset of the Article 8 revision one could probably have counted on one hand—with a few fingers unused—the number of people among those appointed to the Article 8 Drafting Committee, or among the full membership of the sponsoring organisations that would ultimately have to approve the work of the Drafting Committee, who had any familiarity with either old [1978 version] Article 8 or the modern securities holding system.”

If Professor Rogers was one finger, Professor Egon Guttman was the other. As the author of *Modern Securities Transfers* [10], he was the foremost expert on security transfers and secured transactions under

Articles 8 and 9 of the UCC. Professor Guttman passed away in 2021, and so, description of his activities are disappearing. But I have saved references to his work dating back to 2012:¹

Professor Guttman has been involved in the revisions of various Articles of the Uniform Commercial Code, and as a member of U.S. Department of State Working Groups in the drafting of conventions relating to international commercial transactions.

And so, Harmonization of this regime giving control globally to a select group of secured creditors was pushed from the highest level of the U.S. government. The Department of State was the first administrative arm of the U.S. executive branch, with Thomas Jefferson becoming the first Secretary of State in 1789. It is the foremost executive power globally.

After years of effort, the Hague Securities Convention was signed by only the United States, Switzerland and Mauritius. The EU did not sign the Convention due to the identification of problematic European law, which assured property rights to the owners of securities in some jurisdictions. Europe has the ancient legal principle of *lex rei sitae* (the law where the property is situated), and could not easily accept the work-around of “Place of the Relevant Intermediary Approach” (or PRIMA), invented in the Hague Securities Convention.

However, the manifest objective of providing legal certainty to creditors was not in dispute and was clearly accepted by EU authorities, as evidenced by Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements [11]. This document, which published roughly contemporaneously with the drafting of the Hague Securities Convention, contains the following statements:

In order to improve the legal certainty of financial collateral arrangements, Member States should ensue that certain provisions of insolvency law do not apply to such arrangements, in particular, those that would inhibit the effective realization of financial collateral . . .

¹This quote was taken from Prof. Guttman’s faculty profile page at American University at the time. The page still exists, but its content has since been removed.

The principle in Directive 98/26EC, whereby the law applicable to book entry securities provided as collateral is the law of the jurisdiction where the relevant register, account or centralized deposit system is located, should be extended in order to create legal certainty regarding the use of such securities held in a cross-border context and used as financial collateral under the scope of this Directive.

The objective of Legal Certainty for creditors was to be pursued by other means. Where they could not easily change problematic local law in which investors had property rights to securities, they structured around it. This is what lawyers, investment bankers, and, apparently, government officials are paid to do.

Euroclear is one of two European International Central Security Depositories (ICSD), the other being Clearstream. The Brussels office of Morgan Guaranty Trust Company of New York (Morgan Guaranty) founded the Euroclear System in December 1968. Morgan Guaranty began operating as JP Morgan in 1988.

In 2004, the Deputy General Counsel of Euroclear, Diego Devos, sent a memorandum with “Preparatory information regarding European Legal Harmonisation” to “DG Internal Market” [12]. Here are some excerpts:

This note describes Euroclear’s recommendations with regard to the legal barriers that should be addressed as priority items by the Legal Working Group that the Commission intends to set up as a follow-up of its Communication on Clearing and Settlement in the European Union dated April 28, 2004 ... In particular, we identify issues that complicate and prevent the full implementation of major initiatives that the market is undertaking on platform consolidation and harmonization. ...

Recommended ... Removal or modification of requirements that do not recognise the multi-layer holding structure that is the norm in cross-border activity, including:

- *recognition in the EU of the pooled holding of registered assets through a nominee structure (and the different nature of legal and beneficial ownership) in order to keep registered securities*

on a fungible basis at local level and protection of the rights of the nominee;

- *elimination or modification of requirements that directly or effectively require the maintenance of individual records or accounts per beneficial owner ...*

Recommended ... Eliminate impediments to free use of collateral cross-border ...

Diego Devos went on to be appointed General Counsel of the Bank for International Settlements (BIS) in 2009.

As noted in the preceding chapter, in April of 2004, The European Commission Internal Markets and Services Director General proposed setting up a “group of legal experts, as a specific exercise intended to address problems of legal uncertainty identified in the context of considering the way forward for clearing and settlement in the European Union.”

It took ten years of conniving, but in 2014 the way forward was made certain with the Central Securities Depository Regulation (CSDR).

I had arranged to speak at a hedge fund conference in Zürich in January of 2014 to warn the “professionals” about the undermining of property rights to securities, and of the implications. I thought perhaps the tide could be turned in Europe. Believe it or not, this was in large part my purpose in moving to Europe. Prior to the conference, I had sent personal emails with the outline of my points to all of the attendees. While I was speaking, by the bright light of the projection screen, I could see that the eyes of the people in the room were as wide as saucers. When I finished, there was complete silence. In the coffee break that followed, I asked people what they had thought about what I had said. I asked if they understood what I was explaining. One person merely replied, “Oh, yes.” I asked him what he would do about it. He simply said, “Nothing.” I asked him why he would do nothing. His reply was, “My clients don’t care about this.” I said, “They don’t care about it, because they don’t know about it.”

Six months later, the Central Securities Depository Regulation (CSDR) was implemented by the EU directive No. 909/2014 [13].

A Central Security Depository (CSD) operates a book entry system for electronic settlement of trades and maintains a record of “ownership.” An International Central Security Depository (ICSD) is linked to national CSDs, and it handles securities lending and collateral management. As noted by the European Securities and Markets Authority [14]:

CSDR plays a pivotal role for post-trade harmonization efforts in Europe, as it enhances the legal and operational conditions for cross-border settlement in the EU.

And thus, the desired goal of cross-border mobility of collateral has been achieved. How was that engineered?

CSDR provides for links between CSDs. National CSDs, which hold the record of ownership, are linked to the International Central Security Depositories; the transfer of legal title to customer collateral from the national CSD to the ICSD, and the use of customer collateral are thus enabled. The customer has “ownership” in the book-entry system of the national CSD, while the collateral is held in pooled form at the ICSD level. This allows the “cross-border services”, i.e. the use of customer collateral. This is essentially the U.S. model, in which all custodians have accounts at DTC, which holds all securities in pooled form. DTC functions as an ICSD.

We will see how that has worked in looking specifically at Euroclear and developments in Finland and Sweden.

Once upon a time, Finland and Sweden had legal systems and national registries of securities ownership, which assured owners that their securities could not be used as collateral without express agreement. It had been possible to own and hold Swedish government bonds, for example, with absolute certainty that they could not be lost in an insolvency of a custodian. In 2006, the Legal Certainty group identified Sweden and Finland as having problematic law.

In 2008, Euroclear was allowed to acquire one hundred percent of Nordic Central Security Depository (NCSD), which owned the central security depositories of both Finland and Sweden, Suomen Arvopaerikeskus Oy (APK) and VPC AB (VPC), respectively. These are now local CSDs linked to Euroclear Bank SA/NV which operates as an ICSD under Belgian law.

CSDR requires an account provider to publicly disclose the levels of protection and costs associated with the different levels of segregation of securities accounts at the central securities depositories. Skandinaviska Enskilda Banken AB (SEB) makes such a disclosure with respect to central securities depositories in Sweden, Denmark, Finland, Norway, Euroclear Bank SA/NV and Clearstream Banking S.A. [15]. Here are the shocking key passages from that disclosure:

In the unlikely event of a shortfall of securities the client in question will not be able to claim a right of separation but will likely be considered as an unsecured creditor without priority to the assets of the bankruptcy estate.

In the case of securities held at Euroclear Bank SA/NV Belgian law (the Royal Decree no 62) applies provisions following the principal that all securities deposited by Euroclear Bank SA/NV participants (i.e. SEB) with Euroclear Bank SA/NV are deposited on fungible basis. By virtue of the Royal Decree, Euroclear Bank SA/NV participants have been given by law a co-ownership right of an intangible nature on a pool of book-entry securities of the same category held by Euroclear Bank SA/NV on behalf of all Euroclear Bank SA/NV participants having deposited securities of the same category. The said Decree provides for a loss sharing provision for the underlying clients of a Euroclear Bank SA/NV participant in case such Euroclear Bank SA/NV participant goes into default. Furthermore, Belgian law gives the National Bank of Belgium privilege over Euroclear Bank SA/NV's own proprietary securities to cover e.g. a situation where securities that are held by Euroclear Bank SA/NV with any depository on behalf of its participants are not enough to cover the actual holdings of such securities by the participants.

Thus, over a period of six years, property rights to securities in Sweden and Finland were deliberately subverted. These countries went from having the strongest property rights to securities to having no property rights to securities beyond an artificial appearance of ownership.

In 2014, coincident with the EU directive on central securities depositories, shocking changes were made to Swedish law. Very few know about this, other than the people who did it.

I tracked this down through a cryptic reference in a Euroclear document, *General Terms and Conditions Account Operations and Clearing* [16]. Buried in there, on page 38, is the following clue:

14.2 PREVAILING LAW RELATING TO THE DISPOSAL OF VPC ACCOUNTS AND FINANCIAL INSTRUMENTS REGISTERED IN A VPC ACCOUNT

The real right consequence of disposals relating to VPC accounts and financial instruments registered in VPC accounts are governed by the provisions in Chapter 6 of LKF.

This quote refers to Sweden's law on central security depositories and accounting for financial instruments [17]. Chapter 6 of this law is titled, in translation, "Legal effect of registration, Presumption of ownership." Buried at the bottom of this chapter is found the further direction:

Special provisions on pledging of financial instruments are found in the Act (1991:980) on trading in financial instruments.

[Särskilda bestämmelser om pantsättning av finansiella instrument finns i lagen (1991:980) om handel med finansiella instrument.]

Within Act (1991:980), Chapter 3 is titled, "Disposal of financial instruments belonging to someone else" [Förfoganden över finansiella instrument som tillhör någon annan].

Now we are getting warm!

The first paragraph states that, "The intended disposal must be specified carefully." That seems like a good thing, but it goes on to state the following:

The first paragraph does not apply if the company's counterparty or the parties to an agreement in which the company participates is another company that is under the supervision of the Financial Supervisory Authority or a foreign company within the EEA that is allowed to run comparable activities in its home country and that is under the reassuring supervision of an authority or other competent body.

This gives the local CSD legal authority, and broad latitude to pass legal control of customer assets as collateral to the ICSD without the knowledge or approval of the account holder.

The implementation of this is now so thorough that a Swedish citizen cannot hold Swedish government bonds in Sweden as property without exposure to insolvency of the account provider, the local CSD, or of the ICSD. The securities of Swedish citizens are certainly pooled with securities being used as collateral elsewhere.

I came to Sweden in 2009 in order to be able to hold Swedish government bonds in Sweden with property rights. I was able to do that using a VP konto (account) at Handelsbanken. However, following the legal changes made in 2014, Handelsbanken completely discontinued the VP konto structure, and offered clients only custody accounts.

SEB also discontinued its long-standing VP konto structure, which had assured direct ownership of specific securities, but then introduced something they called a Service VP konto, which is held with the local CSD, Euroclear Sweden. I called into SEB about this, and was told that a VP konto specialist would call me. When I received the call, I asked two simple questions:

1. Are securities held in a Service VP konto specifically identified under the name of the account holder?
2. Can the securities held in a Service VP konto be re-vindicated in the event of the failure of SEB or of Euroclear.

The VP konto specialist put me on hold for a long time while he investigated my questions. When he came back, his answer was simply that, while there might be a small risk of failure of Euroclear, the account was insured for 250,000kr. He confirmed that holding of securities at Euroclear was the change made with the new Service VP konto structure, and he confirmed that there is a risk of loss of securities with the new structure. He seemed shocked himself to have learned this.

In 2011, a friend who had been a State Secretary in the Swedish government arranged for me to meet with the Minister and the State Secretary for Financial Markets. I was so moved when I received the email in-

forming me of this, tears came to my eyes; it gave me hope that in Sweden it might be possible to make a difference, and thus to turn the tide somewhere. I am forever grateful to them for that meeting; such a thing would never be allowed in the land of my birth. They heard me out about the implications of conforming to the U.S. model, and did not disagree. They said it might be possible to avoid this if the Germans would stand against it, the implication being that little Sweden could not do it alone.

The juggernaut rolled on. We are all in its path.

5. Collateral management

People should either be caressed or crushed. If you do them minor damage they will get their revenge; but if you cripple them there is nothing they can do. If you need to injure someone, do it in such a way that you do not have to fear their vengeance.

Niccolo Machiavelli

Associated with the imperative that certain secured creditors must be given legal certainty to client assets, globally, without exception, is the further assurance of near instantaneous cross-border mobility of legal control of such collateral.

As we will see, the objective is to utilize all securities as collateral, and hence to have the real practical means to take all securities as collateral. Comprehensive “collateral management” systems have been implemented, which assure the transport of all securities cross-border through the mandated linkage of CSDs to ICSDs and on to the CCPs, where the risk of the derivatives complex is concentrated. The supposed “demand” for this enormous undertaking is not being driven by true market forces, but by regulatory contrivance.

A report published in 2013 by the Committee on the Global Financial System at the Bank for International Settlements entitled *Asset encumbrance, financial reform and the demand for collateral assets* [18] states the following:

Regulatory reforms and the shift towards central clearing of derivatives transactions will also add to the demand for collateral

assets. But there is no evidence or expectation of any lasting or widespread scarcity of such assets in global financial markets.

Another report by the same committee, entitled *Developments in collateral management services* [19], states (on page 16; emphasis added):

... some changes that may raise demand for collateral have not been phased in yet, since jurisdictions operate on different time-lines for mandatory central clearing and margin requirements for non-centrally cleared trades. Multiple market participants noted that implementation of mandatory clearing requirements has not yet advanced to the point where those market participants are experiencing shortfalls in collateral readily available to pledge ...

and furthermore, on page i:

Motivated by expected increases in demand for collateral stemming from regulatory changes ... collateral management service providers are evolving their service offerings in an effort to improve efficiencies and enable market participants to meet collateral demands with existing and available securities.

