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**Working Paper**

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eabh Papers, No. 20-04

**Provided in Cooperation with:**

The European Association for Banking and Financial History (EABH) e.V., Frankfurt a.M.

*Suggested Citation:* de Jong, Abe; Jonker, Joost; Röell, Ailsa; Westerhuis, Gerarda (2020) : Reinventing institutions: Trust offices and the Dutch financial system, 1690s-2000s, eabh Papers, No. 20-04, The European Association for Banking and Financial History (EABH), Frankfurt a. M.

This Version is available at:

<https://hdl.handle.net/10419/226211>

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**Reinventing institutions:  
Trust offices and the Dutch financial system, 1690s–2000s**

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**Abstract:**

Trust offices (*administratiekantoren*) that repackage securities have been a central institution in Dutch finance since the late eighteenth century. Their basic form and functioning have remained largely the same, but over time, the repackaging has come to serve a variety of very different purposes. We argue that trust offices have been reinvented several times to adapt to changing circumstances. Originally set up for administrative convenience, they helped to create liquidity, notably for foreign securities. As from the 1930s, their most prominent purpose became to shield directors of large corporation from shareholder influence and hostile takeover threats. This is still their most common function in their current reincarnation as dedicated foundations, each tied to a particular company and largely controlled by its board and executives.

**Acknowledgement:** The authors thank participants and conveners of the 2018 WEHC, Boston session ‘The emergence of corporate governance in big business in the 19<sup>th</sup>–20<sup>th</sup> century’. Jorrick Pieter Hassing and Merel Hoveling provided excellent research assistance.

**JEL Classification:** G23; N23; N24

**Keywords:** trust offices; corporate governance; financial innovation; the Netherlands

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## 1. Introduction

What makes financial systems different from each other? Though there are tentative signs of convergence towards the US model, even within the Eurozone differences persist and locally-determined government responses to the 2008 crash appear to have stimulated divergence rather than convergence.<sup>1</sup> Broadly speaking the relevant literature explaining differences between financial systems may be grouped into three schools: culture, law and economics, or political economy, respectively emphasizing the importance of informal institutions, legal traditions, or the outcome of bargaining processes between interest groups as determinants of how financial systems operate.<sup>2</sup> In this paper we argue that we should pay more attention to formal institutions and institutional adaptation in the Northian sense to understand both the evolution of financial systems and persistent differences between individual systems.<sup>3</sup>

We demonstrate the importance of adaptation of formal institutions by analyzing how a peculiar beast specific to the Dutch financial system, the *administratiekantoor*, evolved over more than two centuries. Its core function and *modus operandi*, while remaining recognizably the same, were adapted to suit new needs in a continuous interaction between investors, business corporations, and the financial system. This resulted in the Netherlands having both highly specific and highly effective takeover defenses and off-the-shelf vehicles favoured by international corporations from around the world.<sup>4</sup> Moreover, we argue that the *administratiekantoor*'s continuous adaptation succeeded because of its perceived efficiency and legitimacy as a governance institution.<sup>5</sup>

Therefore our topic is not just a historical curiosity: it contributes significantly our understanding of both financial system dynamics generally and of what makes the Dutch financial system today a case apart. We argue that the *administratiekantoor* is a perfect example of Merton's spiral of financial innovation.<sup>6</sup> It represents a highly flexible institution

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<sup>1</sup> Allen and Gale, *Comparing Financial Systems*; Van der Valk, *Household Finance*; Jonker, Milo, and Vannerom, "From hapless victims".

<sup>2</sup> For an overview of the literature see Van der Valk, *Household Finance*, 39-62.

<sup>3</sup> North, *Institutions*, 80; North, *Understanding*.

<sup>4</sup> Adams and Ferreira, "One share-one vote"; Shearman & Sterling LLP, *Proportionality*, 8 and 14; De Jong *et al.*, "The role of self-regulation"; and Shayndi Raice and Margot Patrick, "The obscure power of a Dutch 'Stichting'", *Wall Street Journal*, 23 April 2015.

<sup>5</sup> DiMaggio and Powell, "The iron cage revisited"; Thornton *et al.*, *Institutional logics*, 20-49; Scott, *Institutions and Organizations*, 181-193; Aguilera and Jackson, "Comparative and international corporate governance"; Pagano and Volpin, "The political economy"; Davis, "Agents without principals?"; and Rhee and Fiss, "Framing controversial actions."

<sup>6</sup> Merton, "Functional perspective", 26.

continuously adapted to suit particular circumstances as they arose, thereby creating new options and opportunities for banks, corporations, and investors which attract new participants into the market, thereby further widening options and opportunities, and so on and so forth, in the process rendering the Dutch financial system very different when compared to others. In other words, the *administratiekantoor* also provides an example of how and why financial markets, and by extension capitalism, come to vary from one country to another.<sup>7</sup> We study the *administratiekantoor* and the evolution of the certificates they have issued from an institutional perspective and investigate the various phases of their development over time. For each phase we discuss their role in finance and governance. In the transitions between phases we try to understand the transformation from the perspective of economic cost and benefit and legitimacy. Though the *administratiekantoor* is and was somewhat different in function from the trust office in the Anglo-Saxon world, we will treat the terms *administratiekantoor* and trust office interchangeably as synonyms throughout the paper.<sup>8</sup>

## 2. Back to the beginning: *negotiaties*

The *administratiekantoor* has its origins in the *negotiatie*. Derived from the French verb *négocier*, this Dutch word originally referred to the process of negotiating and to trade in general. By the early seventeenth century it already meant the outcome of particular negotiations, notably with respect to loans. When government officials or directors of the Dutch East India Company VOC were instructed to raise short-term debt, they were told *geld te negotiëren* (to negotiate money), sometimes simply *te negotiëren*. The resulting debt was called *geld op negotiatie* (money negotiated) or simply *een negotiatie* (a loan). Such debts were normally specified in a piece of paper called *een obligatie* (a bill or a bond).

The first transformation of the term *negotiatie* took place during the 1690s and was effected by the Amsterdam merchant banking firm of Wed. Jean Deutz & Soon.<sup>9</sup> One of the firm's main commercial assets was a lucrative privilege granted by the Habsburg Emperor for selling mercury from his mines. Following commercial practice Deutz gave advances on the sale of mercury supplies received, until in 1695 the Emperor, pressed for money, asked and

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<sup>7</sup> Hall and Soskice, *Varieties of Capitalism*, 9-17; Sluyterman, *Varieties of Capitalism*, 9-21.

<sup>8</sup> Trust offices in English-speaking countries are not the same institution as the *administratiekantoren* in the Netherlands. Moreover, over time the legal characteristics of both the Dutch *administratiekantoren* and the Anglo-American trust offices undergo significant changes.

<sup>9</sup> Elias, *De Vroedschap van Amsterdam*, 1046-1050.

obtained a fundamental change in conditions. Deutz obtained confirmation of the monopoly in return for a 1.5 million guilder loan, to be repaid in twelve years with 5% interest from the sale of increased mercury supplies. Deutz then did something new. He parcelled the loan and sold it on to investors, probably in the form of shares giving claim to an annual 5% payment plus redemption from the mercury sales revenues. Merchants had taken shares in large sovereign loans before, but Deutz repackaged one kind of asset, an asset-backed loan, into another one, that is, he securitized the loan to the Emperor so as to sell it to investors. In doing this the firm developed a form which effectively turned this and subsequent Austrian loans issued by Deutz into what today is known as an investment trust in the UK or a closed-end mutual fund in the US, albeit one holding just one type of asset. Having sold the loan with attendant risk to investors, Deutz remained in control, handling sales, keeping the books, paying interest and redemptions, sending surplus profits back to Vienna, and charging commission on all transactions. In effect, with respect to the loan Deutz already performed the same tasks which the *administratiekantoor* would do later. The firm's formula proved a great success. Within a few years Deutz sold a string of similar asset-backed Austrian loans, familiarizing investors with this type of vehicle. The practice of repackaging also prompted the first transformation of the term *negotiatie*. From referring to the original loan itself, the word now also came to mean the vehicle sold to investors.

