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C O N T E N T S

P R O C E E D I N G S

MR. RUDER: I am David Ruder. Thank you for coming. We are pleased to have this bigger room.

I would also like, at this time, to acknowledge the presence of the executive director of the historical society, Carla Rosati. She has been stalwart in moving our organization forward from an obscure, unknown society to one which we believe is now making its mark in history. So if you -- I haven't given you the commercial, but of course, before you leave this conference, you will become a member of the Society, and Carla has put out materials for you to accomplish that task.

We will be having luncheon in a room next door. Pete, am I forgetting anything? There are additional papers for this session, for the second session, the accounting session, on the table in the other room. Without more, Dick Phillips, our program chairman.

CHAIR PHILLIPS: Good morning. Last night those of you who heard Chairman Pitt speak understood that his first priority as chairman of the Commission is to look at the issues affecting disclosure under the '33 and '34 Act. And so it is particularly appropriate, and indeed important, to start this morning's conference with a discussion of corporation disclosure and the changes that are impending over the horizon as we move to coordinate our disclosure and

accounting system with the globalization of the markets.

Leading this discussion are two of the most qualified people in our profession: Linda Quinn, a 16 year veteran of the Commission, who served as director of the Division of Corporation Finance for 10 years, a period of intense activity throughout her reign as director; co-chairing with Linda is Ed Greene, who holds the distinction of both being a director of Corp Fin from '79 to '81 and general counsel of the Commission prior to becoming a director. He is now a member of Cleary Gottlieb in London, having served both in Washington and Tokyo, while Linda is a partner of Shearman and Sterling in New York. I turn the program over to Linda and Ed.

MS. QUINN: Thank you, Dick, for those kind remarks. We are delighted to be here today and have a terrific panel to talk about the issues involving public companies and capital formation. I would like to briefly introduce our panel members. Starting on my right we have Jose Osorio, who is the chairman of the Securities and Exchange Commission of Brazil.

Bill Williams, to my immediate left, is a partner at Sullivan and Cromwell and has participated in many -- in the development of the securities law in many emerging markets.

Next is David Martin, who you all know as the

current director of the Division of Corporation Finance, who has been addressing these issues and dealing with the issues of securities reform that Chairman Pitt talked about last night.

Next to David is William Underhill from Slaughter and May in London and is going to give us the perspective from -- it is a big job -- the European Union and the developments there in those markets.

And finally, we have David Brown who is the chairman of the Ontario Securities Commission in Toronto and is the chairman of the IOSCO Technical Committee, which is the committee of the major developed markets at IOSCO who has been -- that committee has been responsible for many of the principles that have been announced by IOSCO over the last 10 to 15 years; and indeed, the technical committee was the primary source through working party number one of the IOSCO disclosure guidelines that have been proposed and agreed upon.

And with that, Ed, I will turn it over to you.

MR. GREENE: Thank you. We have prepared a paper to address some of the changes we would ask the Commission to consider going forward on, but we think it should be seen not in a vacuum, but done in awareness of what is going on in other jurisdictions. So our paper focuses on what is happening in Europe with the European directives; it also

addresses the proposals made by the American Bar Association, Federal Regulation Securities Committee, and also some developments that are taking place in Canada.

The reform goals we articulate in the paper are high quality, timely and relevant information for investors, free movement of capital across borders, broadest possible range of investment opportunities in the whole market. By this we mean that we believe that markets will become increasingly competitive in trying to attract issuers to raise money, and the U.S. has got to adapt to that and make its markets competitive as other markets integrate and develop more fully, and we think there needs to be accountability fairly calibrated to participants' actual responsibilities in the distribution process.

There are current frictions in the existing regulatory systems known to all of us who engage especially in cross border transactions. There are anachronisms in financing and reporting regulatory regimes, there are varying and sometimes inconsistent requirements of different national regimes, and there are unnecessary restrictions on cross border trading.

As we developed our reform proposals, we tried to think about what are the regulatory premises that affect regulation today in developed markets and we identified the following. Most markets make a distinction between the

public market and the private market. The private market is thought to be where investors who are sophisticated can purchase securities without any mandatory disclosure being imposed on issuers. The idea is that they can fend for themselves and therefore extract what information is necessary to make a choice.

Now there are differences in terms of deciding who are eligible investors and how they can be located, but there is definitely a private market. The public market is for the retail market, and that market is premised on mandatory disclosure, review by an agency, vetting the prospectus before being given to investors.