Thus, while there was no evidence of scarcity of collateral and market participants were not experiencing shortfalls, “demand for collateral assets”, was being artificially created and intensified by regulatory fiat. It was absolutely not market-driven.

This was designed and deliberately executed to move control of collateral to the largest secured creditors behind the derivatives complex.

Derivatives are financial contracts on everything imaginable and even unimaginable for most of us. They may be modeled on real things, but are not the real things themselves. They are un-tethered from physical reality ... but can be used to take real things as collateral. This is the subterfuge, the endgame of it all.

On its pages 8-11, the cited report [19] discloses the objectives of these collateral management systems, providing further confirmation that it is the linking of CSDs and ICSDs which provides cross-border mobility of collateral from the “collateral giver” to the “collateral taker” (yes, they really explicitly use those terms):

First, many of the largest custodians have implemented, or have plans to implement, a custodial platform that is global in nature. This will be a single system or set of connected systems that allows a customer a single view of all its available collateral held by the custodian, regardless of location. ...

The desired end goal of all these efforts is to get as close as possible to a single view of all available securities, regardless of where they are held, in real time. This aggregation of supply information is a necessary prerequisite for the efficient deployment of available securities to meet collateral obligations. ...

ICSDs enable their participants to obtain aggregate views on the entirety of the latter's securities holdings held with the ICSD, including securities held by ICSD participants via link arrangements.

At this point, the report illustrates the relationships between the ICSD and its participant in a diagram, which is included below as Figure 5.1 on page 31. The text continues:

Diagram 5 [Figure 5.1] illustrates the services available at ICSDs, whereby a customer (collateral giver) is a participant in the ICSD and holds its securities in the ICSD, including via link arrangements between the ICSD and local CSDs. The ICSD, as CMSP [Collateral Management Service Provider], having established direct or indirect (ie via a custodian participating in the local CSD) links with local CSDs, has information on and can access the entirety of a participant's securities for collateral management purposes.

At this point, the report clarifies in a footnote:

The entirety of a participant's securities includes the participant's securities that were issued and are held at the ICSD and the participant's securities that were issued and are held, via ICSD link arrangements, at a linked CSD.

The report then turns to the role of the “collateral takers”:

The collateral takers are also participants in the ICSD. Both the collateral giver and the collateral takers provide information to the ICSD as CMSP regarding collateral obligations. With this information, the ICSD runs its optimisation process and may automatically generate collateral allocation instructions for the collateral giver/takers based on the results ... the ICSD will also process the movement of securities on the books of the ICSD, since counterparties included in the optimisation and allocation process are participants in the ICSD. If the collateral giver does not have sufficient securities in the ICSD environment, it can source collateral by ... transferring securities from its own account at the linked CSD to its securities account in the ICSD with a free-of-payment (FoP) settlement occurring in the linked CSD.

Note that transferral of the people's assets is to be made free-of-payment (FoP)! They meant not just "free mobility of collateral", but, quite literally, "free collateral." How nice!

Through collateral transformation, the objective is to utilize all securities as collateral [19, p. 15]:

As supply and demand dynamics for collateral continue to evolve, it is possible that efforts to make more efficient use of existing collateral will not be sufficient to fully satisfy individual obligations. If that is the case, some market participants may need to exchange available, but ineligible, securities for other securities that meet eligibility criteria in order to fulfill their collateral obligations. Undertaking transactions to achieve this outcome has been defined as "collateral transformation."

Collateral transformation is simply the encumbrance of any and all types of client assets under swap contracts, which end up in the derivatives complex. This is done without the knowledge of the clients, who were led to believe that they safely owned these securities, and serves no beneficial purpose whatsoever for these clients.

And here it is! Here is the automated, market-wide sweeping of collateral to CCPs and central banks in a time of market stress [19, p. 19]:

In times of market stress, rapid deployment of available securities may be crucial in mitigating systemic issues. For instance, with

better visibility of available securities and better access to them, firms may be better positioned to rapidly deploy securities to meet margin needs at CCPs in times of increased market volatility or to pledge to central banks in emergency situations to gain increased access to the lender of last resort. ...

The automation and standardisation of many operations related to collateral management ... on a market-wide basis ... may enable a market participant to manage increasingly complex and rapid collateral demands.

And so as we have seen here irrefutably, the objective is to utilize all securities as collateral and hence to have the real practical means to take all securities as collateral.

Comprehensive “collateral management” systems have been implemented which assure the transport of all securities cross-border through the mandated linkage of CSDs to ICSDs to the CCPs (where the risk of the derivatives complex is concentrated), and on to the anointed secured creditors, which will take the collateral when the CCPs fail, having assured for themselves that their taking of assets cannot be “legally” challenged.

Inevitably following the “Everything Bubble” will be the “Everything Crash.” Once prices of essentially everything crash and all financial firms rapidly become insolvent, these collateral management systems will automatically sweep all collateral to the Central Clearing Counterparties (CCPs) and Central Banks.

The trap, into which all nations have been herded, is ready and waiting to be sprung.

There will be an epic end point to the decades of seemingly out-of-control financialization, which served no beneficial purpose for humanity, but the devastating effects of which are apparent even now.

It has been a deliberate strategy executed over decades. This was the purpose of inflating the global bubble entirely out of proportion with any real world thing or activity, which must end in disaster for so many, with no pockets of resilience allowed to remain in any country.

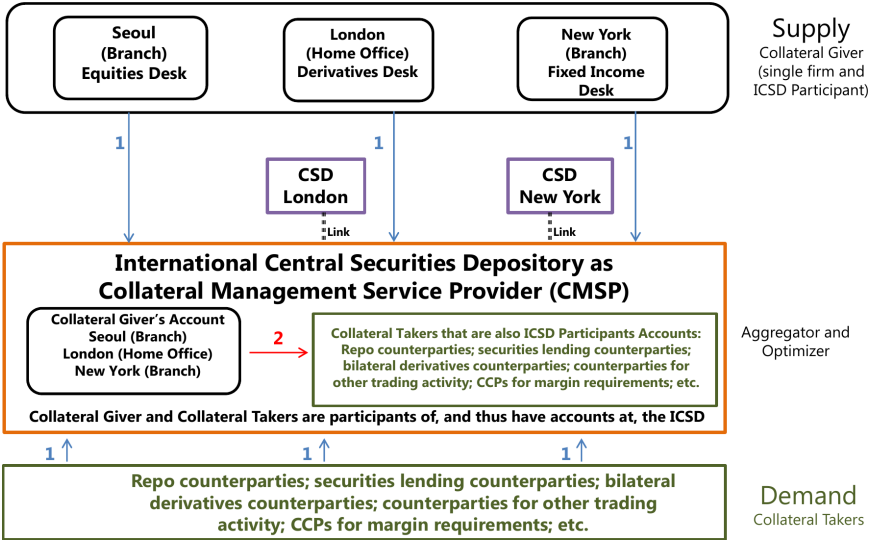


Figure 5.1 Multiple jurisdictions, ICSD as collateral management service provider with links to other CSDs. Adapted from Diagram 5 in [19]. Explanations provided in the original: Link = The ICSD has direct or indirect links with other CSDs. Securities held by ICSD participants via these link arrangements are included in the respective collateral pool of the ICSD participant and available to the ICSD as CMSP. 1 = The collateral giver and collateral takers send notification to the ICSD regarding their triparty transactions. 2 = The ICSD will determine the optimal use of available securities and generate the underlying collateral allocation instructions; collateral transfer is settled on the books of the ICSD.

6. Safe Harbor for Whom, and from What?

All animals are equal, but some animals are more equal than others.

George Orwell, *Animal Farm*

In 2005, less than two years before onset of the Global Financial Crisis, “safe harbor” provisions in the U.S. Bankruptcy code were significantly changed. “Safe harbor” sounds like a good thing, but again, this was about making it absolutely certain that secured creditors can take client assets, and that this cannot be challenged subsequently. This was about “safe harbor” for secured creditors against demands of customers to their own assets.

Here are some explanatory excerpts from the online article *The Effect of the new Bankruptcy Code on Safe Harbor Transactions* [20]:

On October 17, 2005, the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the 2005 act) became effective, amending various provisions of the U.S. Bankruptcy Code ... Of particular significance are the provisions of the 2005 act that address the bankruptcy treatment of various “safe harbor” transactions, such as forward contracts, commodity contracts, repurchase agreements and securities contracts.

Historically, under U.S. Bankruptcy Code, a bankruptcy trustee could avoid transfers, i.e. force disgorgement or repayment, if

- the transfer was ‘constructively fraudulent’, i.e. less than ‘reasonable equivalent value’ was received and the debtor in bankruptcy

- was insolvent,
- became insolvent as a result of the transfer,
- was engaged in business for which the debtor had unreasonably small capital,
- intentionally incurred debt beyond his ability to pay, or
- made such transfer to or for the benefit of an insider;

or

- the transfer was made within 90 days of a bankruptcy filing (one year if the transferee was an insider).

Transfers that meet any of the above criteria are referred to as ‘preferences’, ‘preference transfers’, or ‘preference liabilities.’ So now, with the new “safe harbor” provisions, the transfer of customer assets to creditors previously considered to be fraudulent can no longer be challenged. That was exactly the point. Further, it is now quite OK for the transfer of the public’s assets to be made free-of-payment (FoP), as there is no requirement to show that reasonably equivalent value was received.

Stephen J. Lubben is the Harvey Washington Wiley Chair in Corporate Governance & Business Ethics at Seton Hall University and an expert in the field of corporate finance and governance, corporate restructuring, financial distress and debt. Below are some excerpts from his book *The Bankruptcy Code Without Safe Harbors* [21]:

Following the 2005 amendments to the Code, it is hard to envision a derivative that is not subject to special treatment.

The safe harbors cover a wide range of contracts that might be considered derivatives, including securities contracts, commodities contracts, forward contracts, repurchase agreements, and, most importantly, swap agreements. The latter has become a kind of ‘catch-all’ definition that covers the whole of the derivatives market, present and future ...

A protected contract ... is only protected if the holder is also a protected person, as defined in the Bankruptcy Code. Financial participants—essentially very large financial institutions—are always protected.

The safe harbors as currently enacted were promoted by the derivatives industry as necessary measures ... The systemic risk argument for the safe harbors is based on the belief that the inability to close out a derivative position because of the automatic stay would cause a daisy chain of failure amongst financial institutions.

The problem with this argument is that it fails to consider the risks created by the rush to close out positions and demand collateral from distressed firms. Not only does this contribute to the failure of an already weakened financial firm, by fostering a run on the firm, but it also has consequent effects on the markets generally ... the Code will have to guard against attempts to grab massive amounts of collateral on the eve of a bankruptcy, in a way that is unrelated to the underlying value of the trades being collateralized.

The new safe harbor regime was cemented into case law with the court proceedings around the bankruptcy of Lehman Brothers. In the lead-up to the failure, JP Morgan (JPM) had taken client assets as a secured creditor while being the custodian for some of these client assets! Under long-standing bankruptcy law this would clearly have been a constructively fraudulent preference transfer benefitting an insider. And so, JPM was sued by clients whose assets were taken.

I will cite the following memorandum filed in defense of JPM by the law firm Wachtel, Lipton, Rosen & Katz, with the U.S. Bankruptcy court of the Southern District of New York [22]:

The purpose of the safe harbors, from their inception, has been to promote stability in large and inherently unstable financial markets by protecting transactions in those markets from being disturbed during a bankruptcy. As explained in the legislative history of the original safe harbor, “the financial stability of the clearing houses, with often millions of dollars at their disposal, would be severely threatened by” exposure to avoidance claims; as well, actions to avoid margin payments made by clearing houses could set off a “chain reaction” of insolvencies among all other market participants, “threatening the entire industry.”

Now here is the decision of the court [23]:

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK In re: Chapter 11 Case No. 08-13555

The Court agrees with JPMC that the safe harbors apply here, and it is appropriate for these provisions to be enforced as written and applied literally in the interest of market stability. The transactions in question are precisely the sort of contractual arrangements that should be exempt from being upset by a bankruptcy court under the more lenient standards of constructive fraudulent transfer or preference liability: these are systemically significant transactions between sophisticated financial players at a time of financial distress in the markets—in other words, the precise setting for which the safe harbors were intended. . . .

The Court first must consider whether JPMC is eligible for protection under section 546(e). That subsection, like the safe harbors generally, applies only to certain types of qualifying entities. . . .

JPMC, as one of the leading financial institutions in the world, quite obviously is a member of the protected class and qualifies as both a “financial institution” and a “financial participant.

And so, only “a member of the protected class” is empowered to take customer assets in this way. Smaller secured creditors are not similarly privileged.

In the aftermath of the 2007-2008 Global Financial Crisis no executive was convicted of a crime for the use and subsequent loss of client assets. Quite to the contrary! The bankruptcy of Lehman Brothers was used to establish case law precedent that the “protected class” of secured creditors have an absolute priority claim to client assets, and that, potentially and practically, only they will end up with the assets.

7. Central Clearing Parties

Humpty Dumpty was pushed.

Mr. Potato Head, Toy Story

Central Clearing Parties (CCPs) take on counterparty risk between parties to a transaction and provide clearing and settlement for trades in foreign exchange, securities, options, and most importantly derivative contracts. If a participant fails, the CCP assumes the obligations of the failed clearing participant. The CCP combines the exposures to all clearing members on its balance sheet.

Is there a risk that CCPs might fail?

Euroclear is an International Central Securities Depository (ICSD), which was designed to channel customer collateral to CCPs. In 2020, Euroclear published an article discussing the possibility of failures of CCPs *Regulating the risks of CCPs* [24], in which we find the following remarkable statements of panelists at Euroclear's Collateral Conference:

Regulators around the world have demanded more capital, more collateral and more clearing. And to a large degree they now have what they wanted. . . .