In 1753 Deutz launched another innovation, mortgage-backed securities based on credit provided not to sovereigns but to private borrowers.<sup>10</sup> The firm provided credit collateralized on mortgages to plantation owners, bundled those mortgages together into a *negotiatie* and sold shares in that fund to investors, interest and redemption to be paid from sales of the plantations' products in Amsterdam handled by Deutz, who kept control over the entire process and earned commission all around. Popular with investors, this type of vehicle was again known as *negotiatie* and quickly copied by other merchant bankers, who sold an estimated total of 80 million guilders in mortgage-backed securities to investors, mostly in Amsterdam, but also in Middelburg, Rotterdam, The Hague, and Utrecht. By now the repackaging of assets was familiar enough to inspire further product development.

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<sup>10</sup> Van de Voort, *De Westindische Plantages*.

### 3. A crucial step: from *negotiatie* to *administratiekantoor*

In 1774 the Amsterdam broker Abraham van Ketwich opened subscriptions in a *negotiatie* called *Eendragt Maakt Magt* (best translated as United We Stand).<sup>11</sup> The subscriptions would be invested in a number of securities commonly traded on the Amsterdam exchange, including Caribbean mortgage-backed securities, projected to yield an annual 4% dividend. Van Ketwich's *negotiatie* was what we now call a closed-end mutual fund, the number of shares being limited to 2,000. The vehicle's main purpose was to allow investors frightened by the 1772-73 financial crisis to diversify their portfolios.<sup>12</sup> Van Ketwich managed the vehicle in the by now customary way, collecting revenues, paying dividends to shareholders, and earning commission over all transactions. His was a very clever innovation. It represented an ideal way for a broker, who was not allowed to trade for his own account, to make money on the side; it offered investors an easy way to spread their portfolio risk; and it considerably lowered the threshold for doing so by issuing shares of 500 guilders, whereas normally securities traded had a nominal value of 1,000.<sup>13</sup>

Unsurprisingly Van Ketwich's pioneering example was, like Deutz's mortgage-backed vehicle, also quickly copied by other bankers and brokers. Some set up similar diversified mutual funds, but others concentrated on one type of security. This latter form gained wide popularity during Amsterdam's heyday as an international loan issuing centre during the last quarter of the eighteenth century, for a particular reason.<sup>14</sup> Until then loans to foreign powers were usually denominated in guilders, putting the exchange risk on the borrower. The competition between merchant bankers for business together with a declining guilder enabled foreign borrowers to negotiate loans in their own currency, shifting the exchange risk to lenders. At the same time the change of currency threatened to render loans less attractive to Dutch investors due to transaction costs of conversion in local currency and by making price and yield calculations more difficult. To eliminate that threat, bankers and brokers repackaged foreign securities into a *negotiatie*, which then issued guilder-denominated shares in the joint ownership of those securities to investors.

The stock-substitution vehicle quickly became the dominant form of issuing foreign securities on the Dutch market and really performed the same functions which later fell upon

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<sup>11</sup> Berghuis, *Ontstaan*.

<sup>12</sup> Rouwenhorst, "Origins".

<sup>13</sup> The seventeen articles in the prospectus are described by Rouwenhorst. The fund involved a sophisticated lottery system, while the main requirements relate to the diversification of the portfolio of assets. See Rouwenhorst, "Origins".

<sup>14</sup> Geljon, *Algemene Banken*, 21-27.

the *administratiekantoor*. The bankers and brokers launching *negotiaties* issued *certificaten* (certificates) representing claims on securities held in the vaults of designated trustees, usually a notary, and distributed the flows of money generated by those securities. From there it was only a short step to the *administratiekantoor*, taken during the French occupation (1795-1813). When for a variety of reasons securities prices collapsed across the board, brokers and bankers stepped in to support the market by creating liquidity. They bought blocks of particular securities, say French bonds, and deposited these in an *administratiekantoor*, which performed the customary stock-substitution, that is to say, it issued certificates giving right to the joint ownership of those securities, and handled the money flows issuing from the securities.<sup>15</sup> In this way a motley lot of bonds could be bundled, made more recognizable and thereby rendered easier to trade. Additional advantages were enhancing liquidity by breaking up large denomination bonds into smaller ones and transforming bonds made out to named persons or entities into certificates to bearer, Dutch investors' preferred form of security. The first *administratiekantoren* appear to have been those set up by the big broker Willem Borski for French securities (1802, jointly with Ketwich & Voomberg and Van Halmael & Hagedoorn), US bonds (1805, with N., J., & R. van Staphorst), and Dutch bonds (1809, again with Ketwich & Voomberg).<sup>16</sup> Though initially set up for foreign securities, they soon became popular for Dutch public debt as well following the reorganization of the public debt administration in 1809.<sup>17</sup> Amsterdam alone came to count no fewer than twelve such *administratiekantoren* for Dutch public bonds.<sup>18</sup> As yet no offices were set up to handle corporate issues for the handful of big joint-stock companies active in the Netherlands such as the Nederlandsche Bank, the Nederlandsche Handel-Maatschappij, or the various railway companies.

Though derived from *negotiaties* and performing the same administrative functions, the *administratiekantoor* was really a new institution, not a vehicle sold to investors, but merely a separate, more or less independent office to pool, repackage, and manage securities so as to enhance their liquidity. That said, once established some of the offices widened their reach by launching *negotiaties* or investment funds of their own. Others remained tied to a single purpose. During the 1850s the Amsterdam firm of Hope & Co. set up separate offices

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<sup>15</sup> Geljon, *Algemene banken* 28-31.

<sup>16</sup> Geljon, *Algemene banken* 52, mentions an *administratiekantoor* for Dutch public debt set up in Delft in 1809 by businessmen unconnected to the securities trade.

<sup>17</sup> De Kat, *Effectenbeheer*, 405-406.

<sup>18</sup> Geljon, *Algemene Banken*, 28.

for handling the liquidation of two specific US loans. To distinguish them from general-purpose *administratiekantoren* the firm called them *Gemeenschappelijk Bezit* (common property), followed by the name of the particular security issue.<sup>19</sup> This form and name were to have a bright future, as we will discover.

The second half of the nineteenth century saw three new trends, two minor ones and one major one.<sup>20</sup> First, the number of *administratiekantoren* managing Dutch public debt declined when the government switched to a new issuing system based on bearer bonds.<sup>21</sup> Second, during the 1880s *administratiekantoren* began reorganizing themselves from partnerships into joint-stock companies owned by the bankers and brokers interested in the securities handled by that office.<sup>22</sup> Third and most important, from 1864 the boom in US railroads led to five new *administratiekantoren*. Some of these offices focused on a single issue or company, others had a wider scope. Most American railroad shares and bonds ended up being handled by them, because the original securities were usually registered, that is to say, made out to named persons or entities, so exchanging them for the bearer certificates customary in the Netherlands made them much more attractive for local investors. Little noticed at the time, this repackaging of railroad shares represented a typical small, incremental step in the evolution of the *administratiekantoor*, but at the same time it was a momentous step opening up important new options and opportunities. Turning the shares into certificates representing claims to pooled shares really split the bundle of legal claims pertaining to those shares into two parts. The ownership claims to economic yields such as dividend payments, capital gains, and share splits were vested in the certificates, while the control rights, that is to say, the voting rights, remained in the pool with the *administratiekantoor*.

Pooling the original securities in this way gave Dutch investors more clout in negotiations following the frequent financial mishaps which occurred in US railroads, a form

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<sup>19</sup> Geljon, *Algemene Banken*, 31.

<sup>20</sup> Indirectly related, in 1891 a new type of intermediary appeared in the form of *trustmaatschappijen* modelled on New York trust offices but in fact slightly different from them. Dutch trust offices focused almost exclusively on strengthening the bondholders' position for particular loans, notably bonds issued by mortgage banks, by providing guarantees as to the collateral attached. Some *trustmaatschappijen* also opened safe deposit services but, contrary to similar US institutions, they refrained from attracting deposits. After the first such institution another 12 followed up to 1912. See Geljon, *Algemene Banken* 446-447.

<sup>21</sup> Geljon, *Algemene Banken* 439-440.

<sup>22</sup> Geljon, *Algemene Banken* 442.



of proxy voting.<sup>23</sup> Indeed, in 1867 the bankers and brokers who had introduced Atlantic & Great Western Railroad shares in the Netherlands set up an *administratiekantoor* with the specific purpose of pooling them to defend Dutch investors' rights during the company's reorganization.<sup>24</sup> More importantly, though, splitting shareholders' legal claims on a company into two distinct parts quickly gained legitimacy because the market readily accepted it. Certificates and original shares traded side-by-side, certificates at a slight discount representing the trust office's cost.<sup>25</sup> As a result investors and the financial system at large became used to this type of arrangement.