There is also a notion that there should be regular reporting to the market. In the U.S., you do it if you are a certain size. Other markets predicate that obligation on having done an initial public offering, but once you are either held by a certain number of investors or you have done an offering, you ought to update the market regularly. The timing of that will differ. All jurisdictions require annual reporting. Some jurisdictions require interim six month reports, others do it quarterly, but there is a notion that the market should be regularly updated.

Regulatory review. I think most markets would take the view that initial public offerings documents should be vetted rigorously. Thereafter, regulatory view can be either of the regular reporting or, in

some cases, additional distributions made by seasoned companies.

Ready access to the market for seasoned companies. In the United States, we started this with shelf registration. I think it is now widely accepted in most markets that seasoned companies, publicly held, should have access to the market with limited, if any, regulatory intervention.

All markets make distinctions between secondary market trading and distributions perhaps because distributions involve special selling efforts; in part, perhaps, because the company might be changed by the proceeds raised. Distributions are regulated differently from secondary market transactions. In connection with distributions, most markets require prospectuses to be delivered and have some regulation of communications to be sure that the selling is done through the prospectus as the offering document.

We have considered three proposals going forward in our paper. First, we address what the European Union has done in its directives, and there are two very important directives. We make reference to the fact that there was a report of the Committee of Wise Men, it was called -- it must be wonderful to be on that committee -- the Lamfalussy report, which said that Europe must have an integrated market by 2004. And it has a new way of going forward that would try to check the

power of local regulators because it has not created a central securities regulator in Brussels.

So two very important directives have been put out, the prospectus directive and the directive on market abuse. And there is a consultation paper on ongoing reporting, and we think that there are some interesting ideas in these proposals that the SEC might consider. At the same time, there was the ABA letter to the Division of Corporation Finance. Bill Williams and Linda Quinn were actively involved in these proposals, setting forth changes to the U.S. domestic system, which does not necessarily address what is happening in other markets, but has, we think, some very good ideas.

And then there is Greene and Quinn. A bit presumptuous, but we thought we would try to take the best of both and put some proposals on the table. First, we will talk public versus private, and Linda will take us through that discussion, and then we will alternate as we go through our various topics.

MS. QUINN: I am going to very briefly hit the highlights, which are talked about more in the paper, what the EU proposal is, the ABA proposal, our taking what we think is the best of both worlds, and then the panel is going to talk about the issues that come up.

Very quickly, the EU proposal does have a private offering exemption from prospectus requirements, and they

propose three different versions of that exemption. Offers to qualified investors. This is quite common. It is quite common and it is definitely the process in the U.S. It is in U.S. state laws and it is in most jurisdictions.

Then there is also a proposal that offers addressed to a restricted circle of persons should be exempt. And here you see that the proposal is a hundred and fifty per member state or below fifteen hundred in case of a multi-jurisdictional offering. This is similar to existing regulations that focus on the number of persons to whom an offering is made in jurisdictions, currently like Japan, and I understand France has a similar type of restriction.

And then the third is offers of securities that can be acquired only for consideration of at least a hundred and fifty thousand euro per investor. And that kind of concept has been used in the United States in some instances, particularly, in the commercial paper market, where the amount that each investor can invest in has been used as a measure as to whether it is appropriately sold in the commercial paper exempt market.

One of the things of interest in this, and we are going to talk about in this panel, is that the EU proposal doesn't address the distinction between sales and offers, meaning if you sell to the right people can you ignore who saw the offer or to whom marketing has been made, and

secondly, when you can resale the privately placed securities that have not been registered to go to the public market.

The ABA proposal addressing issues that the Bar saw as issues under the U.S. law recommends creating one class of private issuers. As you know, in the --

MR. GREENE: Purchasers.

MS. QUINN: Sorry. Private purchasers. That, in the U.S., there are a number of different categories of eligible investors, depending which regulation you are looking at. In the Rule 144A market, you have QIBs, which are very large institutions. In the Regulation D, which generally sets up a safe harbor for private placements, you have the concept of an accredited investor, which is a much lower threshold of eligibility. The ABA recommends that there be one definition for the entire private placement market, perhaps with higher standards than an accredited investor, but lower standards than QIBs.