And yet despite the huge efforts undertaken by market participants there are still two major concerns. The first is that financial regulations from different jurisdictions are not fully aligned with one another. And secondly that the risks in the financial systems have been concentrated into central clearing counterparties (CCPs). These two issues come together in the upcoming regu-

latory push to devise resolution and recovery regime for CCPs around the world. ...

The EU's push to create a recovery and resolution regime for CCPs ... has also created tensions between the clearing houses themselves and their clearing bank and asset manager members, as to who should pay what in the event of a collapse of these critical market infrastructures. ...

But, for the EU-institutions, the redline [sic] is that if a CCP fails, then the taxpayer will not be expected to pay.

The last paragraph is a subterfuge assuring that in the “resolution” the secured creditors will immediately take the underlying assets; that is the plan, i.e., nationalization must not be allowed.

The report goes on:

In whatever way the final text [of the regulation] is balanced, it does not detract from the fact that risk is now heavily focused within these institutions. One of the Euroclear panellists suggested that there is resistance to the ever-increasing march toward central clearing as it is a risk management function, and functions do occasionally fail.

Indeed, just because CCPs have not failed in the past, there is nothing to say that there will not be a CCP crisis in the future. Panellists were concerned that with the small capital base CCPs currently have, any recovery and resolution of a failing CCP will involve direct clearing members standing up to support them through a number of difficult actions for the firms involved. ...

One of the key requirements of the draft paper will be a requirement for the CCPs to undertake scenario planning. And for a CCP to fail, it will likely have been triggered by the simultaneous default of two major members. “If a large CCP is in trouble because of its members [sic] default, then we will be having a banking crisis” says Benoît Gourisse, Senior Director, European Public Policy at ISDA.

In 2022, the Financial Stability Board (FSB) and the Committee on Payments and Market Infrastructures at the BIS published the report

Central Counterparty Financial Resources for Recovery and Resolution [25], in which we find the following statements:

In November 2020, the Chairs of the FSB, the Committee on Payments and Market Infrastructures (CPMI), the International Organization of Securities Commissions (IOSCO) and of the FSB Resolution Steering Group (ReSG) publicly committed to collaborate on and conduct further work on CCP financial resources in recovery and resolution. Such work would consider the need for, and develop as appropriate, international policy on the use, composition and amount of financial resources in recovery and resolution to further strengthen the resilience and resolvability of CCPs in default and non-default loss scenarios.

Under the subheading “System-wide and contagion effects and interconnectedness”, the same report states:

Because the scenarios were specific to each CCP, the results cannot be aggregated to simulate total losses at the level of the financial system for any particular scenario. Therefore, system-wide effects were not considered. The analysis did not take into account the underlying economic circumstances that could cause the simultaneous default of four clearing members at each of the seven CCPs, the likelihood of such circumstances, or the potential impact of the same clearing members defaulting in multiple CCPs. Neither did the analysis endeavour to model second and later order effects of the scenarios that might result in wider market stress, including potential increases in margin requirements, liquidity pressure and collateral scarcity. Finally, the analysis assumed that all non-defaulting participants continued to perform as they had committed to.

Thus, this analysis provided by the “Financial Stability Board” of the BIS absolutely avoided contemplation of exactly what happens in a global financial crisis!

The Depository Trust & Clearing Corporation (DTCC) operates two CCPs, both of which have been designated in the U.S. as Systemically Important Financial Market Utilities (SIFMUs).

The following excerpts are from an article published by DTCC [26] :

With three of DTCC's clearing agency subsidiaries declared as "systemically important financial market utilities" (SIFMUs), Pozmanter [the DTCC Head of Clearing Agency Services and Global Operations] said there has been significant effort and discussions this year to update the clearing corporations' and the depository's recovery and wind-down plans. ... He asked panelist Stephen Pecchia, DTCC Managing Director, Recovery and Resolution office, about the updated wind-down rules as well as some of the changes to the clearing agency loss allocation rules.

"The Covered Clearing Agency standards require plans for orderly recovery and wind-down," Pecchia said. "We would seek to wind-down the failed entity and concurrently, shift our services to a third party that has either stood up within the DTCC enterprise or would be some other third-party acquirer. What will happen is essentially a transfer of services: there would be some assignment of assets, there would be service agreements put in place between the failed clearing agencies as well as between the DTCC holding company and this new entity." ...

"Hopefully this is something we will never have to do, but we do need to be prepared," he said. "As many of you know, what will drive this potentially happening may not be something we've seen historically—but the value comes in the planning."

So, something which has not been seen before will drive the imperative to start up a new CCP, and they are planning for it to happen.

DTCC has provided a video clip titled *Perspectives on CCP Risk Management* [27], in which Murray Pozmanter makes the following statement:

We believe the level of capitalization of a CCP is a key component of its overall resiliency. CCPs must be sufficiently capitalized in order to withstand losses from both member default and non-member default loss events. In response to this, we have implemented a comprehensive capital framework to effectively measure and mitigate risk, and to support the resiliency of DTCC and our subsidiaries.

What then is the capitalization of DTCC?

This is an excerpt from the DTCC's consolidated financial Statements as of March 2023 [28]:

The Depository Trust & Clearing Corporation (DTCC) is the parent company of various operating subsidiaries, including The Depository Trust Company (DTC), National Securities Clearing Corporation (NSCC), Fixed Income Clearing Corporation (FICC), DTCC ITP LLC (ITP), DTCC Deriv/SERV LLC (Deriv/SERV), DTCC Solutions LLC (Solutions (US)), DTCC Solutions (UK) Limited (Solutions (UK)), Business Entity Data, B.V. (BED); Collectively, the "Company" or "Companies."

This is all of DTCC, consolidated, i.e., the whole enchilada.

As of March 31, 2023, the consolidated Total Shareholder's Equity was a tad over \$3.5 billion (that's with a "b").

Now realize that this is the entire capitalization underpinning the Central Security Depository and CCPs for the entire U.S. securities market and derivatives complex.

Contrast this with the cited statement:

We believe the level of capitalization of a CCP is a key component of its overall resiliency. CCPs must be sufficiently capitalized in order to withstand losses from both member default and non-member default loss events.

This is one of the many open deceptions, which are unpleasant and inconvenient to see, and so, readily dismissed.

Now recall these excerpts from the exchange between the Legal Certainty Group and lawyers for the Federal Reserve:

Q (E.U.): *Is the investor protected against the insolvency of an intermediary and, if so, how?*

A (N.Y. Fed): *... an investor is always vulnerable to a securities intermediary that does not itself have interests in a financial asset sufficient to cover all of the securities entitlements that it has created in that financial asset ...*

If the secured creditor has “control” over the financial asset it will have priority over entitlement holders . . .

If the securities intermediary is a clearing corporation, the claims of its creditors have priority over the claims of entitlement holders.

So, there we have it. In the collapse of the clearing subsidiaries of DTCC, it is the secured creditors who will take the assets of the entitlement holders. This is where it is going. It is designed to happen suddenly, and on a vast scale.

There are some further relevant statements in the article *DTCC Details Risk Management Approach* [29]:

Much of the debate recently has focused on whether CCPs should make larger contributions of their own capital to the loss allocation waterfall as a way to make sure that their risk management is prudent and that they had their own ‘skin in the game.’

An argument could be made that CCPs that are publicly traded may potentially not be aligned with the interests of owners and shareholders, who also used its services.

“We felt it was very important to point out that this argument isn’t applicable to DTCC’s CCPs because in essence the source of our capital is our users,” Pozmanter said. “We don’t feel that putting an outsized portion of that capital at risk as part of our loss allocation waterfall would align our interests any better than they’re already aligned with our owners and users. We look at that as a potential source of instability in a stressed market.”

He added, “While we’re in favor of having some of our capital in the loss waterfall, we think that having a very transparent methodology and a static percentage of our operating capital in the waterfall is what’s most appropriate for us.” . . .

As for resolution procedures, DTCC is opposed to pre-funding the default loss waterfall, although it does support pre-funding the operating capital needed to get a new CCP up and running in the event of a default.

“As we go through our recovery and resolution planning we want to have the operating capital pre-funded to potentially start up a new CCP in the event of the resolution of one of our CCPs,” Pozmanter said. “We definitely see the logic in having the operating capital to start up a new CCP pre-funded.”

There you have it. The CCPs are designed to fail. They are deliberately under-capitalized. The start-up of a new CCP is planned and pre-funded. This construct assures that the secured creditors will take all collateral upon which they will have perfected legal control. The rule of law must prevail! We would have chaos otherwise! No one is above the law, after all!

As a reminder of the structure, here is an excerpt from the Wikipedia article on DTCC [2]:

Most large U.S. broker-dealers and banks are full DTC participants, meaning that they deposit and hold securities at DTC. DTC appears in an issuer’s stock records as the sole registered owner of securities deposited at DTC. DTC holds the deposited securities in “fungible bulk,” meaning that there are no specifically identifiable shares directly owned by DTC participants.¹ Rather, each participant owns a pro rata interest in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant, such as an individual investor, owns a pro rata interest in the shares in which the DTC participant has an interest.

With the explanation provided by the Federal Reserve Bank of New York (see Chapter 3), you know what this means.

¹For an explanation of the term fungibility, see [30].

8. Bank Holiday

They have bartered their birthright
for a mess of pottage.

William Blake

My Aunt Elizabeth had been ten years old when the banks were closed by executive order in 1933 [31]. When I asked her to tell me about the Great Depression, she said that suddenly no one had any money, that even wealthy families had no money and had to take their daughters out of private school because they could not pay the tuition.

I wondered why even these wealthy families could not send their children back to their schools after the banks were reopened.

The answer is that only the Federal Reserve Banks and banks selected by the Federal Reserve were allowed to reopen.

“The Federal Reserve Banks,” writes Allan Meltzer, “sent the Treasury lists of banks recommended for reopening, and the Treasury licensed those it approved.” Meltzer’s study *A History of the Federal Reserve* [32] is considered the most comprehensive history of the central bank.

People with money in banks that were not allowed to reopen lost all of it. Their debts were not canceled, however; these were taken over by the banks selected by the Federal Reserve System. If these people could not make their debt payments—which was now likely, since they had lost their cash—they lost everything they had financed with any amount of debt, e.g., their house, their car, and their business.

Thousands of banks were never allowed to reopen. The grand facades of former bank buildings could be seen around Cleveland. There was

such devastation of banks that a neighborhood Catholic church was built with massive stone columns salvaged from a bank building which had been demolished.

The Cleveland Trust Co. had grown through acquisition to become, by 1924, the sixth largest bank in the United States. As noted by The Case Western Reserve University Encyclopedia of Cleveland History [33], “The bank survived the Depression well.” How was that possible?

It was selected by the Federal Reserve to consolidate debts. I had a finance professor who told the class that Cleveland Trust had run a systematic process of foreclosing upon and evicting many thousands of families from their homes in the greater Cleveland area. After these families were evicted from their homes, and their equity wiped out, they were offered the possibility of moving back into their former homes as renters, the advantage to Cleveland Trust being that these families would pay to keep the houses heated until they could be sold. Cleveland Trust did “well.” How did my finance professor know about this? His family was one of those many thousands of families whose home mortgage had been taken over by Cleveland Trust.

Contrast this with the cheery image conveyed by William L. Silber, who was a member of the Economic Advisory Panel of the Federal Reserve Bank of New York. In his article *Why Did FDR’s Bank Holiday Succeed?* [34], Silver writes:

Much to everyone’s relief, when the institutions reopened for business on March 13, depositors stood in line to return their hoarded cash to neighborhood banks. Within two weeks, Americans had redeposited more than half of the currency that they had squirreled away before the suspension. The market registered its approval as well. On March 15, 1933, the first day of trading after the extended closure, the New York Stock Exchange recorded the largest one-day price increase ever. With the benefit of hindsight, the nationwide Bank Holiday in March 1933 ended the bank runs that had plagued the Great Depression ... Contemporary observers consider the Bank Holiday and the Fireside Chat the one-two punch that broke the back of the Great Depression ... the speed with which the Bank Holiday Act reestablished the in-

tegrity of the payments system demonstrates the power of credible regime-shifting policies.

The Emergency Banking Act of 1933, had been passed by Congress on March 9, 1933, three days after FDR declared the bank holiday, with only a single copy available on the floor of the House of Representatives, and with copies being made available to senators as the bill was being proposed in the senate, after it had passed the house [35].

Was it successful? We are led to believe that the Bank Holiday was a brilliant scheme. Well it was—for some. It was enormously successful for those banking interests who took the assets and consolidated their power. It certainly demonstrated the power of “regime-shifting policies.” We will see that it was not just about taking peoples homes and other stuff. As to ending the panic, perhaps that is not so difficult to do when you have fomented the panic.

In the Wikipedia article *The Great Depression* [36] we find the following illumination of the Fed’s odd behavior in the years leading up to the bank holiday:

The Monetarist explanation was given by American economists Milton Friedman and Anna J. Schwartz. They argued that the Great Depression was caused by the banking crisis that caused one-third of all banks to vanish, a reduction of bank shareholder wealth and more importantly monetary contraction of 35%, which they called “The Great Contraction.” By not lowering interest rates, by not lowering rates and by not injecting liquidity into the banking system to prevent it from crumbling, the Federal Reserve passively watched the transformation of a normal recession into the Great Depression.

The Federal Reserve allowed some large public bank failures—particularly that of the New York Bank of United States [in December, 1930]—which produced panic and widespread runs on local banks, and the Federal Reserve sat idly by while banks collapsed. Friedman and Schwartz argued that, if the Fed had provided emergency lending to these key banks, or simply bought government bonds on the open market to provide liquidity and increase the quantity of money after the key banks fell, all the rest of the

banks would not have fallen after the large ones did, and the money supply would not have fallen as far and as fast as it did.