Summing up, during the first two phases of development, *administratiekantoren* developed on the back of the large Dutch capital exports into well-established and broadly accepted vehicles to support investors. They brought investors convenience to improve diversification, liquidity, and monitoring, largely for their international investments through Dutch intermediaries.

#### **4. Certificates for Dutch corporations**

Founded by King William I in 1824, the Nederlandsche Handel-Maatschappij (NHM) had an initial capital of 37 million guilders in 1,000 guilder registered shares.<sup>26</sup> The Dutch preference for bearer shares hampered trade, as did the high nominal value, so in February 1885 the company issued shares to an *administratiekantoor*, the Administratiekantoor van aandelen in Vennootschappen en in binnen- en buitenlandsche leeningen in Amsterdam, which repackaged them in the usual way into small-denomination bearer certificates. The repackaging of NHM shares was therefore a company initiative, not performed by brokers or bankers seeking to boost their trade, but it was otherwise an identical transaction which split the bundle of claims in two. The *administratiekantoor* kept the shares and the vote, the certificate holders only held a claim on the economic gains. The certificates were what was called *royeerbaar* (redeemable), that is to say, investors wanting to obtain voting rights could get them by paying a small fee and exchanging the certificates for the original shares. The

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<sup>23</sup> The trust offices' role here differs from bond trustees in current markets, because bond trustees represent all bondholders, while the trust offices only represented investors that had bought the offices' certificates.

<sup>24</sup> Veenendaal, *Slow Train*, 22-25.

<sup>25</sup> For example in the *Prijscourant* of February 9, 1898, the Central Pacific Railway Company shares traded at 14<sup>5</sup>/<sub>8</sub> guilders, while the certificates were quoted for 14<sup>1</sup>/<sub>2</sub> guilders, a discount of 0.86%.

<sup>26</sup> De Graaf, *Voor Handel en Maatschappij*, 40-41.

Amsterdam stock exchange, used as it was to trading all kinds of certificates, saw no harm in corporate securities without voting rights and listed them side-by-side with the shares. Investors proved sufficiently keen on the certificates for them to trade at times above the shares.<sup>27</sup>

The same considerations, improving liquidity, drove several similar repackaging operations of Dutch corporate shares in the early twentieth century, some undertaken by the company itself, others by bankers and brokers. By 1902, for instance, the 1,000 guilder shares of the Royal Dutch Shell forerunner, the Koninklijke Nederlandsche Maatschappij tot Exploitatie van Petroleumbronnen in Nederlandsch-Indië, had risen to 476 per cent of par, so certificates of 100 guilders were issued to attract small investors. These certificates for 1/10<sup>th</sup> of a share could be bought for less than 500 guilders, whereas the shares were 4,760 guilders each. Similar issues followed for shares in popular safe investments like Nederlandsche Bank, Deli Maatschappij, and Tabaksmaatschappij Arendsburg. The certificates were redeemable, *i.e.* the holders of certificates could swap them for the underlying shares upon paying a small charge to the *administratiekantoor*, which also levied a 1% charge for paying dividends received to certificate holders.<sup>28</sup> Thus the certificates did not represent a form of separation of ownership and control through dual-class shares, because as a rule holders possessed the right to re-unite the economic claims with the control rights on a company. The *Vereeniging voor den Effectenhandel*, the brokers' association running the Amsterdam stock exchange, objected to listing non-redeemable certificates, but did not forbid it.<sup>29</sup> In all likelihood most investors preferred liquidity to the right to vote, so that certification probably reduced the incentive to attend shareholders' meetings.<sup>30</sup> As we discuss below, low attendance was precisely one of the arguments in favour of defensive devices raised in a vigorous postwar debate about the pitfalls of shareholder democracy in modern corporations.

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<sup>27</sup> Mansvelt, *Geschiedenis* II, 442; *Prijscourant*, various years. Documents concerning this transaction in National Archives The Hague (henceforth NATH), 2.20.01 NHM, no. 5970.

<sup>28</sup> Van Lutterveld, *Effecten* 78. Therefore the origin of this practice did not lie in the US, *pace* Voogd, *Statutaire Beschermingsmiddelen* 21, but grew out of the strong local tradition of stock substitution. NATH, 2.20.01 NHM, no. 5970: in addition to NHM shares the Administratiekantoor van aandelen in Vennootschappen en in binnen- en buitenlandse leeningen also issued certificates in eight other companies on the same conditions.

<sup>29</sup> NATH, 2.20.01 NHM no. 12702, Hoogovens appealing to Vereeniging voor den Effectenhandel, 30 December 1940, for its non-redeemable certificates to be listed in the national interest, knowing the association does not like such certificates.

<sup>30</sup> Westerhuis and de Jong, *Over Geld*, 134-135.

## 5. The rise of takeover defenses

Parallel to the certification trend Dutch businessmen developed a taste for what came to be known as ‘oligarchic clauses’, statutory limits on shareholder rights designed to enhance board power and protect a company against hostile takeovers.<sup>31</sup> Priority shares assigning their holders special rights, such as binding nominations for board vacancies, were the first and most widely used of such devices.<sup>32</sup> The adoption of dual-class shares by Royal Dutch in 1898 created a lively debate about the pros and cons. Under pressure from a real or imagined takeover threat by Standard Oil, the board changed its statutes taking the right to appoint managers away from shareholders and giving it to hand-picked holders of priority shares created for the purpose. Opponents cried foul, clamouring that the proposal would create an illegal device at odds with centuries-old traditions of shareholder democracy.<sup>33</sup> Supporters of the new priority shares argued that shareholder democracy no longer worked anyway. Indeed, modern corporations needed to be saved from it, because the wide dispersion of shares coupled with poorly attended annual general meetings (AGMs) made them vulnerable to the whims of accidental majorities.<sup>34</sup> After two heated meetings the Royal Dutch shareholders accepted the change with a large majority, in effect robbing themselves of control.<sup>35</sup> A few other companies followed suit with a range of defensive devices including specific nationality requirements for directors or qualified majorities for particular decisions.<sup>36</sup> In addition to real

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<sup>31</sup> Though takeover defenses are obviously a more narrow concept than limitations of shareholder rights, we use the terms interchangeably. The right to make a binding nomination is a preferential right not normally attached to ordinary shares: Voogd, *Statutaire Beschermingsmiddelen*, 56-57; Boelens, *Oligarchische Clausules*, 103. Interestingly, the first modern Dutch company law (1838) largely followed the French *Code de Commerce* and included a *de-facto* takeover defense in the form of a cap on the number of votes per shareholder. This was introduced because it was considered desirable to eliminate the possibility that individuals could evade liability by adopting the corporate form and dominate that with blanket votes. The voting cap also protected minority shareholders, who gained larger voting power compared to their equity inlay. From 1838 to 1928 the law limited voting rights to a maximum of three to six per shareholder and companies included this voting cap, or a variant, in their statutes. The 1928 law scrapped the limit and a number of companies removed their limit, whilst others introduced one. A notable feature of this construction is that it is a civil law provision strongly protective of minority shareholders. A large corporation such as Akzo only abolished this statutory provision in 1998.

<sup>32</sup> Cremers, *Prioriteitsaandelen*, 31-33.

<sup>33</sup> De Jongh, *Tussen Societas*, 274-276.

<sup>34</sup> Westerhuis and de Jong, *Over Geld*, 134-135.

<sup>35</sup> Jonker and Van Zanden, *From Challenger*, 36.

<sup>36</sup> De Jongh, *Tussen Societas* 278; Polak, *Wering van Vreemden Invloed*; Voogd, *Statutaire Beschermingsmiddelen*, 85.

or imagined takeover threats shareholder absenteeism at annual meetings often served as argument for adopting such oligarchic devices.<sup>37</sup>

During the first decade of the twentieth century chauvinist sentiment prompted calls to protect firms from foreign influence, rising to new, almost hysterical levels during the First World War.<sup>38</sup> In response various new defense mechanisms were put into play by corporations, such as holding structures in the form of joint-stock companies or private associations (*vereniging*). Called *gemeenschappelijk bezit* (collective ownership), or *nationaal bezit* (national ownership) such holdings were essentially institutionalised pyramids inserting exactly one layer between the operational entity and the shareholders, removing assets from their control.<sup>39</sup> The 1908 Nederlandsche Scheepvaart Unie was the first such holding structure protecting three shipping companies from hostile takeovers; two further companies followed suit in 1911 and 1915.<sup>40</sup> The pyramid construction never gained a wide popularity, being considered complicated to set up, difficult to adapt, and needlessly comprehensive compared to the available alternatives.