The ABA also proposes that the sales to these eligible issuers would not require registration and that any securities that are sold in a private placement can be sold to any -- can be resold to any person who would be eligible to take in a private placement. The ABA proposal does address the issue of resale of these privately placed securities and proposes a one year for seasoned issuers, meaning issuers who have been publicly held for more than a

year, and two years for unseasoned issuers.

It also recommends, and Ed is going to talk about this on the discussion of communications, that the private placement exemption focus principally on the sales to the right people and not regulate the offer part of the private placement.

MR. WILLIAMS: Linda, excuse me. It strikes me that the ABA proposal looks a lot like what the Canadian provinces seem to be in the process of doing it, and would it make sense for a moment to ask David to describe what they are in the process of doing right now?

MS. QUINN: Well, why don't we save that for the discussion and --

MR. WILLIAMS: Sorry.

MS. QUINN: That is okay. Just in the interest of time.

The paper proposes that regulators across markets should craft a coordinated definition, objective definition, of those eligible purchasers who would be the foundation for a private exempt offering. The definition would include specific categories of institutional investors, as the EU has proposed, and indeed, as the U.S. system currently works.

We had differed, though, in how you would define who an eligible investor would be, and we have focused on the

sophistication measured by investment experience borrowing from the U.S. experience in defining QIBs and qualified purchasers under the '40 Act.

One of the proposals that is in the EU proposal and exists in the United States is an exemption from registration based on a de minimis size of the offering. In the U.S., that is Rule 504, which says if you offer I think it is $500,000 of securities within a 12 month period, you can do that on an unregistered basis subject to anti-fraud prohibitions, and the EU has proposed a similar de minimis exemption.

We would concur with the ABA proposal to deregulate the offer part of the exempt transaction, meaning there wouldn't be a limitation on general solicitations, and without making a specific proposal, have a coordinated resale limitation in the private placement exemption.

Now one of the keys here, as many of us have found who are transacting in the market, is the development of the use of the Internet by investment banks, as well as issuers, to communicate with the market.

To the extent that you are regulating in different ways, have different definitions of eligible purchasers and have different limitations on offers, this is a huge obstacle to effectively using the

Internet in a global market, and I think you will hear a recurring theme as we discuss today that the concept of using electronic communications to their fullest potential is something that we see as a benefit, not only to issuers and financial intermediaries, but also to investors. It will democratize the flow of information and it will also dramatically change the cost structure of complying with information and other securities laws requirements.

Now with that as the setup of what the paper discusses, we would like to discuss a number of issues here, and I think the lead-off question really is, is there a reason in a market where, as Ed and I have proposed, there be instant access to the market for capital raising for seasoned issuers, is there a need to continue to recognize a private, exempt market? Do these issuers need to be able to approach sophisticated investors without going through the process of registration, however you define what those obligations are? Can you rely on the continuous reporting that is going to be available in the market for already public securities?

Other questions that we are going to touch on is assuming that we all conclude that there is room for a private market, and that is the premise I think of our paper, which assumes that there is a need for a private placement market. You may, for example, have situations where companies have information that they are not ready to announce publicly to

the market, but they still need to raise capital, and therefore, they can't make the announcement to bring their disclosure current. Should they still be able, for example, to go to sophisticated investors and either ask those investors to invest agreeing to keep the private information confidential, or to invest, knowing that there is information they don't know?

Having decided whether you need the private market, there is also the question of how should you define the exemption. Should it be, as we have suggested, solely in terms of the purchasers and their investment sophistication with objective standards across all the markets? And with that, let me kick it open to William Underhill.

Do you want to take the lead on this?

MR. UNDERHILL: Thanks, Linda.

I think that one of the important points to note, when looking at what is happening in Europe compared to the way you do things over here, is that for a long time over in Europe,

that where a class of securities is admitted to trading on a regulated market, the whole of that class of securities would be admitted to trading. In other words, we don't have a concept of a publicly traded security while at the same time securities of the same class may be held in a private distribution in a restrictive fashion.

So that is why you find in the European system there aren't detailed resale restrictions because the assumption is, if we have a traded security, then there has been some kind of prospectus process at some stage in order to get the security eligible for that market. Indeed, that is one of the key proposals in the new European prospectus directive, which would be a prospectus is needed either for public offer or for the admission of securities to trading on a regulated market. In other words, we may have a purely private distribution, but still require a prospectus.

In terms of our existing regime, and it is not clear yet whether this will be replicated in the new regime, that provides a certain amount of flexibility, and there is still a private market which exists partly for this reason, that we have -- having established a class of securities as eligible for trading on a regulated market, generally speaking, an offering which increases the size of that class by 10 percent or less will not require the production of a prospectus document.