This view was endorsed in 2002 by Federal Reserve Governor Ben Bernanke in a speech honoring Friedman and Schwartz with this statement [37]:

Let me end my talk by abusing slightly my status as an official representative of the Federal Reserve. I would like to say to Milton and Anna: Regarding the Great Depression, you're right. We did it. We're very sorry. But thanks to you, we won't do it again.

As this is “ancient history”, it was safe for Bernanke to make such an admission. But more to the point, it would allow him to posture as the wise man who had studied the “mistakes” of the Federal Reserve, and then to justify the Fed’s extraordinary measures to follow in the Global Financial Crisis. Is the Fed indeed “very sorry”? Can one believe the promise that “we won’t do it again”? They have studied the lessons of the past in detail; however, their purpose has been to prepare a new and improved global version for the spectacular end of this debt expansion super-cycle. That’s what this book is about.

Contrary to the image of success, which has been handed down to us, the Bank Holiday did not end the Great Depression. There was no recovery which might have allowed people to service their debts and keep their property. Why was that? “Inexplicably”, the Federal Reserve kept conditions tight [38]:

According to literature on the subject, the possible causes . . . were a contraction in the money supply caused by Federal Reserve and Treasury Department policies and contractionary fiscal policies.

If that was a comprehensive program to assure there was no recovery, it worked quite well. Conditions remained broadly stressful for years, and they kept price levels down, so that people had no opportunity to sell assets for paying off debts. I know from family letters that, despite having no debts, times were quite tough. Grandma Webb wrote to her son (who was in a youth athletic program on an army base) about Grandpa Webb having been out trying to get any work for Webb Equipment. That was in 1936.

Contrary to the image of FDR as a savior, the people in my family who lived through the 30s considered FDR to be something like Satan himself, and they were not religious people.

Here is an interesting quote from Silber [34]:

The Emergency Banking Act of 1933, passed by Congress on March 9—combined with the Federal Reserve’s commitment to supply unlimited amounts of currency to reopened banks—created de facto 100 percent deposit insurance.

So according to William L. Silber, who was an economic advisor to the Federal Reserve Bank of New York, the Fed miraculously and suddenly in March of 1933 had the means “to supply unlimited amounts of currency to reopened banks”, which were, of course, only the banks selected by the Federal Reserve System. Clearly, the Fed had the means all along to avoid the failure of those thousands of banks.

A panic can be fomented easily when you run the system. They made it happen. They planned it, and then brought their solution after they got their regime-shifting policies in place.

The Federal Reserve System and the banks selected by the Fed were prepared to take things from people on a vast scale: their homes, their cars, and even their new electric appliances, which had been sold to them with the innovation of consumer credit. Did “the bankers” need to take this property? What was the real purpose? Can you get past the idea that they were trying to help? Even if we can, we are always led to think about this in a small way—that it is always about a natural human greed for money and for material things. It was not then, and it is not now.

Ask yourself: if they don’t want your money, and they don’t really want or need your stuff, and they’re not trying to help you, what do they want? What’s the point of all of their efforts?

This may be difficult to hear: It was deliberate strategy. It was about ultimate, complete power, allowing no centers of resistance. And so, it was about deprivation. It was about subjugation—and it still is, in more ways than we know.

It was not about helping people then, and it's not about helping people now. It is all part of the same deliberate herding of humanity and elimination of any pockets of resilience, which plagues us still.

While Cleveland is now a crumbling city, it was a center of incredible prosperity in the 1920s. The Federal Reserve Bank building in Cleveland was completed in 1923, less than ten years after the signing of the Federal Reserve Act. The bank vault is the largest in the world, and it incorporates the largest hinge ever built. It seems they were preparing to put a lot of stuff in there, and for the possibility that there might be some stress about that. Perhaps it was not to be filled with refrigerators, washing machines, and toasters. There are machine gun turrets above the sidewalk on the street level.

There was a larger objective.

The preparatory work had been laid when the Federal Reserve System was secretly planned, and with the passage of the Federal Reserve Act in the quiet before Christmas, 1913. The Federal Reserve Act set up an inevitable logic that the Fed must take the gold of the public in a sufficiently major crisis, with the justification that credit could not be expanded otherwise.

This is exactly what is now set up to happen with all securities owned by the public, globally.

Here is an important excerpt from the Wikipedia article on Executive Order 6102 [39] :

The stated reason for the order was that hard times had caused 'hoarding' of gold.

However,

the main rationale behind the order was actually to remove the constraint on the Federal Reserve preventing it from increasing the money supply during the depression. The Federal Reserve Act (1913) required 40% gold backing of Federal Reserve Notes that were issued. By the late 1920s, the Federal Reserve had almost reached the limit of allowable credit, in the form of Federal Reserve demand notes, which could be backed by gold in its possession.

The executive order to confiscate all gold owned by the public was made under the authority of the Trading with the Enemy Act of 1917, which had been enacted four years after the creation of the Federal Reserve. The act had been used to confiscate the property of interned natives of Germany, and more. This is described by Daniel A. Gross in his article *The U.S. Confiscated Half a Billion Dollars in Private Property During WWI* [40], whose subtitle reads: "America's home front was the site of interment, deportation, and vast property seizure."

Apparently all the U.S. public was now the enemy. Think about this. People who were simply protecting themselves and their families from the actions of the Federal Reserve System were accused of hoarding gold, and literally criminalized if they persisted in doing so. The rationale is incredible: You are hoarding gold, so we will take it and do what with it? Hoard it! As we have seen, once they had taken the gold of the public, they did not then use the resource to expand credit. People remained in a debt trap. The deprivation continued and even worsened. That was real enough. The rationale, however, had been planned. It was a construct!

I asked my father why people had turned in their gold. He said that if you did not you were a criminal, but further, that there was nothing you would be able to do with it because you could not legally transport or sell it. So, essentially, the use and value of gold had been confiscated. This was certainly the case because it remained illegal for a U.S. person to own gold for more than forty years!

Here are some excerpts from Executive Order 6102 [41]:

All persons are hereby required to deliver on or before May 1, 1933, to a Federal Reserve Bank or branch or agency thereof or to any member bank of the Federal Reserve System all gold coin, gold bullion and gold certificates now owned by them or coming into their ownership . . .

Whoever willfully violates any provision of this Executive Order . . . may be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both . . .

Note that the penalties were quite severe, and that all the gold was literally to be turned over to the Federal Reserve System. How nice!

Now we can see the purpose of constructing, in 1923, the largest bank vault in the world and a fortified building: it was to hold that confiscated gold.

Perhaps gold will not be confiscated immediately this time around. Gold has not been targeted as the essential collateral backing as was the case under the Federal Reserve Act. In this go-round it is securities of all kinds, globally, which have been set-up as the collateral backing underpinning the derivatives complex. It is quite possible that the big banks have suppressed the price of gold by selling “paper” gold in subsidiaries which will be allowed to fail, while accumulating physical gold in subsidiaries which are designed to survive. This, however, does not assure that you, as a member of the great unwashed, will be allowed to keep your gold, not if this juggernaut continues in motion.

I well remember the words of my father, who had lived through all of this, “The only thing they can’t take from you is your education.”

Only the Federal Reserve System was designed to survive and take over all assets and banking activities. Only the Federal Reserve banks and those selected and controlled by the Federal Reserve were allowed to reopen. The Federal Reserve was also indemnified by the government (i.e., the public) for any losses.

And so, large-scale closure of banks and taking of bank deposits is not unprecedented. Holders of cash in banks are unsecured creditors with no enforceable claim to their money.

It has been promised that there will be no taxpayer bailout this time—as if that is a good thing. Why? Simply because this will allow the banks to be closed rather than nationalized. Then all deposits and assets will be taken by the “protected class” of secured creditors. This is where it is going.

Some wealthy people may think they will hide from this by keeping their money with the “too big to fail banks.” Perhaps it will seem that they have succeeded in this through the early stages of the banking crisis. However, this “regime shift” is designed to be all-encompassing.

The big banks are organized as holding companies with subsidiaries. The purpose of this structure is to legally separate risks. A subsidiary can be designed to take on liabilities, which cannot attach to assets in

other subsidiaries or to the holding company. The weakened subsidiary can be separately bankrupted.

Ordinarily, the deposit-taking subsidiaries should be quite secure. But a strategy has been set up so that the deposit taking subsidiaries of the “too big to fail banks” can be separately bankrupted when the time comes. How can we know that?

The Fed has the power to give exemptions to any bank to move derivatives into deposit-taking subsidiaries, and it has done so. It has been tested, and on a large scale. Apparently it is easily and unilaterally done by the Fed by granting exemptions to Section 23A of the Federal Reserve Act.

Here are some excerpts from a Bloomberg News article from 2011 [42]:

Bank of America Corp., hit by a credit downgrade last month, has moved derivatives from its Merrill Lynch unit to a subsidiary flush with insured deposits, according to people with direct knowledge of the situation.

The Fed has signaled that it favors moving the derivatives to give relief to the bank holding company ... Bank of America's holding company—the parent of both the retail bank and the Merrill Lynch securities unit—held almost \$75 trillion of derivatives at the end of June ... About \$53 trillion, or 71 percent, were within Bank of America NA, according to the data, which represent the notional values of the trades.

That compares with JPMorgan's deposit-taking entity, JPMorgan Chase Bank NA, which contained 99 percent of the New York-based firm's \$79 trillion of notional derivatives ...

Moving derivatives contracts between units of a bank holding company is limited under Section 23A of the Federal Reserve Act, which is designed to prevent a lender's affiliates from benefiting from its federal subsidy and to protect the bank from excessive risk originating at the non-bank affiliate, said Saule T. Omarova, a law professor at the University of North Carolina at Chapel Hill School of Law. ...

In 2009, the Fed granted Section 23A exemptions to the banking arms of Ally Financial Inc., HSBC Holdings Plc, Fifth Third Bancorp, ING Group NV, General Electric Co., Northern Trust Corp., CIT Group Inc., Morgan Stanley and Goldman Sachs Group Inc., among others ...

And here are excerpts from another article on the same subject [43]:

Bank of America (NYSE:BAC) has shifted about \$22 trillion worth of derivative obligations from Merrill Lynch and the BAC holding company to the FDIC insured retail deposit division. Along with this information came the revelation that the FDIC insured unit was already stuffed with \$53 trillion worth of these potentially toxic obligations, making a total of \$75 trillion.

This all has the blessing of the Federal Reserve, which approved the transfer of derivatives from Merrill Lynch to the insured retail unit of BAC before it was done.

This is not an isolated instance. JP Morgan Chase (JPM) is being allowed to house its unstable derivative obligations within its FDIC insured retail banking unit. Other big banks do the same.

Keep in mind, when you see the scale of the derivative positions in these individual banks, that the size of the entire global economy was about \$74 trillion in 2011. So individual banks had derivatives books the size of the entire global economy, and they moved them into their deposit-taking subsidiaries with the approval of the Fed.

Why has this been tested on such a large scale? It seems they are quite serious about something. Is the intent to make the deposit-taking subsidiaries safer? What is the real purpose?

Used at the appropriate time, this will assure the collapse of the deposit-taking subsidiaries of the “too big to fail” banks, allowing the taking of money comprehensively, including from depositors in these deposit-taking subsidiaries, leaving essentially no money anywhere, and no pockets of resilience or of potential resistance. Meanwhile, in the chaos of the ensuing global wave of insolvencies, peppered with contrived existential threats, the “protected class” of bank holding companies and their subsidiaries designed for continuance will not only survive,

but thrive, taking essentially all collateral. This will be put forth as an imperative, i.e., that they must survive and be strong for the sake of humanity, so that the system might begin again and we all might move forward. People will be desperate and simply want the terror to stop.

What fig leaf will depositors have to protect them from the “protected class”?

The Deposit Insurance Fund (DIF) of the Federal Deposit Insurance Corporation (FDIC) was \$128.2 billion as of December 31, 2022. The FDIC is required to fund the DIF to 1.35% of insured deposits. The DIF can be exhausted, and indeed has been totally depleted twice—in the Savings and Loan Crisis and in the Global Financial Crisis. In these instances, the FDIC was allowed to borrow funds from the Federal Financing Bank. The FDIC has a line of credit with the Treasury for up to \$100 billion. If this credit line were fully utilized, total resources would be \$228 billion (roughly 2% of insured deposits). So, if the entire banking system is insolvent, “insured” depositors get 2 cents on the dollar. That will not go far in a widespread banking crisis, or if the deposit-taking subsidiary of a major bank is bankrupted, e.g., Bank of America and JP Morgan have over \$2 trillion, and \$2.5 trillion in deposits, respectively.

In Europe, Banking union was initiated in 2012 supposedly as a response to the “Eurozone crisis”; this has transferred responsibility for banking policy from the national level to the EU level in 21 countries. Sweden has thus far resisted pressure from its own central bank to join the banking union; Denmark and Poland have signed but not yet ratified the treaty.

The objective, I believe, was to create a construct, the goal of which is preventing stabilization of banks through nationalization, based on the simplistic argument that, as the wind-down of the banks will be handled entirely privately, no tax-payer funds will be used.

Resolution powers over the captured banking systems, including around 3,000 banks and other financial institutions, have been conferred to a resolution authority, the Single Resolution Board (SRB), which will execute a Single Resolution Mechanism.

A Single Resolution Fund (SRF) will be used for the exercise of resolution powers. The SRF is composed of contributions from credit institutions and certain investment firms in the participating Member States within the Banking Union.

The SRF must, by law, reach the target level of at least 1% of covered deposits by December 31, 2023, at which time the deposit insurance regime is intended to be fully mutualised among the member states. The SRF is projected to be approximately €80 billion at that point. A revolving credit line from the European Stability Mechanism (ESM) will match the SRF, stepping up total backing to 2% of covered deposits (approximately €160 billion), and thereby reaching harmonization with the level of 2% backing of deposits in the U.S.