One potential alternative defensive measure, namely lodging mass voting power in an *administratiekantoor* by having it exchange shares for non-redeemable certificates, was used only sparingly before the Second World War, presumably because the *Vereeniging voor den Effectenhandel* opposed it. In 1927, for example, the *Gids bij de Prijscourant* (official stock exchange guide) listed only two out of 60 corporate certificates with some limitation to redemption, so the vast majority did not impose any constraints. Taken from the official list of quoted securities, Table 1 shows the five *administratiekantoren* which dominated the field, based on the number of listed certificates they represented at five-year intervals.<sup>41</sup> All five of them were general-purpose outfits issuing redeemable certificates for any number of companies; trust offices tied to a single company were rare before the war.

[See Table 1]

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<sup>37</sup> Tekenbroek, *Verhouding*, 14.

<sup>38</sup> Treub, *Economische Toekomst*; the German term infiltration was used, cited by Boelens, *Oligarchische Clausules*, 9-12.

<sup>39</sup> Berghuis, *Ontstaan*, 118 (“Vereenigde fondsen”) and 139 (“Vereenigd bezit”). The term collective ownership comes from the investment trusts of roundabout 1869 and later, which had the same name and structure.

<sup>40</sup> Hellema, *Rapport*, 9.

<sup>41</sup> We have collected all certificates over the period 1902-2007, taking every fifth year from 1902 onwards. Instead of 1947, we are forced to use the 1949 issue, because the *Gids* was not published between 1944 and 1948.

The Administratiekantoor van aandelen in Vennootschappen en in binnen- en buitenlandse leeningen, already mentioned in connection with the NHM certificates, was by far the biggest throughout, with 159 observations over 16 sampling years between 1902 and 1982. It was closely followed by the Nederlandsch Administratie-en Trustkantoor and at some distance by the Centrale Trust Compagnie and the Administratiekantoor van het Algemeen Administratie- en Trustkantoor NV, the only Rotterdam firm amongst the big players. These trust offices were typically set up between 1885 and 1907 as small joint-stock companies with a nominal capital of 100,000-200,000 guilders of which only 10% was paid up. Moreover, at least during the 1920s, the five big trust offices were not really linked to the companies whose shares and certificates they managed, so at that time they are unlikely to have functioned as levers to mobilize votes. We collected data on corporate certificates, *administratiekantoren*, and interlocking directorships between *administratiekantoren* and the companies whose shares and certificates they managed for the years 1922-1923 from the *Gids bij de Prijscourant*, the *Financieel Adresboek*, and *Van Oss Effectengids*. This yielded 484 firms, of which 46 (9.5%) had certificates managed by a total of nine *administratiekantoren*, seven general ones and two firm-specific ones. The seven general trust offices had a total of 48 executive and non-executive directors, almost seven on average. Those businessmen had a total of 102 interlocking directorships with other companies, but never with a company whose shares and certificates they managed, so the directors of trust offices were well-connected, but did not combine their certificate services with board seats. As a rule, therefore, the main goal of issuing certificates was to improve liquidity and hold the underlying securities in trust for the owners, and not to serve the issuers in one way or another.

For that reason companies wanting to use certificates as defensive devices could not use an *administratiekantoor* servicing redeemable certificates and had to find an alternative. In 1907 the mining company Mijnbouwkundige Werken was the first firm to issue non-redeemable certificates, followed four years later by glue producer Lijm- en Gelatinefabriek.<sup>42</sup> Wishing to secure complete control, the two companies deposited their shares in a private association (*vereniging*), open to Dutch nationals only, which issued certificates to investors. In 1918 the food processing company Calvé established a similar association (*vereniging*), Beheer van Aandelen der NV Nederlandsch-Fransche

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<sup>42</sup> Polak, *Wering van Vreemden Invloed*, 67.

oliefabrieken Nouveau Ets. Its members had to be either Dutch or French nationals, and its sole purpose was to hold Calvé's shares and issue certificates. Six years later this association also was given the right to make binding nominations for board vacancies.<sup>43</sup> In 1928 the Dutch East Indies plantation company Lawoe framed an explicit intention to use its certificates as a takeover defense by dropping the right to exchange them for shares and concentrate all voting rights in an *administratiekantoor*. Lawoe's move was a sign of things to come. The Meneba flour milling concern replaced its registered shares with bearer certificates in 1938, clearly with the intention to prevent hostile takeovers: the certificates were exchangeable for shares, but only customer-shareholders, *i.e.* bakers, received that right. Yet the Meneba board argued at length that the switch would give shareholders better liquidity and did not really harm their interests because shareholders preferred liquidity and dividends to voting rights.<sup>44</sup>

The non-redeemable certificates and trust offices created non-voting equity participations, which were uncommon in other countries at the time. In the U.S., firms could set up a voting trust, but only for a limited period of time of five or ten years.<sup>45</sup> Firms were also allowed to issue non-voting stock.<sup>46</sup> In an overview of the 200 largest U.S. corporations, Berle and Means show that only five had the (temporary) voting trust arrangement, another five had non-voting stock, and two companies had both.<sup>47</sup> They conclude that in 1930 the use of these devices was disputed in court and "had declined from extreme strength to practical impotence."<sup>48</sup> As for the U.K., its default rule has been one-share-one-vote throughout the 20<sup>th</sup> century and the stock exchange discouraged non-voting shares to the point of refusing them a listing.<sup>49</sup> Issuing shares with no, limited, or special voting rights therefore remained highly uncommon, though the practice has been documented as early as 1897 and a handful of firms followed suit.<sup>50</sup>

In the Netherlands, the defensive capabilities of non-redeemable certificates served the blast furnace and steel mill Hoogovens well following the German invasion of the

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<sup>43</sup> Scheffer, *Financiële Notities*, part 1, 186-87.

<sup>44</sup> Memo of the directors of Meneba, 'Waarom geven de meelfabrieken certificaten uit', (Why do the flour factories issue certificates?) from: Archive Vereniging voor den Effectenhandel (AVvdE) 1277, no. 26J.

<sup>45</sup> Berle and Means, *Modern Corporation*, 73, 130.

<sup>46</sup> Berle and Means, *Modern Corporation*, 72.

<sup>47</sup> Berle and Means, *Modern Corporation*, 88-89.

<sup>48</sup> Berle and Means, *Modern Corporation*, 131.

<sup>49</sup> Cheffins, *Corporate Ownership*, 316-317.

<sup>50</sup> Cheffins, *Corporate Ownership*, 31-32.

Netherlands in 1940. Facing Nazi efforts towards *Verflechtung*, i.e. slotting firms in occupied countries seamlessly into the war effort by having them taken over by German concerns, during the second half of 1940 the Hoogovens board came under pressure from Vereinigte Stahlwerke AG. In December the board succeeded in deflecting the threat by mobilizing a shareholder majority in favour of exchanging their shares for certificates redeemable only following a supermajority shareholder vote, which was rendered impossible by lodging a majority vote in an *administratiekantoor* set up for the purpose. The board appealed to the Vereeniging voor den Effectenhandel to list the *de facto* non-redeemable certificates in the national interest, despite the stock exchange's official dislike of them.<sup>51</sup> The Hoogovens trust office thus represented the *administratiekantoor*'s full transformation into an anti-takeover device tied to a particular corporation. After the war the support of top civil servants for the company's clever move served proponents of such devices as an argument justifying the use of non-redeemable certificates: the government itself had sanctioned it.<sup>52</sup> For the Hoogovens board, this oligarchic device clearly conferred the benefit of considerable protection. A 1962 memo called the certificates "a guarantee that the company will continue to be run by a small group of persons who, given their social background, ensure that present policies will remain in place".<sup>53</sup>

## 6. The heyday of protective devices

The 1962 Hoogovens board memo perfectly captured the postwar attitude in favour of curtailing shareholder power, illustrative of the Netherlands moving from a liberal market economy to a coordinated system.<sup>54</sup> In 1949 the *Hoge Raad* (Dutch Supreme Court) ruled that non-executive directors should act in the interests of their company even if that went against shareholders' interests.<sup>55</sup> Six years later the Court took a step further when ruling that the annual general meeting of shareholders (AGM) did not represent the highest authority in conflicts with the non-executives.<sup>56</sup> This was in line with changing political opinion. Members of parliament had advocated from the late 1920s that corporate policy ought to

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<sup>51</sup> De Vries, *Hoogovens*, 481-483; NATH 2.20.01 NHM 12702 for documents concerning this neat trick.