And what that means is that there is a quick and efficient mechanism for issuers who are, to the extent seasoned, that they are already admitted to a regulated market to tap a capital market to go and undertake a primary offering, very much in the same way that you might do a large secondary trade, by talking to a small number of brokers who will then place the securities. And that can all be done in the space of one morning no more documentation then an announcement.

I think you can debate whether 10 percent is the right level, but some kind of flexibility to allow that kind of distribution is, perhaps, helpful. Perhaps it is worth just emphasizing that those securities placed in that way would then immediately, by those institutions, be capable of being traded on the public markets, so we are not troubled by resale restrictions.

MR. WILLIAMS: What about two successive or three successive 8 percent offerings? In what time period can you do this?

MR. UNDERHILL: From a London point of view, I don't have a clear answer to that. The real answer is that the U.K. listing authority would reserve the right to say that those were linked and to require a prospectus to be produced.

MR. WILLIAMS: And suppose that I am an underwriter,

I decide that I am going to buy 8 percent and I choose to sell it in a retail way with a road show, etc. Do I still qualify?

MR. UNDERHILL: Under current rules, if it is part of one transaction which is intended to flow through immediately to a retail offering of that kind, that would qualify as a public offer, and that would give rise to a prospectus.

MR. WILLIAMS: Even though under 10 percent.

MR. UNDERHILL: Even though under 10 percent. If there is to be a truly public offer distribution, then a prospectus would be required.

MS. QUINN: And is the public ongoing distribution defined in terms of marketing efforts? I mean, suppose I buy 4 percent of that private transaction with the idea that I am immediately reselling, but I am reselling on the market to the floor of an exchange or through an electronic system, is that considered a public offering or does it take special marketing efforts to take the private placement resale into a public offering?

MR. UNDERHILL: It would require special marketing efforts. It would have to be seen to be part of a single transaction in which the intent at the outset was to distribute the securities direct into the public's hands.

MS. QUINN: Is the experience that most of these

private transactions are taken by people who are buying for investment as opposed to ongoing distribution?

MR. UNDERHILL: Very much so in that this is a way of getting the stock into the hands of the significant investing institutions who are looking for the stock for their long-term holdings, rather than to be placed with speculative purchasers who are going to seek to make a profit in the after market, that any issuer would be looking to a quality of distribution from his broker to ensure that these were long-term holders who are going to be supportive of the company.

So I suspect it is not open to significant abuse. Maybe one other point, just to mention, is of course in Europe, we have the concept of preemption for new issues of securities, and that means that the opportunity for this kind of non-preemptive placing is quite limited. It is more common, I think, in the U.K. than elsewhere, but in the U.K., it would generally be limited to, in fact, 5 percent of the capital of the issuing company.

So these tend to be relatively small incremental offerings, at least in terms of size. Maybe it is something that your de minimis exemption is getting to, although if you couch it in terms of percentages, it would still be a very large amount of money.

MR. GREENE: Is it fair to say that these are

referred to as telephone placings and they are extremely efficient and they can raise up to 2 to $3 billion in equity and be done within an hour or two, and its premise, as William said, is the market being informed and updated and the sales being to professionals.

So the interesting thing as well, though, is that issuers are very reluctant to sell those securities in the United States, even though they would be restricted securities, because of the concern that an undocumented offering by an issuer, while common in Europe and the U.K, would not be common in the United States. And so these issues tend not to be available to U.S. institutional investors because of the concern that it is not consistent with how we view private placements, which have some form of information memorandum.

And I think it is a reform that should be considered because for seasoned, well followed companies that are current in their disclosure, this is an extremely efficient way to raise capital, and investors simply do not need a prospectus at all. They are perfectly comfortable buying on what information is in the market.

MS. QUINN: Why do you call it a private placement then? Why not just say it is part of the public distribution and either a shelf takedown or you don't have to have special documentation?

Maybe we should ask Dave --

MR. MARTIN: Well, that was the question I had. How detailed do you get in the oversight of the Distribution? You said everybody seems to just understand that it is private, but picking up on Linda's thought, if you are using the Internet to get to 200,000 qualifying purchasers or institutional investors, would that be public in the U.K. or not?