The SRB is now aiming to capture and incorporate into the SRM the legacy national Deposit Guarantee Schemes (DGS). The SRB has a problem with something called Super Priority. In bankruptcy, super priority claims rank with or even above those of secured creditors. The SRB has stated that, “the super priority of DGS makes it de facto unrealistic to use DGS funds in resolution” [44].

The SRB has further stated that “the SRB supports removing the DGS super priority and adopting a general depositor preference” [44]. Why do they object to super priority for DGS? While these funds are quite small, with super priority, the funds used from national DGS would certainly be recovered from the assets of the bank, and thus could be reused. It would give the national DGS a seat at the table alongside the Senior Secured Creditors, potentially involving the state in each resolution process; the SRB absolutely does not want that. They are attempting to force agreement that these funds will be treated as a general depositor preference, which would put any such funds just ahead of unsecured creditors, but behind secured creditors. Practically speaking this means that the funds would not be recovered and would be wiped out in the first major failure. That seems to be the objective. Super priority is only for the “protected class.” The public can only be allowed an appearance of protection.

The Single Resolution Board has directed the biggest banks to prepare for solvent wind-down (SWD). Again, that sounds like a good thing, but given the scale of the bubble, this cannot possibly mean the solvency

of the entire banking system. I suggest that what this means is the preparation of certain portions of the biggest banks to remain solvent.

Here are some excerpts from the SRB memo *Solvent Wind-Down of Trading Books (Guidance for Banks, 2022)* [45]:

All G-Sibs [Globally Systemically important banks] are expected to work on SWD planning as a RPC [Resolution Planning Cycle] 2022 priority.

Other banks will be identified and approached in the course of 2022 following a further assessment of the significance of their trading books, to work on SWD planning as a RPC 2023 priority.

G-Sibs are expected to prepare to plan and ensure that capabilities are ready to deliver “Day-1” expectations in 2022, while other banks approached in 2022 are expected to deliver on these in 2023.

Banks should take all the necessary steps to ensure that all “Day-1” SWD-related expectations are implemented on time.

Here are further excerpts from the SRB’s *Work Programme 2023* [46]:

The SRB’s 2023 Work Programme is set against a backdrop of great uncertainty. While the start of 2022 saw economies beginning to emerge from the pandemic, 2023 will see added challenges, in part stemming from Russian aggression in Ukraine. Rising energy costs have led to double-digit inflation in many parts of the Banking Union. Now, more than ever, it is important we finalise the work on banking resolvability and ensure that all of the goals set out in the SRB’s Expectations for Banks are met before the year is out. This was the initial target date and we are on track to meet it.

The coming twelve months will see the SRB’s focus moving from the more general phases of drafting and fine-tuning of resolution plans towards ensuring that each plan and preferred resolution strategy for each bank is implementable at short notice.

At the same time, crisis preparedness needs to be further strengthened to equip the SRB with all tools needed to react to a looming

crisis, implement a resolution scheme and manage any necessary restructuring of the bank.

It is clear that more harmonised European measures are the way forward, rather than re-nationalising and weakening European financial stability tools.

Nevertheless, there will always be losses when a bank gets into trouble. Resolution is not a miracle fix-all solution, rather it is about attributing and sharing the losses a bank suffers . . .

The year 2023 will be the last of a transitional period for the establishment of the main elements of the resolution framework in the Banking Union.

It seems that we are getting very close to show time!

An indication of the extreme seriousness of the powers-that-be can be seen in the SRB press release from 2022, *Principals of U.S., European Banking Union, and U.K. Financial Authorities Meet for Regular Coordination Exercise on Cross-Border Resolution Planning* [47]:

The heads of resolution, regulatory and supervisory authorities, central banks, and finance ministries of the United States, the United Kingdom, and the European Banking Union are among leaders participating in a Trilateral Principal Level Exercise on Saturday, April 23, 2022. The meeting is part of a series of regular exercises and exchanges among the principals of these key financial sector authorities to enhance understanding of each jurisdiction's resolution regime for global systemically important banks and to strengthen coordination on cross-border resolution.

This exercise builds on six prior cross-border principal level events going back to 2014, with the European Banking Union authorities joining in 2016.

From the U.S., the participants are expected to include the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the President of the Federal Reserve Bank of New York, the Acting Chairman of the Federal Deposit Insurance Corporation, the Chairman of the Securities and Exchange Commission, the Acting Comptroller of the Currency, the

Chairman of the Consumer Financial Protection Bureau, and the Chairman of the Commodity Futures Trading Commission. Participants from the European Banking Union include principals from the Single Resolution Board, the European Commission, and the European Central Bank. Participants from the United Kingdom include principals from HM Treasury and the Bank of England.

This level of attention from the U.S. side is extremely unusual. I have never seen anything like this happen, let alone seven times in eight years. It's almost as if they are planning something quite serious.

The Atlantic Council is a think tank which “creates a meeting place” for heads of state, military and institutional leaders. It is a member of the Atlantic Treaty Association, an umbrella organization, which draws together political leaders, academics, military officials, and diplomats to support the North Atlantic Treaty Organization (NATO).

The focus of the Atlantic Council is military strategy, not economics. And what is the Atlantic Council focusing on now? Central Bank Digital Currency (CBDC), which is virtual money backed and issued directly by central banks.

The Atlantic Council has quite a nice CBDC tracker [48]. Here, one can see that, as of this writing, central banks in 114 countries representing 95% of the global economy are working on CBDC, that 11 countries have fully launched digital currency, that all G7 economies have now moved into the development stage of CBDC, and that 18 of the G20 countries are now in the advanced stage of development.

Why is this happening now globally? Is it really a desire to bring “financial inclusion” to the disadvantaged?

Why would The Atlantic Council, a military strategy think tank, focus on CBDC? We are living within a global hybrid war, a component of which will be the collapse of the banking, money, and payments systems globally.

War aims will be achieved by means other than kinetic war. The foremost aim of the people who have privately controlled the central banks and money creation is that they will remain in power, forever. They can risk no pockets of resistance.

Augustin Carstens is the general manager of the Bank for International Settlements (BIS). One can see the following comments of his, which have “gone viral”, just after the twenty-four minute mark in the video of the virtual meeting titled *Cross-Border Payments—A Vision for the Future* [49]:

We don't know ... who's using a \$100 bill today and we don't know who's using a 1,000 peso bill today. The key difference with the CBDC is the central bank will have absolute control on the rules and regulations that will determine the use of that expression of central bank liability, and also we will have the technology to enforce that.

In other words: CBDC means absolute control.

And so, if the “old” money system somehow collapses, new money will be provided by the central banks in the form of Central Bank Digital Currency (CBDC), the new and improved control system.

Imagine ... it is chaos. You have lost everything but your smart phone (If you don't have one, don't worry—you will be issued one.) You will download an app. You will click boxes agreeing to everything. You will become increasingly indebted with each payment you make using the CBDC you are “given” on your phone. You will be told what to do and what not to do from then on. You will comply if you want to eat.

9. The Great Deflation

Wisdom comes alone through suffering.

Aeschylus

I went down to the Cleveland Public Library and paged through the old chart books of commodity prices and stocks stretching back into the 19th century. I found that, in the 1930s, all commodities, with the sole exception of gold, bottomed at the lows of the prior sixty years. Most public companies ceased to exist. They had gone bankrupt. The shareholders were wiped out. The assets were taken by the secured creditors, the banks selected by the Federal Reserve System.

Price levels did not recover for decades.

In 1923, Grandpa Rogers, the surgeon who had been in the first U.S. medical unit into the Great War, bought three housing lots in Shaker Heights, a new upscale suburb of Cleveland. These properties would have gone up in value through the 20's. In 1929, the stock market crashed. He was probably quite glad that he had not sold the lots and put the money into the stock market. In 1933, when the banks were closed, he was probably quite glad that he had not sold the lots and put the money in the banks. In 1952, three decades later, his widow finally sold the lots for one third of what Grandpa Rogers had paid for them in 1923. This was not because Shaker Heights was economically depressed in 1952. Shaker Heights was, in the 1950's and into the early 1960's, statistically, the wealthiest suburb in the United States.

In 1905, my great, great grandfather's coal yard was valued in a bank appraisal at \$126,000. A modern industrial building with heavy overhead hoists was built on the property in the 1920s by my grandfather;

that became the site of Webb Equipment, the crane and hoist business. After my father's death in 1981, this property, with equipment and materials, was sold for less than \$80,000. This was after three quarters of a century.

Further confirmation of the persistence of the deflation is found in this paper by Tom Nicholas and Anna Scherbina titled *Real Estate Prices During the Roaring Twenties and the Great Depression* [50]:

Using unique data on real estate transactions, we construct nominal and CPI-adjusted hedonic price indices for Manhattan from 1920 to 1939. The CPI-adjusted index falls during the recession that followed WWI, rises to a local peak in 1926 and declines again following the collapse of the Florida real estate bubble. It subsequently recovers to reach its highest value in late 1929 before falling by 74 percent at the end of 1932 and hovering around that value until 1939. A typical property bought in the beginning of 1920 would have retained only 41 percent of its initial value two decades later.

And this was Manhattan!

Consider that in the period from the 1920s into the 1950's (more than three decades), there was little recovery in price level. Think of the absolutely massive demand drivers present through those decades:

- electrification and all it enabled (e.g., refrigeration, appliances of all kinds, industrial machinery);
- the automobile and the associated build-out of the highway system and suburbanization;
- telecommunications (telephone, radio, television);
- air travel;
- a global war, followed by the Korean War and Cold War arms race;
- population growth.

No such drivers of demand are present now. It is quite the opposite. Artificial Intelligence (AI) and robotics are inherently deflationary. We are told that people are not needed. Perhaps that is a tad deflationary.

The “inflation” we are now seeing is not due to strength in the global economy. The underlying intractable problem of our time is not inflation but deflation. The “inflation” is illusory; it is created by massive devaluation of money and artificial scarcity (consider the implications of the Nordstream sabotage).

Perhaps you have heard of the “Everything Bubble.” What is it?

I will explain the horror of it simply. Let’s take the example of a single bond with no fixed maturity date, i.e., a perpetuity. This bond pays a fixed annual dividend of \$5. If the market rate of interest is 5%, this bond has a value of \$100. If the Fed lowers interest rates such that the market rate of interest for this bond is now 1%, what happens to the value of the perpetuity? The fixed dividend of \$5 remains unchanged. As 5 is 1% of 500, the value of the perpetuity goes up five-fold to \$500. Now if the Fed increases market rates back to 5%, the value of the perpetuity paying a fixed dividend of \$5 returns to \$100, and hence, there is an 80% decline in value. It’s basic math.

The entire global financial complex is, essentially, a big perpetuity, i.e. a financial instrument with no fixed maturity date. The prices of all fixed income instruments are determined by interest rates, and all equity market and commercial real estate values are similarly driven.

The Fed created the “Everything Bubble” with the justification of fighting the Global Financial Crisis, which of course the Fed had also created, by lowering the Fed Funds Rate from 5% to near zero, and then keeping it near zero for most of the past 15 years. The Fed has now increased the Fed Funds Rate from near zero in April of 2022 to more than 5.00% in just one year.

That the decline in global financial and real estate markets will be massive, has been made certain. This cake is baked. The financial gains of the past 15 years have been an illusion. Some take comfort in thinking that the losses can be hedged in the derivatives market. If that is the case, the losses do not disappear. They are in the derivatives complex. Epic losses will be concentrated on the balance sheets of the CCPs, which, as we have seen, are designed to fail.

Some take comfort in saying that the Fed will lower rates again when they are forced to do so. Have you noticed that they are not lowering

rates despite the first bank failures? This is just the beginning of such failures given the basic math explained above. The Fed is sharply increasing rates into economic weakness, and a banking crisis. This is exactly what was done in the Great Depression. And they are doing this with the bizarre and cruel justification of *fighting wage growth!*

When the “Everything Bubble” is imploded, we will face a deflationary depression, which will span many years, even decades. This coming Great Deflation is intrinsic to the Great Taking.

The Architects of the Great Taking have planned and prepared to use this dynamic fully, secure in their knowledge that, as night follows day, massive and prolonged deflation will certainly follow the epic debt expansion super cycle, which they created.

The Architects have assured that they alone are positioned to take everything, and that you and your children are positioned on the other side of that, i.e., to lose everything, to be enslaved and even destroyed by it. People will be knocked down, and not be able to get up again. That is intentional, as the populace has been systematically encouraged to go deeply into debt. Whom the gods would destroy, they first cause to borrow at low rates of interest!

As in the Great Depression, prolonged deflation will assure that people who are in debt will not be able to make payments on their debts, let alone repay them. They will be trapped. All property and businesses financed with debt will be taken.

With profound and persistent deflation assured to stretch over many years, debt becomes a powerful weapon of conquest.

Debt is not a real thing. It is an invention, a construct designed to take real things.

It is instructive to look at the deeper meaning of the word, *debt*.

The root word is believed by etymologists to be an ancient Proto-Indo-European word, *ghabh*, meaning to give, to hold, or to receive. It is found, e.g., in the Sanskrit *gabhasti* (hand, forearm); the Latin *habere* (to have, hold, possess); the Old English *giefan* and Old Norse *gefa* (to give), and in the present-day Swedish *ger* (gives) [51].

However, the Latin prefix, *de*, meaning to do the opposite, or undo, or take away totally and completely (think of the word, *defrost*), utterly negates this giving, having, or holding. Again according to the Online Etymology Dictionary [52], the Latin word *debere* means “‘to owe’, originally ‘keep something away from someone,’ from *de* ‘away’ + *habere* ‘to have’.” In medieval Latin, the meaning of *habere* was “goods, capital, investment” [53].

The bottom line is that *debt* has for centuries had the function of dispossessing, of taking away property, capital and investments from someone.