<sup>52</sup> Kleyn, "Weg met structurele beschermingsconstructies", 216.

<sup>53</sup> NATH 2.20.01 NHM 12705, Hoogovens board memo 21 March 1962; cf. Boelens, *Oligarchische Clausules*, 5.

<sup>54</sup> De Jong, Röell and Westerhuis, "Changing national business systems", 780.

<sup>55</sup> De Jongh, *Tussen Societas*, 328-331, 338.

<sup>56</sup> HR:1955:AG2033 (Forumbank); Raaijmakers, "Forumbank (1955) revisited".

strike a judicious balance between the interests of capital, labour, and management, thereby legitimizing the use of takeover defenses. During the 1950s parties on the left pressed for a transfer of shareholder power to works councils representing stakeholders, an idea strongly resisted by parties on the right. An employers' confederation did propose, however, that one third of a company's non-executives be appointed by stakeholders rather than shareholders.<sup>57</sup>

As a result, devices shielding boards from both takeovers and shareholder power proliferated. In addition to the devices discussed already – certificates, priority shares, and collective ownership – Dutch corporate lawyers and notaries introduced a wide array of statutory and non-statutory devices, of which some were used by only one or a few firms.<sup>58</sup> By 1955 only four out of seventy publicly quoted companies with a capital of more than 10 million guilders did not limit shareholder voting rights one way or another, but in 1977 almost all companies did and some had several devices.<sup>59</sup> We have collected information about the four most common devices, based on information published in the *Gids bij de Prijscourant*. Many statutory devices are not observable from this overview, which underestimates the extent to which shareholder rights were limited, for example since binding nominations could be, and were, tied to instruments other than priority or preference shares, such as founder shares.

[See Table 2 and Figure 1]

Table 2 and Figure 1 present an overview of the most important defense mechanisms. Holding constructions, collective and national ownership structures, so common in other countries, were never popular in the Netherlands.<sup>60</sup> In some setting, such as the US, this can be explained by tax policies designed to discourage pyramid holdings, but there were no fiscal barriers in the Netherlands.<sup>61</sup> Businessmen preferred more flexible solutions like certificates and priority shares. Initially they were by far the most popular defensive devices, but during the 1980s preference shares won ground to become the most widely used defensive devices.

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<sup>57</sup> De Jongh, *Tussen Societas*, 342-354.

<sup>58</sup> For a complete overview, see Voogd, *Statutaire Beschermingsmiddelen*.

<sup>59</sup> Hellema, *Rapport*, 9-10.

<sup>60</sup> Shearman & Sterling LLP, *Proportionality*.

<sup>61</sup> Morck, "How to eliminate"; De Goey and De Jong, "The Netherlands", 175, 187.



Already common in the nineteenth century to secure special voting rights, preference shares became increasingly popular. They derived, and still derive, that popularity from being cheap and flexible emergency brakes that do not necessarily affect shareholder voting rights. Their return to fashion goes back to 1955, when the Bandar Rubber company thwarted a hostile takeover by issuing shares to a *stichting gemeenschappelijk bezit* (joint ownership foundation) set up for the occasion and run by Bandar's own board. The novelty lay in the vehicle's legal form. Until then, *administratiekantoren* were joint-stock companies and joint ownership devices sometimes a *vereniging* (association). A *stichting* possesses several advantages. Cheap to set up, it is dormant most of the time, therefore cheap to run and to maintain, and it is not subject to corporation tax or any duty to publish annual reports or register the beneficiaries of any assets managed. Moreover, *stichtingen* do not have members or shareholders, so once appointed their board can do as it pleases within the statutory limits.

Initially the Bandar Rubber construction remained a fairly isolated example. Most other takeover attempts during the 1950s and early 1960s were deflected by issuing shares to loyal banks or institutional investors.<sup>62</sup> However, the heated takeover climate of the later 1960s combined with new EEC rules about equity issues to create *stichtingen* armed with a new and simpler takeover deterrent.<sup>63</sup> Issuing shares to outside investors was relatively expensive and cumbersome, while a real or imminent bid made such shares difficult to price.<sup>64</sup> From 1969 companies therefore switched to loading their defensive *stichting* with preference shares. Some of them chose to authorize them with only an option to issue such shares as and when required. This arrangement was even simpler and cheaper, because the preference shares had a low price-to-nominal value ratio and only a fraction of that needed to be paid up, so the *stichting* would not need to raise large amounts of money to thwart a takeover. Also, the preferred dividends were fixed, rendering finance easy by borrowing the

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<sup>62</sup> Voogd, *Statutaire Beschermingsmiddelen*, 185-188. Another form of *stichting* was apparently used only once. During the early 1960s De Koornschoof board transferred the running of the company to a foundation with the same name and the same board and managers to safeguard it from takeovers. The storm of criticism raised by this move appears to have deterred further use: Voogd, *Statutaire Beschermingsmiddelen*, 31-32.

<sup>63</sup> Bouwens and Dankers, *Tussen Concurrentie*. The intensifying of the takeover climate as driving the increasing adoption of defensive devices is highlighted by a subtle change of press terminology. Until the late 1960s such devices were referred to as *oligarchische clausules* (oligarchic clauses), while in 1969 we first find the term *beschermingsconstructie* (anti-takeover device): "Van der Grinten maakt ruimte voor expansie" *Algemeen Handelsblad*, 26 September 1969.

<sup>64</sup> Voogd, *Statutaire Beschermingsmiddelen*, 219.

required funds. In 1970 such a poison pill proved decisive in helping the Noordelijke Industrie voor Vezelverwerking (NOVE) to defeat Clark and Fenn Ltd.'s hostile takeover attempt.<sup>65</sup> By the end of the 1980s preference shares had become the takeover defense of first choice and, as shown in Table 2, in 1992 59 per cent of the quoted companies examined possessed the option of issuing preference shares to a third party.

The search for effective devices also drove a fundamental repurposing of the share substitution technique practiced by *administratiekantoren*, from enhancing liquidity to reducing shareholder power. That required firms to set up tied trust offices, because the traditional *administratiekantoren* serving all comers still conceived of their fiduciary duty as to the owners, not the issuers, of the securities held in trust. As a result general trust offices lost ground to tied ones. In 1932 88% of certificates listed on the stock exchange had been issued by general trust offices, against only 7% by tied ones and 5% unknown. By 1978 the ratio was 46% to 49% and 6% unknown, and even 13% to 91% and 2% unknown fifteen years later. Following Bandar Rubber's lead, *administratiekantoren* turned themselves increasingly from joint-stock companies into *stichtingen*, a process to all intents and purposes completed by 1989.<sup>66</sup> The percentage of non-redeemable certificates listed on the stock exchange rose in tandem. In 1952, only 16% of certificates were not redeemable, but by 1972 this fraction had increased to 35%.<sup>67</sup>

The stock exchange board, formerly opposed to limiting shareholder voting rights with non-redeemable shares, mustered no significant resistance to this sweeping tide,

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<sup>65</sup>Voogd, *Statutaire Beschermingsmiddelen*, 223.

<sup>66</sup> Voogd, *Statutaire Beschermingsmiddelen*, 22; From the *Gids bij de Prijscourant* we have collected all names of trust offices for firms with certificates over the period 1903-2008, taking every fifth year. Instead of 1943-1948 we use the 1942 and 1949 issues.