MR. UNDERHILL: Just to respond quickly to that point. I am not aware of any demand from distributors of securities in these placings to be able to use the Internet for a more general distribution because part of what the issuer is looking to achieve is, as I have said, a placing of significant amounts with a relatively small number of supportive shareholders. That is going to be based on a pretty direct contact between a salesman and the investor. There is no sense that I see that people want a general distribution to a large number of people, at least not in this context.

MR. MARTIN: Translated into this market to our attitudes, this sounds very much like company registration that was proposed many years ago. I suspect that issuers in this country would be quite interested in using all means available to reach as many purchasers as possible, and the one thing I am taking from

all the proposals is that people are uncomfortable with the Commission in this country really focusing as much on the method of distribution and in the case of a seasoned issuer, on whomever sees the distribution qualifying or unqualifying purchasers.

MS. QUINN: David Brown, do you want to talk about the Canadian experience, what currently exists and the proposals on the table?

MR. BROWN: Well, we have addressed the issues that William was talking about, ways for seasoned issuers to access markets quickly without the general time delays involved with a prospectus, and we devised a system several years ago. The full name is, "The Prompt Offering Prospectus System." It has become known as the POP system. It essentially allows seasoned issuers, who meet certain threshold tests and who have committed to maintaining updated continuous disclosure in the market, to file a very short form prospectus.

It incorporates by reference the other continuous disclosure documents that are outstanding, including the most recent annual report and the quarterly filings and any other material disclosure items that have been put out into the market. It refreshes those as of the date of the prospectus, which gives the investing public and the regulators the comfort that the information has been considered by the

Board.

But we have committed, as regulators, to qualify those prospectuses within two days of their filing. It means, obviously, that not very many are selected for review and if they are reviewed, the review is not nearly as detailed as with a full prospectus.

But because we also monitor very carefully continuous disclosure now and we have teams of people who are doing continuous disclosure reviews, or I guess you would call it periodic disclosure in the United States, we are much more comfortable that having this prospectus filed is a discipline on issuers to have their disclosure up-to-date. Underwriters are involved. And so we have the additional comfort that underwriters are doing their due diligence.

So we think that it provides a system such as the one that William has described. The timing is not quite as fast as William discussed.

MS. QUINN: David, how does the private placement exemption in Canada fit into this POP system?

MR. BROWN: Well, our private placement system in Canada has just undergone quite an overhaul. We started with a system, probably 30 years ago, that is very similar to the one that is being proposed by the EU, and we found that it wasn't workable for a number of reasons.

I think all of the proposals search for ways of defining a sophisticated investor with the expectation that we are more comfortable allowing private placements to be bought by sophisticated investors. And we used to have, as a proxy for a sophisticated investor, that the investor invests $150,000 in the issue. And we found that that was unsatisfactory for two reasons.

First of all, we discovered that it was forcing unsophisticated investors who shouldn't be risking $150,000 to step up to the $150,000 mark in order to be able to participate in an attractive private placement. And so people were being forced to risk more than was prudent for them.

And then secondly, entrepreneurs were aggregating groups of unsophisticated investors into various entities aggregating $150,000. So we have abandoned that and in fact, our system just went into force last week, and we define a sophisticated investor in a manner very similar to the ABA proposal.

We look at the investor's assets available for investment, excluding his home or real estate and so on. So we have tried to find a system that doesn't have those abuses and yet makes it easier for companies, particularly in the formative stage, to raise capital from people --

MS. QUINN: Do you have a limitation on general solicitation?

MR. BROWN: No. No longer. We did. That is gone.

MS. QUINN: And is there a resale limitation?

MR. BROWN: There is a resale. There is a hold period, and we have just harmonized the hold periods across the country. They vary from six months to twelve months.

MR. OSORIO: Just a quick comment. On the Brazilian market, we have a similar system to the one described in the Canadian sense that most transactions now have to be public with a prospectus and so on. We just approved a new corporate law that will allow us to most likely create, perhaps, a private market, except the only one we have right now is for mutual fund distribution where we do have different rules for qualified investors and retail markets.

On the U.S. market, on your comments on private and public, most of the Brazilian companies that came to the U.S., came through the private market first, maybe learning, testing the waters, and basically during the nineties.

There is a new phenomenon that there are fewer and fewer dedicated asset managers for emerging markets in general, in Brazil in particular. Therefore, the global funds only want to buy public offers of large

corporations. So I suspect that to have medium sized Brazilian companies and perhaps other emerging markets at the private market where most sophisticated buyers would help.