There will be no debt forgiveness. We can plainly see in their deliberate preparations over decades to *take* on a vast scale. Ancient societies knew the practice of the *debt jubilee*, i.e. a comprehensive forgiveness of debts; it was enacted repeatedly in the interest of general human welfare. No debt forgiveness is intended now. But what purpose should the artificial constructs and institutions of society serve, if not human welfare? What must vitally concern each and all of us, if not human welfare?

The-powers-that-be have designed an elaborate legal construct to prevent individual states from directing their central banks to create the money to protect the depositors. If many trillions can be created to bail out private banks, the same could certainly be done as a social imperative. That it will not be done is a sign of the true intent—deprivation and subjugation.

This “Great Reset” is anti-human. It is intended to fix in place a system something like feudalism in perpetuity, in which the populace is held in a state of deprivation and fear with the empty promise of safety. Wake up! We have been living within a protection racket, in which the “protectors” terrorize the “protected.” Those supposedly protecting us from the “bad guys” ARE THE BAD GUYS!

10. Conclusion

Let every soul submit himself unto the authority of the higher powers. There is no power but of God. The powers that be, are ordained of God.

Tyndale Bible (1526)

For his efforts in translating certain texts into the English of the day, William Tyndale was jailed in a castle just outside of Brussels, and then executed by strangulation, after which his body was burned at the stake.

Perhaps one might, at some point, come to question whether the “powers that be” are ordained of God. One can easily know that they conduct wars against innocent people.

Curtis Lemay famously said:

There are no innocent civilians. It is their government and you are fighting a people, you are not trying to fight an armed force anymore. So it doesn't bother me much to be killing the so-called innocent bystanders.

As a human being, should this not concern you? What part of the organized slaughter of vast numbers of innocent people can you find acceptable? Do you believe that you are special in some way, that you were being protected, or that you will be protected now?

There has been abundant evidence of great evil at work in the world, throughout time and in our present time. Do you really wish to be ignorant of its existence and operation?

There is an interconnectedness of all things. If you don't care about the obvious lies, the deaths of innocent children, the fire-bombings of cities, the suppression of dissent, the propaganda, the escalating terrorism, in which, quite strangely, innocent people are always and everywhere the target, sooner or later it is coming for you, or your children, or your grandchildren. If you know and you're not doing anything about it, or saying anything about it, it's time.

It's time to start connecting the dots, because they lead to you.

The wealthy assume that, because the system has allowed them to accumulate wealth, they will be protected in some way, that they are special. You are special. They're saving you for dessert.

You have been allowed to chase profits while the wellbeing and resilience of your people have been broadly and systematically eliminated. There are monsters under the stairs eating people alive. But you don't want to look under the stairs, because you want to keep using the stairs.

To not know is bad. To not want to know is worse. Willful ignorance of the existence and operation of evil is a luxury even the wealthy can no longer afford.

We are in the grip of the greatest evil humanity has ever faced (or refused to acknowledge, as the case may be). Hybrid war is unlimited. It has no bounds. It is global, and it is inside your head. It is never-ending.

Nothing focuses the mind like an imminent hanging, or as Samuel Johnson originally said, "Depend upon it sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully." Hybrid war can be stopped. Stopping it begins in your mind.

During the Great War, Edward L. Bernays had worked with the Committee on Public Information to "sell" the war to the public. In 1928, he published his book *Propaganda* [54], in which we can read this statement on the subject:

Those who manipulate this unseen mechanism of society constitute an invisible government which is the true ruling power of our country.

The systematic psychological manipulation of society, begun with the evils of the Great War, has continued non-stop, and it has escalated to the point that we are now subject to full spectrum, continuous psychological operations.

Eighty-one years after the publication of Bernays' book, Chris Hedges wrote the following [55, p. 51]:

A public that can no longer distinguish between truth and fiction is left to interpret reality through illusion. Random facts or obscure bits of data and trivia are used either to bolster illusion and give it credibility, or discarded if they interfere with the message . . .

When opinions cannot be distinguished from facts, when there is no universal standard to determine truth in law, in science, in scholarship, or in reporting the events of the day, when the most valued skill is the ability to entertain, the world becomes a place where lies become true, where people can believe what they want to believe. This is the real danger of pseudo-events and pseudo-events are far more pernicious than stereotypes. They do not explain reality, as stereotypes attempt to, but replace reality. Pseudo-events redefine reality by the parameters set by their creators. These creators, who make massive profits selling illusions, have a vested interest in maintaining the power structures they control.

The people behind the wars have *never* been investigated and removed from power. They have continued in control of all central banks, and money creation, and have extended their control globally.

Certainly many who have abetted this are ignorant of the greater design. But the people behind the wars are, quite literally, lying, thieving killers, and they know it. To say that there is much evidence of this is an understatement. Perhaps they have not killed innocent men, women and children with their own hands, but they have deliberately caused these deaths. That this is done with intent can be known through the persistence of their planning and actions over many decades. While the scale and audacity of this criminality seems unimaginable to us, nothing is unimaginable to them. Their criminality has now reached

unprecedented and ultimate scale, as its aim is the subjugation of the entire globe and of all people.

Wars have always been not so much about taking things as about subjugation of populations on all sides. Vast destruction and death are acceptable to their planners. You might ask, how could the people plotting and executing such insane schemes be held together? I suggest that it has something to do with the binding power of shared guilt, of the criminal pact. The perpetrators are each and all are bound, whether explicitly or unconsciously, by evidence of shameful, treasonous acts committed against their own people. The commission of crime is a power totem among them. The more heinous the crime, the more powerful is the binding force.

In the past few years, you have been living within an escalating hybrid war. Globally, we have witnessed overt media control and propaganda campaigns; censorship, including arrests of people speaking in public; monitoring of all electronic communications and physical contact tracing; brutally enforced lock-down and masking requirements, with people being beaten, handcuffed and arrested, even in their homes; suspension of healthcare services and weakening of healthcare systems; invasive testing requirements for employment and travel; forced quarantine of travelers; and coerced quarantine and “vaccination” of the healthy, general population.

Governments dropped all pretence of democracy, and were emboldened to open despotism. There were no functioning checks on this power. The courts provided no effective recourse to the public.

Governments broadly abused fundamental human rights using as justification prevention of the spread of infectious diseases, which are, in truth, a great many, ever-present, and continually evolving. And so, this justification, if allowed to stand, assures the end of democracy and installation of openly despotic government.

Are you able to contemplate that this may have been about more than a virus?

We have witnessed designs and real attempts to exert physical control over every person’s body, globally, and this is continuing [56]. Why is this happening?

I will make a startling assertion. This is not because the power to control is increasing. It is because this power is indeed collapsing. The “control system” has entered collapse.

Their power has been based on deception. Their two great powers of deception, money and media, have been extremely energy-efficient means of control. But these powers are now in rampant collapse. This is why they have moved urgently to institute physical control measures. However, physical control is difficult, dangerous and energy-intensive. And so, they are risking all. They are risking being seen. Is this not a sign of desperation?

Where will they hide when they have all of the assets, when they have damaged all of humanity, and caused billions to awaken through suffering?

They promote the belief that they are all-powerful. They are not. All they have had is the power to print money. The rest, they have usurped from humanity.

Never before has a system benefitted so few at the great expense of so many. Is this not inherently unstable and unsustainable? Physical control, as opposed to rule by deception, requires enormous energy. Can this be sustained while destroying all economies, and abusing all people, globally? They do not know how to “build back better.” Look at their footprint around the world—the destruction, the economic devastation. When it comes to the real world, they are exceptionally good at just one thing: fucking things up. Then they declare victory, and fix blame on others for the horrific damage done.

We were told by Hobbes that war is the natural state of man (Hobbes’ patrons were “nobles”). But is war natural and inevitable? How did humanity survive? Think about it. Did humans survive by killing each other? It is oxymoronic! War is aberrant. 100% of human survival is based on cooperation. You cannot survive alone. You depend on everyone else, and everything else. That is sanity. That is reality.

All organizations promoting war are criminal organizations. The people behind them are mass murderers. The men and women orchestrating chaos in country after country are criminals of the worst kind. The people following orders are not heroes; they are criminals.

The people controlling this system are quite obviously not benevolent. They are not noble. They are not elite. They are insane!

They are the antithesis of everything we could value, admire, and love. These people do not represent human development, or the future of humanity. They are lacking in essential human qualities. They are aberrant. Antipathy for humanity is aberrant. For 99.99% of human history, sociopaths like these would not have survived the next winter. Their nature was seen and they were ostracized from the village, to save the village.

They operate today through anonymity enabled by inhuman scale. Even so, this will not allow them to continue indefinitely. We have entered a time in which their nature is being recognized. Knowledge of their existence has become unavoidable. Their grasping will come to an end, because all of humanity cannot allow it to continue. Once it is recognized, humans will bond against a common existential threat. People from all walks of life will join in common cause. We have witnessed this already.

Their power structure can and must be dismantled non-violently. The “masterminds” will not yet be known. However, the individuals and organizations near the levers of power (monetary, media, government, “healthcare”, military, police, legal, corporate), operating with criminal intent toward the mass of humanity, can be identified. The allegiances of these functionaries are unstable, driven by narrow self-interest. By directly and personally putting these people on notice that their actions are being documented, and subject to criminal prosecution, they may be impelled to decline further involvement. This process can be accelerated. It is not necessary to wake up the majority! We are not fighting the 1%, but the 0.01%. Even without mobilizing the majority, it is entirely possible to realize an enormous advantage of intelligent, capable, activated people.

If the people behind this Great Taking persist in their insane schemes, they will inevitably be found. It will be quite simple to follow the collateral to those who have arranged to take it. Perhaps they aren't such masterminds after all!

We will come to know who is behind this hybrid war against humanity.

We will come to know who controls the Bank for International Settlements, the Federal Reserve System, and all central banks globally, and hence all political parties, governments, media, and armed forces.

We will come to know who controls the CIA.

And we will finally know who has been behind the assassinations.

Let me close with John F. Kennedy's own words:

*Our problems are man-made; therefore,
they can be solved by man.*

Our problems are man-made; therefore, they can be solved by man.

*Our problems are man-made;
therefore, they can be solved by man.*

*Our problems are man-made;
therefore, they can be solved by man.*

Appendix

This appendix contains the full text of the New York Federal Reserve's reply to the European Commission's inquiry regarding the legal rules for the cross-border transfer of securities. For context, please see Chapter 3.

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March 6, 2006

Mr. Martin Thomas
C107 3/62
Financial Markets Infrastructure Unit
Financial Services Policy and Financial Markets
Internal Market and Services DG
European Commission
B -1049 Brussels
BELGIUM

Dear Martin:

As we recently discussed on the phone, we have prepared a legal response to the EU Clearing and Settlement Legal Certainty Group Questionnaire. Enclosed you will find our answers. If you have any questions please feel free to contact me at (212) 720-5024 or Jennifer Wolgemuth at (212) 720-6911.

Sincerely,



Joyce M. Hansen

Enclosure



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?

This response confines itself to U.S. commercial law, primarily Article 8, specifically Part 5 of Article 8, and parts of Article 9, of the Uniform Commercial Code (“UCC”); it does not discuss other laws or regulations or rules, which may significantly affect aspects of the indirectly-held securities system, such as securities, tax, accounting, banking laws, regulations or rules, or any other laws, regulations or rules. The subject matter of Article 8 is “Investment Securities” and the subject of Article 9 is “Secured Transactions.” Article 8 and Article 9 have been adopted throughout the United States. The United States Treasury issues securities through the Federal Reserve Banks and persons holding those securities on the books of the Reserve Banks do so through TRADES. The TRADES regulations apply Federal substantive law to certain aspects of the transactions at the level of the Federal Reserve Banks and provide for the application of the substantive law of the securities intermediary’s jurisdiction (as defined in Article 8 of the UCC) for holdings of Treasury securities at the lower levels. In addition, persons may also hold Treasury securities directly through a system called “Treasury Direct” which is not designed for trading. This response does not discuss the Treasury regulations for TRADES or “Treasury Direct.”

It is important to convey at the outset that Article 8 plays a limited role in the securities markets. Article 8 does not govern contracts for the purchase and sale of securities, clearing arrangements, or regulate the relationships between and among clearing corporations, brokers, or dealers, and their customers except to the extent such entities act as securities intermediaries. Article 8 and Article 9 simply provide the rules for identifying the rights, interests, obligations and priorities of interests in securities, whether certificated or uncertificated, held directly or through intermediaries. As noted above, many important issues regarding the securities markets in the United States are governed by State and Federal securities laws and regulations and State and Federal banking laws and regulations and are outside the scope of the UCC.

I. CONTENT AND STRUCTURE OF A LEGAL SYSTEM

General aspects

Before answering any of the specific questions posed, it's useful to set the stage by defining a few terms central to Article 8's framework for “indirectly held securities:” (1) the “securities account” is established by agreement between a securities intermediary and its customer and the securities intermediary agrees to treat the person maintaining the account to which an indirectly held investment is credited as entitled to exercise the rights comprising the investment; (2) the “securities intermediary” is a person in the business of maintaining securities accounts for others, such as a bank or broker, and is acting in that capacity (as opposed to, *e.g.*, a party to a trade); (3) the “financial asset” is the investment held indirectly (more specifically defined below); (4) the “securities entitlement” is the name given to the property rights and interests of the person holding a financial asset through a securities account; and (5) an “entitlement holder” is the person having a security entitlement to a financial asset against its securities intermediary (the “investor” or “customer” in the questions). These terms are used throughout this response.

In addition, references to Article 8 in the responses are in the following form: “8-XXX,” XXX being the section of Article 8 referenced.

- (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?**

Under Article 8, a security is “an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer: (i) which is represented by a security certificate or in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer, (ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and (iii) which: (A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or (B) is a medium for investment and by its terms expressly provides that it is a security governed by [Article 8].” 8-102(15).