<sup>67</sup> For example, in the 1955 AGM of the shipping line Van Nievelt, Goudriaan & Co., firm management proposed certificates so as to prevent the company from being taken over by a foreign entity. The prominent shareholder rights advocate Posthumus Meyes argued that shareholders were deprived of their rights, while liquidity was very low. The board dismissed the argument and issued certificates. City Archive Rotterdam (CAR), 488 Van Nievelt, Goudriaan & Co, no. 9-11. Also in 1955, Thomsen's Havenbedrijf placed certificates with the Administratiekantoor van het Algemeen Administratie- en Trustkantoor in Rotterdam. The certificates had the same nominal value as the underlying shares, but they were not redeemable. The conditions of the certificates stated that the *administratiekantoor* received the voting rights (preamble 2), and certificate holders could not request shares (art 8). (AVvDE, 2215 Thomsen's Havenbedrijf). Even so some companies continued to value redeemable certificates. In 1972 a paper mill switched from shares to fully exchangeable certificates so as to concentrate votes and maximize effective voting, an example followed in 1988 by the Fokker aircraft factory: Voogd, *Statutaire Beschermingsmiddelen* 25, note 30.

presumably because its members cared more about brisk trade than about shareholders' rights. In the face of complaints about *administratiekantoren* being too closely tied to particular corporations the board did no more than ask experts' commissions to investigate.<sup>68</sup> The 1955 Hellema report highlights just how far public opinion about the position of shareholders had changed. In the committee's tell-tale expression shareholders possessed 'medezeggenschap', *i.e.* the right to have a say: not the final decision.<sup>69</sup> Consequently the committee did not go further than recommending that certificates be admitted to the official list only if the *administratiekantoor* managing them met a string of requirements safeguarding its independence from the corporations whose shares it held. Soft though the committee's recommendations were, the stock exchange board lacked the power or conviction to see them through. In 1961 sugar company CSM set up a tied *administratiekantoor* which issued non-redeemable non-voting certificates covering 46 per cent of its shares so as to neutralize block votes held by banks.<sup>70</sup> Despite misgivings the stock exchange board admitted the CSM certificates to the list. During the 1960s another report on non-redeemable certificates commissioned by the board went unpublished for reasons unknown.<sup>71</sup>

The sharp increase in defensive devices turned the original argument against shareholder democracy into a self-fulfilling prophecy: shareholders no longer bothered to attend AGMs. A 1954 survey counted the shareholders present at 43 AGMs. No more than six shareholders attended 32 of those AGMs and at 28 of those they represented less than 10 per cent of shares. Fifteen years later the situation had hardly improved.<sup>72</sup> In April 1968 only one shareholder attended the AGM of the Rotterdam Droogdok Maatschappij, obviously the *administratiekantoor*. No surprise that all agenda items were approved without discussion.<sup>73</sup>

In 1971 parliament sanctioned the curtailing of shareholder power by approving the so-called *Structuurwet*. Applying to all companies with capital of over 10 million guilders, the law established as a principle that a corporation's supreme power rested with its non-executives deemed to represent its stakeholders and the interests of society at large. Consequently the *Structuurwet* gave the non-executives the right to appoint and fire

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<sup>68</sup> Helmers et al., *Graven naar Macht*, 87.

<sup>69</sup> Hellema, *Rapport*, 7.

<sup>70</sup> Sluyterman, *Driekwart Eeuw CSM*, 133.

<sup>71</sup> Voogd, *Statutaire Beschermingsmiddelen* 27-28.

<sup>72</sup> Westerhuis and de Jong, *Over Geld*, 134-135.

<sup>73</sup> CAR 425 Rotterdam Droogdok Maatschappij (no. 74-2 and 74-3).

managers, approve the annual accounts, and even fill vacancies amongst themselves by co-optation, prerogatives previously belonging, at least in theory, to shareholders who were left with no powers to speak of.<sup>74</sup> The law's mandatory cooptation of directors, called *structuurregime*, eliminated the need to have priority shares with the right to make binding board nominations, so their popularity declined in favour of other devices.

## **7. The shareholders' return and new applications to an old institution**

During the 1980s conceptions about the position of corporations in society began to change and with that opinions about shareholder rights. The Dutch business system became increasingly liberal and international investors bought growing stakes in Dutch firms, giving support to mounting resistance against the extent to which shareholders were kept powerless.<sup>75</sup> Worried by a perception that corporate defences kept down Dutch stock prices compared to other countries, the stock exchange board finally woke up and reinvented itself as a defender of shareholders' rights, albeit a timid one, since it always had to heed members' commercial interests. New non-redeemable certificates were no longer admitted to the official list, though the board did not dare to eliminate the ones already quoted.<sup>76</sup> A whole chapter of the stock exchange's 1985 annual report discussed the downsides of defensive devices for shareholders' rights.<sup>77</sup>

Sensing a change of opinion, the government asked a commission headed by prominent corporate law professor W.C.L. van der Grinten to investigate the variety and impact of corporate defense devices. Though primed by the board of the stock exchange to push for a revival of shareholder power, the commission presented only the soft recommendation that the scope and number of defensive devices deployed by any one company ought to be limited.<sup>78</sup> Even that suggestion ran into fierce opposition from the corporate sector. Cosseted by decades of cosy corporate governance relationships, managers and non-executive directors cried foul at the prospect of having to face shareholder criticism, let alone activism. To preserve as much as possible the association of listed companies (*Vereniging van Effecten Uitgevende Ondernemingen* VEUO) entered into negotiations with the board of the stock exchange and, after protracted negotiations, managed in 1992 to reach

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<sup>74</sup> De Jongh, *Tussen Societas*, 367-379.

<sup>75</sup> De Jong, Röell and Westerhuis, "Changing national business systems", 790-793.

<sup>76</sup> Voogd, *Statutaire Beschermingsmiddelen* 28.

<sup>77</sup> Voogd, *Statutair Beschermingsmiddelen* 28; Frentrop, *Ondernemingen*, 353-359.

<sup>78</sup> Frentrop, *Ondernemingen*, 356-359.

a highly favourable agreement. Henceforth listed corporations were still permitted to arm themselves with defensive devices, as long as they accepted a limit on the number and combination of defensive devices adopted. The two sides also agreed that non-redeemable certificates should be eliminated from the stock exchange list as an anomaly in globalizing capital markets and incompatible with modern governance ideas. As a result the use of non-redeemable certificates fell from 40 percent of listed companies in 1993 to 15 percent by 2008 (Figure 1). However, several companies with non-redeemable certificates resisted, notably Hoogovens, Nutricia, and CSM. The sugar producer proved particularly stubborn. It refused to eliminate its 1961 certificates and requested an exemption from the new listings rules. In response the stock exchange board suspended trade in CSM certificates and threatened to de-list them if CSM stuck by its guns.<sup>79</sup> This fell flat when the company won litigation contesting the board's decision; the certificates remained listed.<sup>80</sup>

Meanwhile the tide had turned further towards enhancing shareholder rights, with a further expert committee report in 1995, the mounting concern about undervaluation of Dutch corporate shares due to restricted shareholder rights, and the Tabaksblad code of conduct for corporate governance published in 2003.<sup>81</sup> The code of conduct condemned the use of certificates held by tied *administratiekantoren* and stipulated that that an *administratiekantoor* board needs to have its certificate holders' confidence.<sup>82</sup> That created a delicate situation in the case of food concern Wessanen, whose *administratiekantoor* lost a vote of confidence in 2005.<sup>83</sup> Dutch law was amended that same year so as to give certificate holders the same vote as shareholders.<sup>84</sup> Though a 2005 study concluded that the response to the Tabaksblad code of conduct was poor, certificates had already lost most of their original attraction. CSM announced its intention to scrap them in 2006, a year after the association of securities owners *Vereniging voor Effectenbezitters* had concluded that certificates were

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<sup>79</sup> Sluyterman, *Driekwart Eeuw CSM*, 195.

<sup>80</sup> "Beurs lijdt gevoelig verlies in conflict met voedingsconcern CSM", *Trouw*, 4 July 1995.

<sup>81</sup> This undervaluation was termed 'Dutch Discount' ("Zet Peters mes in 'Dutch discount'?", *Het Financieele Dagblad*, 20 December 2002.

<sup>82</sup> Committee Corporate Governance, *Code*, 27.

<sup>83</sup> "Wessanen zet het mes in de bescherming", *Het Financieele Dagblad*, 16 March 2004; "Stemkantoor Wessanen onder vuur", *Het Financieele Dagblad*, 13 January 2005;

"Machtsstrijd bij Wessanen", *Het Financieele Dagblad*, 12 April 2005; and "Stemkantoor delft onderspit", *Het Financieele Dagblad*, 28 April 2005. Interestingly, the board of the firm aimed to provide certificate holders the same rights as shareholders, but the *administratiekantoor* resisted and kept its powers, until the entire board threatened to resign.