MR. MARTIN: Ed, can I just jump in with two questions and a comment on this subject?

MR. GREENE: Yes.

MR. MARTIN: The questions are, I guess, for people that are familiar with the EU proposal.

Linda, the slide says that the EU proposal does not distinguish between offers and sales. Yet as I understood the way the proposal is laid out, you don't get the exemption unless you don't make offers to some people. Is that a backhanded way of distinguishing --

MR. GREENE: I think the better reading is that they are going to do it consistent with the current exemption, which focuses on offers, not eligible purchasers, which we think is a defect in the proposal.

MR. MARTIN: A question, I guess, for the ABA group, but it comes up for the others. No one seems to be that detailed about what I will call the small business investor, and as you know, in this country we have an active small business environment. Most of these proposals seem to be racheting up the exemptions. Are you actually

contemplating that we leave in place what I will call the small investor exemptions that we currently have?

MR. GREENE: I will let Bill answer that.

MR. WILLIAMS: The short answer is Regulation D would be retained for that purpose. Interestingly, in the Canadian situation, in addition to the institutional exemption, they have an exemption of that sort. So yes, there would be two exemptions in place, but neither would turn on who was offered the security, whether there was a general solicitation or not.

MR. MARTIN: Right. Exactly. And the only comment, and I think it is more detail so we don't have to get hung up on it, but I wonder about the difficulties of establishing a global definition of an eligible purchaser with different economies and different valuations. I expect that will be a difficult detail to work through at some point.

MR. GREENE: It is, but one could start with coordinating. For example, if Europe is going to go through that with the U.S. --

MR. MARTIN: Exactly.

MR. GREENE: -- that start would give you a fairly seamless market and it would be an example for other markets going forward, Japan and elsewhere. I think the difficulty is to the extent you focus just on offers to eligible

purchasers, most companies find it very difficult to coordinate this exemption in global offerings.

MR. MARTIN: Exactly. Right.

MR. GREENE: I would like to now shift to the regular reporting to the market because this was key to what Harvey Pitt talked about last night. Let's go through quickly what the European Union proposal would be.

It would require uniform disclosure throughout Europe based on the IOSCO disclosure standards, which the SEC has adopted in its new Form 20-F. And what this does is not only have IOSCO standards applicable to cross-border offerings, but now it would mandate the same disclosure requirements for domestic offerings entirely in the U.K., in Germany, and France.

Member states would be barred from imposing additional requirements. This is not something the SEC would be likely to buy into because it has always reserved the right to have additional disclosure requirements, Guide 3 for banks being the classic case.

Issuers outside the European Union must comply with IOSCO standards and provide financial information equivalent to EU requirements. This should not be a problem for U.S. companies. Perhaps the most important part of the directive is that all European companies would be required to report under international accounting standards. Now this is

important because many German companies have started to report under U.S. GAAP because of the perception that investors are more comfortable with U.S. GAAP. This directive would insist that they report under international accounting standards and then also under US GAAP if they would like to.

Frequency. This is a major change. There is a consultation paper that now would require European issuers to report quarterly in line with the United States, which is currently one of the few markets to impose quarterly reporting.

New updated disclosure. And we will get to this on the next slide, but companies would be required to inform the public without delay of all new information which is not of public knowledge and is necessary to enable investors to make an informed assessment of their assets and liabilities, financial position, profit and losses, prospects and rights attaching to securities, which may lead to substantial movements in the prices of its securities. And each member state must develop its own version of EDGAR.

We would propose that there be uniform disclosure standards based on IOSCO for all issuers. We think the standards for U.S. and foreign issuers should be the same. We think there ought to be increased collaboration between the SEC, IOSCO and appropriate European Union bodies as they

implement a directive. And we think there ought to be an Emerging Issues Task Force created to address new disclosure issues as they arise because this system would only work if you do have uniformity and you don't have additional requirements being imposed by disparate regulators.

With respect to international accounting standards, we believe that foreign issuers should be permitted to use these standards in the United States and that the SEC should become more involved in this process. We are not going to spend time on this issue because this next panel will focus on accounting and disclosure, but we just wanted to put our mark in here.

Frequency. This is a very difficult issue. We have a periodic reporting system and we think that foreign issuers and U.S. issuers ought to be subject to the same reporting requirements with respect to that. Now the U.S. has a different system from what is contemplated for the European Union.