In the Article 8 context, the term security is not the only relevant concept, as any “financial asset” can be credited to a securities account. In addition to securities, financial assets include: (1) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment or any property which a securities intermediary agrees to treat as a financial asset and (2) property which a securities intermediary agrees to treat as a financial asset. 8-102(9).

- (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?**

Issuance of securities is not the subject of Article 8. Most typically, an issuer issues a global certificate to a nominee of the upper-tier intermediary, which then credits interests in that security to securities accounts maintained on its books. Securities can also be issued entirely in dematerialized form.

An entitlement holder can acquire a security entitlement in only one of three ways: (1) the securities intermediary credits a financial asset to the entitlement holder’s securities account; (2) the securities intermediary accepts a financial asset for credit to the entitlement holder’s securities account; or (3) the securities intermediary is obligated by law to credit a financial asset to the entitlement holder’s securities account (a security entitlement implied in law).

Securities accounts

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

A securities account is an account to which a financial asset is credited or may be credited pursuant to an agreement under which the person maintaining the account “undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.” 8-501. When a financial asset has been credited to a securities account a person acquires a security entitlement with respect to that financial asset.

- (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?**

As noted above, any “financial asset” may be credited to a securities account. The securities intermediary can agree to treat essentially anything, including cash, credited to the securities account as a financial asset. For a discussion of the rights of entitlement holders against third parties and intermediaries, *see* the answer to question 7.

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

No, and, in fact, the ultimate investor will almost never be recorded by name on the books of an upper-tier intermediary or the issuer.

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?**

Securities may be credited to a securities account in the name of a person or entity that is acting on behalf of another, such as a trustee, agent, or investment advisor, where the existence of the other is not indicated. In addition, a trustee, agent or advisor may indicate the capacity in which it acts without identifying specifically the names of its customers. An intermediary may satisfy its obligation to maintain financial assets corresponding to its securities entitlements by maintaining those assets with one or more other securities intermediaries and would typically hold those assets in a collective position. Typically, a broker will maintain 2 accounts at its clearing bank, a “proprietary account” and a “customer account.” In its proprietary account, the

broker holds its own securities and in its customer account it collectively holds securities for its customers (without identifying the customers).

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?**

Article 8 establishes the rights of an entitlement holder in the security entitlements credited to its securities account. Security entitlement is defined broadly as the “rights” and “property interests” of an “entitlement holder” specified by Part 5 of Article 8 with respect to a “financial asset.” 8-102(17).

1. The “property interest”

A security entitlement involves a property interest in the financial asset (as contrasted with in personam rights against the securities intermediary) only to the extent it includes rights to the financial asset enforceable against other persons. 8-104(c) limits an entitlement holder’s interest as a “purchaser” of a financial asset to the rights enumerated in 8-503. 8-503(a) provides that financial assets held by a securities intermediary are “not property of the securities intermediary” and are exempt from claims of general creditors of the securities intermediary (but not certain secured creditors). The subsection further provides that financial assets are held by a securities intermediary for its entitlement holders “to the extent necessary” to meet its obligations to entitlement holders. This provision protects the entitlement holder from the securities intermediary’s general creditors and, thus, provides some property interest, **but it does not empower the entitlement holder to assert rights against any person other than its intermediary, except in the very limited circumstances described below.**

8-503(b) describes the entitlement holder’s property interest in a financial asset as a “pro rata property interest” in all interests in that financial asset held by the securities intermediary. This *pro rata* interest in the fungible bulk of a particular financial asset, however, is **not** a claim to a specific asset held by the financial intermediary. 8-102, comment 17. The drafters refer to the entitlement holder as having obtained a property interest “only in the sense that under Section 8-503 a security entitlement is treated as a *sui generis* form of property interest.” 8-104, comment 2.

Under subsection 8-503(c), enforcement of that property interest against the securities intermediary is limited to the rights enumerated in Sections 8-505 through 8-508. (These are discussed below in the discussion of “rights” against the securities intermediary.)

2. The “rights”

a. “rights” against third parties

Article 8 provides an entitlement holder limited rights in the financial asset against persons other than its securities intermediary. The entitlement holder has no ability to exercise economic or other rights to the financial asset directly against the issuer; however, the securities intermediary has an obligation to obtain and pass on those economic rights to the entitlement holder and to exercise ownership rights on behalf of the entitlement holder as further described below. Part 5 of Article 8 only enumerates limited property interests enforceable against “purchasers,” (which term is defined in Section 1-201(33) of the UCC to include essentially any recipient of a voluntary transfer, including a secured party, which could be an upper tier intermediary) and describes no rights against the issuer of the financial assets. 8-102, comment 17.

Much of the indirect holding system involves at least two tiers of securities intermediaries (meaning that the financial asset is a securities entitlement). Article 8 does not give an entitlement holder any rights against an upper-tier intermediary, except as described below.

Article 8 does include rights of an entitlement holder against purchasers of a financial asset underlying a security entitlement, but only in “extremely unusual circumstances.” 8-503, comment 2. Such a circumstance arises when each of the following conditions have been met: First, the securities intermediary is subject to insolvency proceedings. Before the entitlement holder can pursue rights against the purchaser, the administrator in the securities intermediary’s insolvency proceeding must have elected not to pursue those rights. Second, the securities intermediary does not have sufficient financial assets to meet its obligations to entitlement holders. Third, the transfer of the financial asset to that particular purchaser violated the securities intermediary’s obligation to maintain sufficient interests in the financial asset. Fourth, the purchaser is not entitled to protection under 8-503(e). 8-503(e) protects any purchaser who has given value and obtained control of the financial asset from any action based on the entitlement holder’s property interest unless that purchaser colluded with the securities intermediary in violating its duties to the entitlement holder. The vast majority of purchasers qualify for this protection.

b. “rights” against its securities intermediary

Article 8 gives an entitlement holder a number of specific rights against its securities intermediary. The rights an entitlement holder may enforce against the securities intermediary are limited to enforcement of the securities intermediary’s Article 8 obligations. There are eight statutory obligations, listed below as ⁽¹⁾ through ⁽⁸⁾.

i. statutory obligations

The first set of obligations relate to the entitlement holder’s receipt of the economic and corporate rights that make up the financial asset. A securities intermediary must take action⁽¹⁾ to obtain a payment or distribution made by the issuer of a financial asset. 8-505(a). This is accompanied by an almost absolute obligation (subject to set-off or counterclaim) to the entitlement holder⁽²⁾ to pass along payments or distributions made by the issuer of a financial asset and received by the securities intermediary. 8-505(b). (Note that the obligation to pass through economic benefits of the financial asset is the only obligation of a securities intermediary **not** subject to

limitation by agreement or a commercial reasonableness standard. 8-505(b).) The securities intermediary is obligated⁽³⁾ to exercise ownership rights with respect to the financial asset on behalf of the entitlement holder--these rights encompass such things as voting rights, conversion rights, rights to make demand for payment of an instrument which is a financial asset, and rights to enforce legal obligations. 8-506, comments 3-4.

The second set of obligations relate to protecting the entitlement holder from the financial risk of the securities intermediary. The securities intermediary must⁽⁴⁾ promptly obtain and maintain sufficient quantities of the financial asset to satisfy the claims of its entitlement holders. 8-504(a). The only exception to this requirement is for “a clearing corporation that is itself the obligor of an option.” 8-504(d). The securities intermediary also has an obligation not⁽⁵⁾ to grant security interests in the financial assets held for entitlement holders without agreement. 8-504(b).

The final three obligations relate to complying with entitlement orders or directions from the entitlement holder. An “entitlement order” directs the securities intermediary to “transfer or [redeem] a financial asset to which the entitlement holder has a security entitlement.” 8-102(a)(8). The entitlement order only directs the transfer; it is not an order to sell the financial asset.

The securities intermediary must⁽⁶⁾ comply with an entitlement order, if originated by the entitlement holder and the securities intermediary has (1) reasonable opportunity to assure itself of genuineness and authenticity and (2) reasonable opportunity to comply. 8-507(a). If the securities intermediary acts on an ineffective entitlement order, it must⁽⁷⁾ re-establish a security entitlement and pay or credit any distributions or payments not received as a result of a wrongful transfer. 8-507(b). If the securities intermediary does not re-establish the security entitlement, it is liable for damages. 8-507(b). Finally, the securities intermediary has a duty⁽⁸⁾ to “act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary.” 8-508.

ii. standards of performance

A securities intermediary satisfies its obligations under Article 8 by complying with other legal requirements, by exercising due care in accordance with reasonable commercial standards, or by performing its duties as specified by agreement. 8-504(c)(1)-(2); 8-505(a)(1)-(2); 8-506(1)-(2); 8-507(a)(1)-(2); 8-508(a)(1)-(2); 8-509. A securities intermediary’s compliance with another statute, regulation, or rule satisfies this Article 8 duty if the substance of the duty is the subject of that other legal requirement. 8-509(a). To the extent not covered by statute, regulation, rule, or by the party’s agreement, duties are to be performed and rights are to be exercised in a “commercially reasonable manner.” 8-509(b).

A securities intermediary may withhold performance of its obligations because of unfulfilled obligations the entitlement holder has to the securities intermediary. 8-509(c). This right to withhold performance may arise out of a

security interest, under a security agreement with the entitlement holder or otherwise, or under other law or agreement. 8-509(c).

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

As stated above, to the extent necessary to satisfy securities entitlements with respect to a financial asset, the interests held in that financial asset by the intermediary are held for entitlement holders and are not property of the securities intermediary. Thus, the securities intermediary does not "own" the financial assets credited to the securities accounts maintained on its books, although it may be reflected in the books of the issuer or its transfer agent as the registered holder or have a security entitlement (or be an investor/account holder) in respect of an upper-tier intermediary. The securities intermediary may have a security interest in those financial assets, if it extended credit to the entitlement holder to purchase such financial assets or if it has otherwise obtained the agreement of the entitlement holder that those financial assets secured other obligations the entitlement holder owes the securities intermediary.

(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?

Yes. If one holds securities indirectly through a securities intermediary as a securities entitlement rather than directly, the specific rights the holder has are described by and determined by Part V of Article 8-505 through 508. There is no direct exercise of rights against the issuer. However, the issuer cannot raise any defenses against the entitlement holder that it could not assert against the entitlement holder if the entitlement holder held the security directly.

(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?

No. The security entitlement holder does not have rights attaching to particular securities in the pool, he has a *pro rata* share of the interests in the financial asset held by its securities intermediary to the amount needed to satisfy the aggregate claims of the entitlement holders in that issue. This is true even if investor positions are "segregated."

(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)?

The investor acquires rights in respect of the financial assets credited to his securities account at the moment the credit is made (i.e., the security entitlement is created). 8-501(b)(1). The investor may also acquire such rights when a securities intermediary receives a financial asset from the investor or acquires a financial asset for the investor and, in either case, accepts that financial asset for credit to the investor's account. 8-501(b)(2). Finally, the investor may acquire such rights when the securities intermediary becomes obligated by other law, regulation or rule to credit a financial asset to the investor's securities account. 8-501(b)(3).

- (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?**

The holder has those rights explained above in the answer to question 7 against its securities intermediary and against third parties. The holder obtains its economic rights and other ownership rights to the financial asset through its intermediary. The entitlement holder's rights are good against third parties unless it granted a security interest or took the entitlement with notice of an adverse claim (*see also* answers to questions 23-25).

- (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?**

Article 8 would not afford an investor these rights, and it would seem unusual for an account agreement to provide this right.

- (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?**

Article 8 does not afford an intermediary these rights. Securities account agreements typically give the securities intermediary a security interest in the contents of a securities account in respect to credit extended to the customer by its intermediary. In addition, a securities intermediary has an automatic perfected lien in securities that entitlement holders have purchased with credit extended by the securities intermediary. 9-206(a), (b); 9-328(3).

- (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?**

Under Article 8, an investor is protected against the insolvency of its securities intermediary insofar as the security entitlements credited to the investor's securities account are not part of the securities intermediary's bankruptcy estate (and likewise, an investor is protected from the insolvency of an upper-tier intermediary). However, an investor is always vulnerable to a securities intermediary that does not itself have interests in a financial asset sufficient to cover all of the securities entitlements that it has created in that financial asset. This is best illustrated by example:

if a securities intermediary (SI) becomes insolvent, and it is discovered that SI created total security entitlements to 500 shares of Company X in the securities accounts of 5 entitlement holders (10 shares each) on SI's books, but that SI itself had a security entitlement of only 100 shares of Company X on the books of an upper-tier securities intermediary, under Article 8, each entitlement holder holding through SI would only get 20 shares of Company X,

i.e., its *pro rata* share of SI's interest in Company X. (The Article 8 insolvency distribution scheme does not apply to all insolvent securities intermediaries, and other insolvency distributions schemes applicable to some types of securities intermediaries might require different results.)

The interests of an entitlement holder in the financial assets trump the interests of any of the securities intermediary's creditors that have a security interest in the same financial asset. 8-511(a). Note that this rule has two exceptions. If the secured creditor has "control" over the financial asset it will have priority over entitlement holders who have securities entitlement with respect to that financial asset. 8-511(b). If the securities intermediary is a clearing corporation, the claims of its creditors have priority over the claims of entitlement holders. 8-511(c). (This second exception is to allow for the secured financing that aids in clearing corporations' settlement activities.)

Article 8's limited protection for investors is "premised on the view that the important policy of protecting investors against the risk of wrongful conduct by their intermediaries is sufficiently treated by other law." 8-511, comment 2. The "other law" includes, among others, Federal and State banking law and Federal securities law which require a securities intermediary to separately account for customer securities versus proprietary securities, and the Securities Investor Protection Act, which protects investors against losses up to \$500,000 for cash and securities (of which only \$100,000 can be to reimburse cash claims) held at firms which are members of the Securities Investor Protection Corporation (as are all securities firms that are also required to register as broker-dealers).

(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?