<sup>84</sup> Burgerlijk Wetboek (Civil Code), Art. 2:118a.

dying out, having had their day.<sup>85</sup> During the 2000s not a single IPO on the Amsterdam market issued certificates.<sup>86</sup> Only some smallcaps retained their certificates and *administratiekantoor*. For example the academic publisher Brill with annual revenues of €16 million argued that they had existed for three hundred years and their product required independence, i.e. protection.<sup>87</sup>

Giving up certificates was all the easier for corporations given the wealth of alternative defensive devices that remained. Table 3 presents an annual overview of takeover defenses and ownership information.<sup>88</sup>

[See Table 3]

Companies simply shifted their main line of defense to *stichtingen* with the right to issue preferred shares as and when needed. In 2013 this highly effective device blocked the takeover of Dutch telecom company KPN by Mexican telecom magnate Carlos Slim.<sup>89</sup> Despite the demise of certificates the *administratiekantoor* spirit and intention live on in company-tied *stichtingen* with the right to issue preferred shares, which retain many of the oligarchic traits that characterized certificate-issuing trust offices dedicated to a specific company. In 2005, the board members of the foundations were appointed by co-optation in 68% of the statutes, while in several others the corporation's board made the appointments. In 50% of the statutes of firms with certificates, the certificate-holders had the right to nominate board members, but only 42% of the *stichtingen* organized meetings of certificate holders for

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<sup>85</sup> “CSM negeert aanbeveling van ‘Peters’”, *NRC Handelsblad*, 3 February 1998; “CSM schaft certificaten aandelen af”, *De Volkskrant*, 19 December 2006; CSM Annual Report 1997; De Jong et al., “The role of self-regulation”, 502; Monitoring Commissie Corporate Governance, *Monitoring*; Peter Paul de Vries, “Certificaten sterven uit”, *Effect* 12 March 2005.

<sup>86</sup> Kolfshoten, De Haan and Couwenberg, “Nieuwe fondsen”, showing that in 1998 and 1999 of 34 newly listed companies only one had certificates. Preferred shares were most popular with 21 companies.

<sup>87</sup> Brill Annual Report 2004, 15; “Brill houdt deuren voorlopig gesloten”, *Het Financieele Dagblad* 2 September 2005. Brill's *stichting* statutes dated May 4, 2005 state (article 2) that all rights of the shares will be exercised in the best interest of the corporation and anyone involved. The board members are appointed for a maximum of three terms of four years by the board members and cannot include current or former directors or employees of Brill (article 5). Brill does not have meetings of the board with the owners of certificates.

<sup>88</sup> This overview is based on Van der Elst, De Jong and Raaijmakers, *Onderzoeksrapport*, 46-63.

<sup>89</sup> Daniel Thomas and Matthew Steinglass, “Carlos Slim's bid for KPN hit by Dutch stance”, *Financial Times*, 15 August 2013.

ordinary shares. The second line of corporate defense, maintained by about half of our sample, is formed by the so-called *structuurregime* introduced by the 1971 law and reserving board appointment and other rights to the non-executives. Many companies possess a third line of defense in the form of highly concentrated shareholdings. On average, Dutch firms have one largest shareholder owning a quarter, while all blockholders (defined as shareholder with over 5%) own between 44% and 50%. The resulting pattern of defensive devices clearly sets the Netherlands apart from that in 19 other countries surveyed in 2007, notably as the only country with certificates, one of five without ownership ceilings, and one of only three with voting preference shares, without voting ceilings, and without golden shares.<sup>90</sup>

It is therefore doubtful that the pro-shareholder rights wave of the 1980s and 1990s, for all the splash it made, really achieved something, if only because meanwhile views on shareholder influence have turned full circle. When in 2017 the Dutch Government sold part of its stake in systemically important bank ABN AMRO, the transaction took the old-established form of depositing the shares in a tied *administratiekantor* which then sold certificates to the public. The express desire to immunize the bank against takeovers is underlined by the fact that its trust office may ignore how certificate owners want it to vote.<sup>91</sup>

Repurposed as tax efficient means of corporate control, the old *administratiekantor* spirit and intention also live on in so-called *Bijzondere Financiële Instellingen* (Special Financial Institutions or SFIs). In 1982 the IKEA founder Ingvar Kamprad set up the first of an interrelated web of *stichtingen*, run by an *administratiekantor*, to bind his sprawling empire together at the lowest fiscal cost. Sanctioned by law in 1994, by 2002 the SFIs were estimated to number 12,500 and to have generated an estimated one billion euros in tax revenues plus 500 million euros in fees for specialized service providers in 2007.<sup>92</sup> Gross flows routed through SFIs were said to amount to 4 trillion euros, ten times Dutch GDP, in 2017.<sup>93</sup> Defined as “foreign companies that route financial flows through the Netherlands at least partly for tax reasons”, SFIs serve to attract money flows from international corporations and HNWIs to the Netherlands with attractive tax rates and options like the age-

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<sup>90</sup> Shearman and Sterling, *Proportionality*, 7, 14, 15.

<sup>91</sup> Letter of Minister of Finance to the House of Representatives of May 22, 2015 “Verkoop ABN Amro”.

<sup>92</sup> De Nederlandsche Bank, *Quarterly Report 2007*, 66.

<sup>93</sup> Van Dijk, Wyzig and Murphy, *The Netherlands*; Shayndi Raice and Margot Patrick, “The obscure power of a Dutch ‘Stichting’”, *Wall Street Journal*, 23 April 2015.

old splitting of cash flow and control rights.<sup>94</sup> By law the Dutch central bank supervises the SFIs but, as *stichtingen*, they are exempt from most publication duties, rendering supervision illusory and facilitating the hiding of ultimate beneficiaries. For these reasons multinationals including car manufacturers Fiat Chrysler and Nissan-Renault or the Russian internet giant Yandex have their formal base in the Netherlands. If Fiat Chrysler and Peugeot Citroën do merge, the combination will probably chose its legal seat in the Netherlands for the same reasons: fiscal optimization of their international revenues. No surprise that the Netherlands figures high on the Tax Justice Network's Financial Secrecy Index, 14<sup>th</sup> position in 2018, up from 41<sup>st</sup> three years earlier.<sup>95</sup>

## 8. Conclusions

What makes financial systems differ from each other? Our case study demonstrates that, in addition to differences in legal origins, informal institutions, and bargaining processes between interest groups, we should pay more attention to formal institutions like the Dutch *administratiekantoor*. During an evolution spanning more than 300 years, the *administratiekantoor* evolved out of commonly practised stock substitution transactions, from a technique to boost the liquidity of particular securities first into a corporate takeover defense, then into an all-purpose vehicle facilitating corporate controls and low-tax money flows for multinationals and wealthy individuals. All along the way this highly adaptive institution interacted with the country's financial system, widening its options and providing ready alternatives, thereby continuously changing that system itself. Of course we do not argue that the *administratiekantoor* created either the marked Dutch penchant for oligarchic corporate governance controls or the country's present position as the Delaware of Europe. It did no more than facilitate them: businessmen would have found other ways of achieving cherished goals. We do argue, however, that the *administratiekantoor*'s easy availability, its long-established legitimacy, and its adaptability decisively shaped the Dutch financial system's evolution, its particular configuration, and its informal institutions such as investors' willingness to hold certificates rather than the original securities and perhaps even the country's curiously ambivalent and shifting position towards shareholder rights.

In short, the *administratiekantoor* as an institution survived changes because it was flexible in adaptation, but also because it facilitated change itself. By that virtue it shows us,

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<sup>94</sup> This happened with the so-called *Wet financiële betrekkingen buitenland 1994*, Staatsblad 1994, 258.

<sup>95</sup> Tax Justice Network, *Narrative Report*; Van Beurden and Jonker, "Perfect symbiosis".



firstly, that the adaptation captured by terms of North's adaptive efficiency does not just apply to countries, but also to the institutions themselves. *Administratiekantoren* as a finance and governance institution in the Dutch setting have been adapted to changing circumstances. We demonstrate that structures can change by adapting their functionality. Secondly, we find that the legitimacy of institutions is crucial for their diffusion. The use of *administratiekantoren* grew when their use was considered legitimate, while when it was not, we observe a near extinction, until a financial crisis justified the structure again.