We have a periodic disclosure system, which means that you only have to update your disclosure quarterly if you are not making a distribution in the interim. If you are making a distribution, of course you must update the disclosure in the prospectus.

The New York Stock Exchange does have a continuous disclosure obligation, but it is ignored and honored more in

the breach for two reasons. One, it is not enforceable by investors and second, the only remedy is to have the securities delisted by the New York Stock Exchange.

Now what is proposed for Europe is what also is the rule in most of the Canadian provinces, and that is that issuers have to monitor marketplace expectations with respect to their anticipated results or prospects. And if there are material new developments, they must issue information to the public. In the U.K. these are called profit warnings. And following September 11th, the FSA did notify and remind all issuers, listed and subject to the London rules, that they had a duty to update the market if their prospects had changed as a result of these developments.

We think that the difficulty with that is it puts issuers in the awkward situation of only being required to disclose historic information while at the same time monitoring how the market is predicting outcomes based on that historic information, and then go to the market to try to bring its expectations more in line with the company's.

We don't think we ought to have a regime of continuous disclosure based entirely on updating expectations derived from historic information. What we would like to see is to have certain mandated information of a forward-looking nature be disclosed by companies to the public with an obligation to update that information when circumstances change.

Now this would be enormously difficult unless we address the one thing that is unusual about the U.S. market, and that is the prevalence of class action litigation. This would only work if we had an absolute safe harbor with respect to this forward-looking information only going against issuers in the context of absolute fraud and giving a good faith defense to issuers as to the timing of disclosures.

We also think that it addresses issues of sensitivity and confidential information, such as mergers, contract negotiations, and so forth, which if you read the statement in the directive and if you look at the Canadian rules, perhaps might be required to be disclosed prematurely. At least make it subject to question after the fact.

So our point of depature is that we would, for the first time, ask the Commission to consider mandating forward-looking information of a type to be discussed, and that information would have to be updated continuously when there are material new developments. And there would be a safe harbor comparable in some ways to the approach that Regulation FD took. If you remember, FD said investors couldn't sue based on failure to comply. Only the SEC could enforce it.

We would not, perhaps, go that far, but we would have a safe harbor so that people would feel comfortable making this type of information available. I will now turn to Bill

Williams and the panel to discuss, in a sense, the merits and the defects of the periodic versus continuous disclosure system and how they would urge the Commission to go forward.

MR. WILLIAMS: Let me say the European proposal appears to be an absolute disclosure requirement - without any exception – and Harvey Pitt has been talking about a requirement to disclose immediately what he calls "unquestionably material" information, a new category of information.

A PARTICIPANT: We will know it when we see it.

MR. WILLIAMS: Right. Not yet defined. There are practical problems with this, of course, that have been alluded to. For example, if I am in the process of negotiations relating to a major acquisition or selling the company, at what point does it become material? Or, to take the Texas Gulf Sulfur situation, I have discovered a big copper lode and I am in the process of buying up the land or the mining rights. I am a company in financial difficulty and I am thrashing around with my creditors trying to get extensions, revisions or refinancing. I have to be able to withhold that information.

Now interestingly, and I am going to let David Brown correct what I am about to say, many of the Canadian provinces have a continuous disclosure

requirement, but they frequently have exceptions. In some cases, the exceptions depend upon consultation with the relevant commission.

In the case of Quebec, it is very simple. After saying that there is an obligation to publicize material development, it says that a reporting issuer is not required to prepare a press release if its senior management has reasonable ground to believe that disclosure would be "seriously prejudicial" to the interests of the issuer and that no transaction in the securities of the issuer has been or will be carried out on the basis of information not generally known. The issuer doesn't have to confer with the Quebec Securities Commission. Whereas in Ontario, I believe they do.

If the SEC or the European Union is going to pursue this kind of an approach, it ought to have an exception like the one in Quebec. There should be no consultation with the regulatory authorities. Having said that, I think the Quebec requirement is too tight saying that disclosure has to be "seriously prejudicial to the interests" of the issuer. The issuer should be able to use the exception if it has a reasonable business purpose for withholding the information.

Now David, I don't know whether you want to comment on how this works in Canada.

MR. BROWN: Bill, yes, I would. First, I don't think it is possible to discuss these issues unless you discuss them in the context of the civil liability, civil litigation system. And I think many of the decisions historically made in the U.S., and different decisions that have been made in Canada and elsewhere, reflect the differences in the civil litigation system. Ours is far less robust than it is in the United States.