A securities intermediary has a duty under Article 8 to obtain and maintain sufficient quantities of financial assets to satisfy the claims of its entitlement holders. 8-504(a). In satisfying that duty, the securities intermediary must either (1) act with respect to the duty as agreed upon by the entitlement holder and the securities intermediary or (2) in the absence of an agreement, exercise due care in accordance with reasonable commercial standards. 8-504(c). Though the standard may be specified by agreement, the official comments to 8-504 and UCC Section 1-302(b) provide that the duty may not be disclaimed. Moreover, the official comments specifically indicate that the duty of care applies in the securities intermediary's selection of its own securities intermediary or intermediaries through whom the intermediary holds financial assets. In determining whether the duty is satisfied or breached in the selection of the securities intermediary's own intermediary where it holds financial assets to satisfy its own entitlement holders claims, one looks in part to custom and practice and whether the intermediary has little or no choice in the selection of the intermediary, which may be the case when holding foreign securities in a securities account.

The interaction between statutory duties and the provisions of the agreement between the securities intermediary and its customer is complex and nuanced. Note that the official comments to Section 8-504 are quite lengthy, and evidence a strong interest in the many risks a securities intermediary may contract around, particularly with respect

to foreign securities and foreign custodians. This is an area which is heavily regulated and satisfaction of a regulatory duty constitutes compliance with the substance of a duty (imposed in 8-504 through 8-508) under 8-509(a).

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)?**

A transfer of an interest in securities typically requires an agreement between the transferee and the transferor, although for a sale no writing is required and for a pledge a writing is often but not always required. A transfer as between those parties may be “effective” without the steps described below occurring, although the respective parties rights against and vulnerabilities to many third parties, including their respective securities intermediaries, will be affected if those steps have not occurred.

In the indirect holding system, security entitlements are created and extinguished--that accomplishes the settlement of securities transactions, much like a payment of bank money. Operationally, Party A, having a securities account at Securities Intermediary X containing a security entitlement to Security I, might instruct its Securities Intermediary X to transfer or deliver Security I to Party B, also having a securities account at Security Intermediary X. Securities Intermediary X will simultaneously create a security entitlement to Security I in Party B’s securities account and extinguish the security entitlement to Security I in Party A’s securities account.

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

There is no “object” that is transferred. A security entitlement is created, and another security entitlement is usually simultaneously extinguished. A security entitlement comprises the rights and interests explained in the answer to question 7.

- (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?**

These rights are mostly determined by the system rules, which are outside the scope of Article 8. As far as Article 8 is concerned, the interests and rights described in the answer to question 7 are related to the time in which the security entitlement is created/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?

Concepts of finality are not addressed in Article 8. Finality may be the subject of the rules of any securities intermediary or clearinghouse or other law or regulation. However, the Article 8 rules generally and in particular the rules on adverse claims contribute to the certainty of rights to financial assets and securities entitlement thereto.

- (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?**

See answer to question 20 .

- (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?**

See answer to question 20.

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?**

An entitlement holder claiming an interest in a financial asset credited to its securities account maintained with a securities intermediary will share *pro rata* with other entitlement holders claiming interests in the same financial asset credit to their securities accounts at the securities intermediary. The *pro rata* share will be a share of the securities intermediary's own total interest in the financial asset in question. 8-511(a). That claim will take priority over the claims of other creditors of the securities intermediary, subject to a few exceptions, explained further in the answer to question 25.

Among parties with a security interest in a financial asset credited to a securities account, the party that has perfected its security interest by control will beat a party that has perfected its security interest by filing. Special rules apply when the creditor asserting that security interest is the securities intermediary, the securities intermediary's securities intermediary, or a clearing corporation, discussed in more detail in the answer to question 15.

Note that Charles Mooney has provided additional responses to this question and questions 24-25 and 29-33.

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

Article 8 includes three specific rules to protect purchasers: One rule protects the entitlement holder from adverse claims asserted against it to the financial asset if the entitlement holder acquired the security entitlement for value and without notice of the adverse claims. 8-502. (Note that Section 8-116 may make the securities intermediary a “purchaser for value” of the financial asset. Thus, the securities intermediary has the rights of a purchaser when it needs to assert those rights against third persons.) The second rule similarly protects from adverse claims a person who purchased a financial asset or security entitlement from an entitlement holder if the purchaser gave value, had no notice of the adverse claim and obtained control of the security entitlement. 8-510(a). The third rule protects a purchaser of a financial asset against claims of an entitlement holder to a property interest in that financial asset, by *limiting* the entitlement holder’s ability to enforce that claim against the purchaser to those instances where: (i) the securities intermediary is insolvent, (ii) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that asset, (iii) the securities intermediary violated its obligation to keep sufficient interests in the financial asset by transferring it to the purchaser, **and** (iv) the purchaser either (a) didn’t give value, (b) didn’t obtain control, or (c) colluded with the securities intermediary in its failure to meet the obligation to hold sufficient financial assets to satisfy all of its entitlement holders security entitlements in such financial asset. 8-503(d). Essentially, unless the purchaser was involved in the wrongdoing of the securities intermediary, an entitlement holder will be precluded from raising a claim against it.

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

A securities intermediary may not grant a security interest in a financial asset that it is required to maintain in order to meet all of its customers’ claims to that financial asset, except with the agreement of the relevant customer.

A securities intermediary that has extended credit to an entitlement holder to purchase a financial asset maintained by an entitlement holder in a securities account maintained at that securities intermediary has a statutory lien over those financial assets, and that lien has priority over all other liens. 9-206(a), (b); 9-328(3). A securities intermediary may also, by agreement with the entitlement holder, have a security interest in financial assets credited to the entitlement holder’s securities account to secure obligations the entitlement holder may owe the securities intermediary.

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?

Generally, no. The investor has no rights under Article 8 against an upper-tier intermediary, as upper-tier intermediary *per se*. The investor may have rights against an upper-tier intermediary to the extent it colluded with the investor’s securities intermediary to violate the securities intermediary’s obligations to entitlement holders and certain other conditions, detailed in the answer to question 24. 8-503(d).

- (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?**

8-112 explains where a creditor's claim against an entitlement holder's security entitlement may be made: only by legal process upon the entitlement holder's securities intermediary. Process directed at an upper-tier intermediary will be ineffective. (If the interest of the debtor the creditor is claiming is in a security entitlement maintained in the name of a secured party, the creditor may reach that interest by legal process upon the secured party. 8-112(d).) Under Article 8, a creditor or third-party such as a liquidator of an investor might be able to make a claim to financial assets against an upper-tier intermediary in the circumstances set forth in 8-503(d), detailed in the answer to question 24.

- (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?**

This answer assumes that the question refers to an upper-tier intermediary of the securities intermediary itself. 8-112 explains where a creditor's claim against an entitlement holder's security entitlement may be made: only by legal process upon the entitlement holder's (in this case the securities intermediary's) securities intermediary. Process directed at an upper-tier intermediary will be ineffective. (If the interest of the debtor the creditor is claiming is in a security entitlement maintained in the name of a secured party, the creditor may reach that interest by legal process upon the secured party. 8-112(d).) Note that the attachable assets of a securities intermediary are net of the financial assets deemed not owned by the securities intermediary (*i.e.*, proprietary financial assets). Under Article 8, a creditor or third-party such as a liquidator of a securities intermediary might be able to make a claim to financial assets against an upper-tier intermediary in the circumstances set forth in 8-503(d), detailed in the answer to question 24.

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?**

In the general terms of Article 8, a shortfall should not happen. A securities intermediary may not create security entitlements greater than its interests in a particular security. 8-504. A securities intermediary could obviously violate that requirement. The only rule in such instances is that the security entitlement holders simply share *pro rata* in the interests held by the securities intermediary. That rule applies at each level. That is, the holdings of each securities intermediary holding a security entitlement through an upper-tier intermediary will be reduced to its *pro rata* share of the upper-tier securities intermediary's holdings. In turn, each entitlement holder holding through one of those securities intermediary will have its holdings reduced to its *pro rata* share of its securities intermediary's holdings.

This no-shortfall rule is a general requirement that is dealt with in more specificity in other regulatory law, compliance with which constitutes compliance with the above-referenced section of Article 8. 8-509(a). In certain circumstances, those rules do allow for temporary shortfalls. For example, in the case of fails, a firm is permitted a certain period of time to clear up any resulting shortfall before it would be required to obtain the necessary securities from some other source. In actual fact, shortfalls occur frequently due to fails and for other reasons, but are of no general consequence except in the case of the securities intermediary's insolvency.

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

See answer to question 29. Article 8 requires a securities intermediary to maintain a financial asset in quantities at least equal to the security entitlements it has established in favour of entitlement holders. 8-504(a). Article 8 allows for this duty to be satisfied by compliance with other applicable law. 8-509(a).

(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?

As noted above, a securities intermediary has a duty under Article 8 (that duty may be impacted by other law or regulations) to not create security entitlements greater than its interests in a particular security. Breach of that duty (or other applicable law or regulations) may result in various sanctions against or other liability of the securities intermediary. In terms of the interest that the entitlement holders have in the financial assets credited to it securities account: regardless of fault, fraud, or negligence of the securities intermediary, under Article 8, the entitlement holder has only a *pro rata* share in the securities intermediary's interest in the financial asset in question. Entitlement holders may have other claims against the securities intermediary (e.g., damages for breach of its Article 8 or other applicable duty). This is of little consequence absent the insolvency of the securities intermediary. In Article 8's insolvency scheme, the *pro rata* analysis applies as well, but other insolvency or other regulatory schemes may trump Article 8, leading to a different result. In addition, note that the collusion of the securities intermediary with a third-party purchaser might give the customer claims against that purchaser. See answer to question 24.

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

This is not addressed in Article 8, other than as discussed in the answer to question 7, in part 2.b.ii. Generally, parties can contract for the standard of care. The extent to which a securities intermediary can contract its way out of liability for basic negligence or wilful behaviour is probably limited by other law.

(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?

Where a securities intermediary obtained registered securities to support its security entitlements, if a registered certificate is destroyed, a replacement may be

obtained pursuant to the rules of 8-405 which may require posting of an indemnity bond or meeting other requirements of the issuer. In the rare case in which a securities intermediary has obtained a registered security and has not yet had it re-registered in its own name, the rights of entitlement holders depend on whether the intermediary exercised reasonable commercial standards of care. If it did, the entitlement holders have no greater rights against the intermediary than the intermediary has in the certificates. If it did not, the entitlement holders may further sue the intermediary for damages.

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?**

See answer to question 7.

- (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?**

See answer to question 7.

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

See answer to question 7.

- (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?**

No.

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?**

The issuer's jurisdiction is not relevant for purposes of Article 8's rules on the indirect holding system.

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.

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?**

For purposes of determining the rights and obligations of a securities intermediary, an entitlement holder having a securities account there, and third parties asserting claims to the financial assets credited to that securities account, the only relevant jurisdiction is “the local law of the securities intermediary’s jurisdiction” 8-110(b). A securities intermediary’s jurisdiction is either (the first of the following list to apply): first, that jurisdiction specified for purposes of this particular section of Article 8 as the jurisdiction of the securities intermediary in the agreement between the securities intermediary and the entitlement holder; second, that jurisdiction specified in the agreement between the securities intermediary and the entitlement holder, as the governing law of the agreement); third, the jurisdiction in which the office of the securities intermediary at which the account is maintained, as specified in the agreement between the securities intermediary and the entitlement holder, is located; fourth, the jurisdiction in which the office of the securities intermediary identified in the account statement as the office serving the entitlement holders’ account is located; and fifth, the jurisdiction in which the chief executive office of the securities intermediary is located. 8-110(e).

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?**

If the “domestic account” is a securities account governed by maintained at a securities intermediary in the United States, then the investor’s rights under Article 8 do not depend on whether the financial asset in its securities account is a foreign security or a domestic security--its Article 8 rights and interests are the same.

- (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?**

The identity of the foreign country is irrelevant, but, given the cascade described in the answer to Question 39, an investor holding through a foreign intermediary might not have its rights determined under Article 8 unless the account agreement had the appropriate selection. In the event of the insolvency of the

intermediary, the “lex concursus” will determine the rights of the investors. In the United States, the relevant insolvency law will differ depending on the type of entity (bank, broker/dealer) that acts as intermediary.

- (42) **Are foreign intermediaries (where (i) the headquarters, (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?**

An investor holding securities indirectly through a securities intermediary will not be entitled to the protections of Article 8 unless the agreement governing the securities account specifically identifies the jurisdiction as an Article 8 jurisdiction

- (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?**

Finality is not addressed in Article 8.

- (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?**

This is not addressed in Article 8.

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

This is not addressed in Article 8.

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

This is not addressed in Article 8. However, it may be addressed by regulatory law. For example, the Securities Exchange Commission imposes regulatory requirements on investment companies (mutual funds) that use foreign intermediaries as custodians for their assets.

- (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?**

There may be, but such restrictions are not found in Article 8.

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)?**

Article 8 does not contain these rules.

- (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?**

Article 8 does not address these questions.

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

N/A.

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

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?**

Article 8 does not impose disclosure requirements on intermediaries.

- (53) **What data storage requirements are there?**

Article 8 does not impose data storage requirements on intermediaries.

- (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?**

Article 8 validates issuer's restrictions on transfer; Federal securities laws contain transfer restrictions but the scope and consequences of such restrictions are beyond the scope of our advice here.

- (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?**

DvP rules are not part of Article 8, and generally are not imposed by law but rather through clearing and settlement system rules, market convention and by contract. The issue of when title passes or payment due would be addressed by contract between the buyer and the seller or exchange trading rules.

(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?**

No.

(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?**

Yes, but not in Article 8. Such protections are found in other law, such as Federal and State securities laws and regulations. For instance, state law may include (as New York State law does) a criminal rehypothecation statute, making it a crime for a securities intermediary to encumber a customer's securities without consent.

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Response: March 2006

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