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*Trouw*

*De Volkskrant*

*Wall Street Journal*

**Table 1: *Administratiekantoren* for Dutch shares**

<b>Years</b>	<b>Name</b>	<b>Observations</b>
1902-1982	Administratiekantoor van aandelen in Vennootschappen en in binnen- en buitenlandsche leeningen (Amsterdam)	159
1912-1977	Centrale Trust Compagnie (Amsterdam)	34
1917-2002	N.V. Nederlandsch Administratie-en Trustkantoor (Amsterdam)	138
1922-1992	Administratiekantoor van het Algemeen Administratie- en Trustkantoor N.V. (Rotterdam)	85
1942-1982	Hollandsch Administratiekantoor N.V. (Amsterdam)	39

*Note:* Table 1 shows the five largest *administratiekantoren* based on the number of listed certificates they represented at five-year intervals. All certificates over the period 1902-2007 are traced for every fifth year (starting in 1902; 1949 instead of 1947) and for each certificate the *administratiekantoor* is registered. *Source:* Gids bij de Prijscourant.

**Table 2: Takeover defenses, 1902-1992**

Year	Observations	Certificates	Priority shares	Preference shares	Holding constructions
1902	222	4.5%	0.2%	0.0%	0.0%
1907	234	5.6%	0.2%	0.0%	0.9%
1912	295	4.7%	0.3%	0.0%	1.4%
1917	369	6.0%	0.5%	0.0%	4.3%
1922	484	9.5%	2.1%	0.0%	3.1%
1927	498	10.4%	3.2%	0.0%	2.4%
1932	483	12.4%	6.8%	0.0%	3.1%
1937	444	11.7%	6.5%	0.0%	1.4%
1942	376	16.0%	11.4%	0.0%	3.7%
1949	436	16.1%	25.0%	0.0%	2.5%
1952	446	18.4%	17.3%	0.0%	2.2%
1957	426	21.4%	22.3%	0.0%	2.6%
1962	393	19.6%	26.0%	0.0%	3.1%
1967	317	20.5%	29.7%	0.0%	3.8%
1972	182	18.7%	42.3%	9.9%	7.1%
1977	158	23.4%	44.3%	27.2%	7.0%
1982	115	29.6%	40.9%	34.8%	7.8%
1987	107	36.4%	43.0%	42.1%	9.3%
1992	105	36.2%	36.2%	59.0%	9.5%

*Note:* Table 2 shows the percentage of listed firms that have one of four important takeover defenses. All listed firms over the period 1902-1992 are traced for every fifth year (starting in 1902; 1949 instead of 1947). Certificates and priority shares are mentioned in the capital structure description of the firm. Preference shares are also mentioned in the capital structure and only when less than 25% of the shares are placed, the preferences shares are included as a takeover defense, because otherwise the shares are financing shares. Holding constructions are identified based on company names (for example including *Nationaal Bezit* or *Gemeenschappelijk Bezit*). *Source:* Gids bij de Prijscourant.

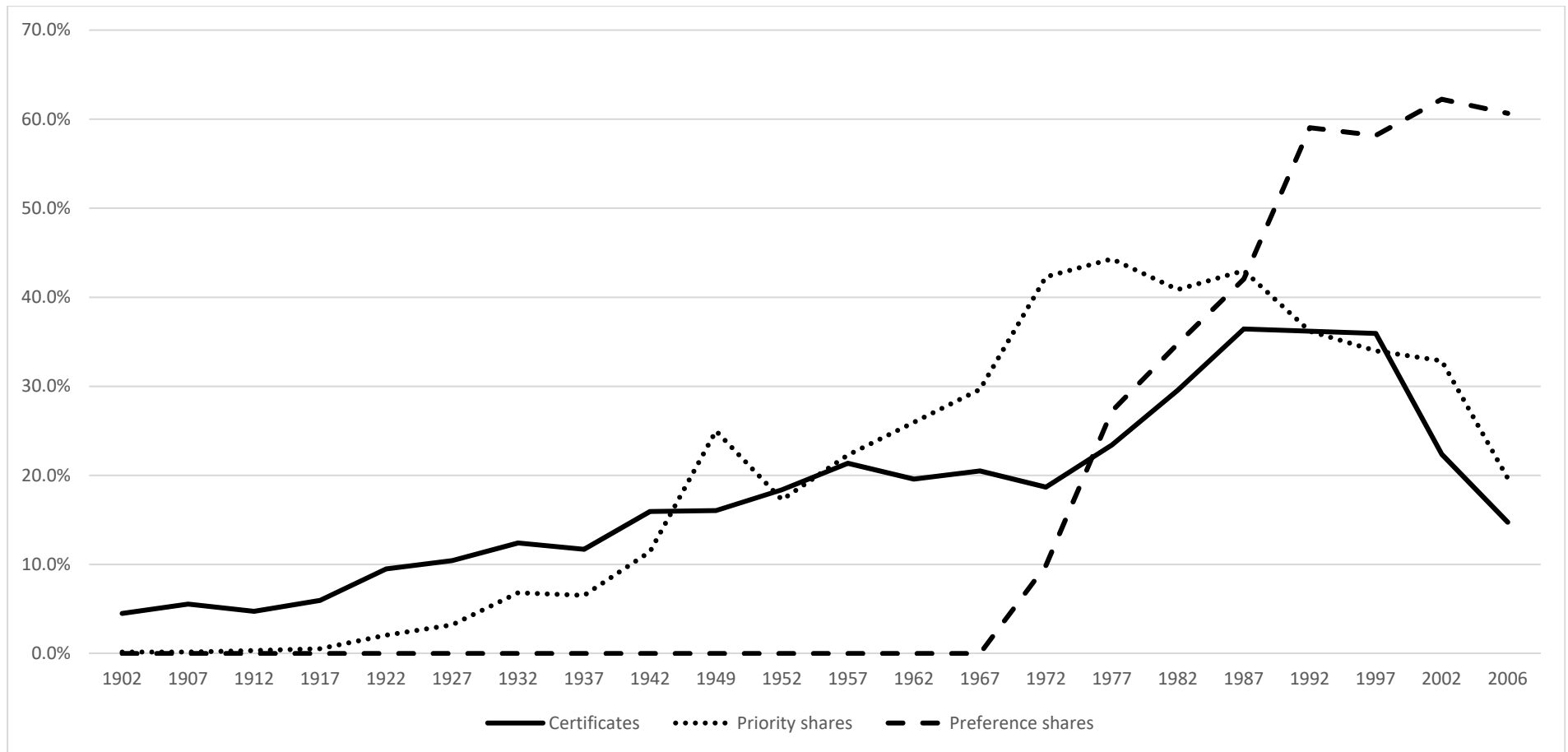


**Table 3: Takeover defenses, 1993-2006**

Year	Observations	Certificates	Priority shares	Preference shares	Structured regime	Largest blockholder	All blockholdings
1993	147	40.1%	40.8%	61.9%	54.4%	29%	50%
1994	145	40.7%	40.7%	62.8%	60.7%	27%	47%
1995	145	40.0%	39.3%	62.1%	63.4%	27%	47%
1996	151	37.7%	36.4%	60.3%	66.2%	27%	47%
1997	153	35.9%	34.0%	58.2%	64.7%	25%	44%
1998	159	32.7%	32.7%	57.9%	60.4%	25%	46%
1999	168	27.4%	34.5%	63.1%	56.0%	26%	47%
2000	169	26.0%	34.9%	63.3%	53.3%	25%	46%
2001	155	23.2%	34.2%	65.2%	53.5%	25%	48%
2002	143	22.4%	32.9%	62.2%	48.3%	26%	52%
2003	139	22.3%	33.1%	61.2%	47.5%	25%	51%
2004	137	17.5%	31.4%	59.1%	n.a	23%	50%
2005	129	15.5%	27.9%	59.7%	n.a	22%	49%
2006	122	14.8%	19.7%	60.7%	n.a	24%	50%

*Note:* Table 3 shows the percentage of listed firms that have one of four important takeover defenses and ownership information for all listed non-financial firms over the period 1992-2006. Certificates and priority shares are mentioned in the capital structure description of the firm in the Gids bij de Prijscourant. Preference shares are also mentioned in the capital structure and only when less than 25% of the shares are placed, the preferences shares are included as a takeover defense, because otherwise the shares are financing shares. The structured regime is inferred from the supervisory board statements in the firm's annual reports. The blockholder information is based on annual overviews in *Het Financieele Dagblad* of shareholders with holdings above 5%. See Van der Elst, De Jong and Raaijmakers, *Onderzoeksrapport*, 46-63. *Sources:* Gids bij de Prijscourant, firm annual reports, and *Het Financieele Dagblad*.

**Figure 1: Evolution of takeover defenses, 1902-2006**



*Note:* See Table 2.

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