It is very difficult in Canada at the present time to have a class action securities lawsuit because it is necessary to demonstrate reliance and it is necessary in order to have a class, to have a commonality of interest. And everybody's reliance is different. And so it is very difficult to maintain a class action lawsuit in Canada.

And perhaps against that background, we have gone, many, many years ago now, probably 20 years ago, down a road that has some similarities with what is being proposed in the European Union. We don't go so far as to require companies to inform the public without delay of new information which is not of public knowledge, but what we do say is companies must advise the market of material changes in their affairs. And material changes are defined to be changes that would reasonably be expected to affect the stock price if the change had been widely distributed or

disseminated in the market.

If there are material events that affect a company, it is expected to make those events public as quickly as possible. They technically have a 10-day window in which to do it, but companies rarely take the full 10 days unless there are extraordinary circumstances.

In the life of average public issuers in Canada, there would not be very many of those releases a year. And in fact, many companies might only have one or two of those types of releases a year. There are some difficult issues, and the difficult issues aren't satisfactorily addressed in Canada. One of them is the one that Bill discussed, and that is what if there is a material change that is very sensitive to the company, which if known, could seriously harm the company. And Bill has referred to the Quebec provision.

In Ontario, we still require the company to file a notice of the change with the Commission, but they can do it on a confidential basis. It does not involve consultation with the Commission, the company determines whether there is a confidential requirement. The company has to reaffirm every 10 days that the reason for confidentiality still exists, but it is the company's call as to when to release that information.

MS. QUINN: David, what does Ontario do with the

information?

MR. BROWN: Well, Ontario keeps it in a file --

MR. GREENE: Keeps it confidential.

MS. QUINN: I mean, why is there reporting? What is the purpose to be served?

MR. BROWN: I think it is buried in the mists of time, but I think it is a discipline. It is to force the board to be sensitive to material changes that need to be reported and to force the board and the senior management to go through the exercise of reporting, while recognizing that if it will harm the company, it should not be made public.

MR. OSORIO: Yes, we have the same provision in terms of this confidential filing. I thought I was going to learn what to do with it from David, but I guess --

MR. WILLIAMS: One thing you can do is watch trading.

MR. OSORIO: -- it does serve a purpose. We do have a continuous filing system that doesn't work too well because of the enforcement problem that the New York Stock Exchange has, but it does serve a purpose because if we think it is something that the market ought to know, we have the power to disclose the confidential information that has been filed, and the same test is applied, you know, it is anything that materially affects the price of the stock.

The Brazilian market, as most emerging markets, has much higher volatility. So it doesn't add to the volatility. In some of the large corporations, they are actually doing it much better recently, you know. And so, but I don't like the confidential filing the same way that David doesn't. We have that in our law, and unfortunately, I haven't learned what to do with it still.

MR. GREENE: I would like to conclude this with David and William Underhill. In the U.K., a hundred and thirty-six companies have issued profit warnings based on the London Stock Exchange listing requirement. Why is the London Stock Exchange able to get more compliance than perhaps the U.S. because it is quite -- I think it is fair to say that the directive reflects the experience or the rules that are already in effect in London.

MR. UNDERHILL: Ed, very much it does. We have had a rule for as long as I can remember, which is quite a lot of years now, in the London Stock Exchange requiring, as originally formulated, announcements to be made to avoid the creation of a false market in shares, and that was admirably general and allowed people to get along fine saying what they felt they ought to say.

That has been tightened up over the years and we now have a general principle that material developments do

have to be announced. Again, it imposes a substantial movement in share price as the test of materiality, which is similar to what is proposed under the new regime.

We do allow exceptions, but the exceptions are for what are called impending developments. I think the principle that this works on is that if something has happened which is relevant to the company and its assessment, then the market ought to know about it. There is no excuse for allowing people to trade when the market has materially changed in its character from what they might reasonably understand or expect.

If that change has not yet happened, but is impending, you are negotiating with your banks to change your covenants, or you are negotiating an acquisition, then it is legitimate to keep that information confidential and not announce it.

But I think the interesting feature of the U.S. system, and indeed the difficulty I have with the Canadian approach, is that it recognizes that it is legitimate for the market to continue trading when in fact the basis on which they are determining prices is a misapprehension -- the world has changed and nobody knows about it. And that is quite a difficult principle for me to accept.

Having said all that, I think the system, which requires continual updating, is very difficult to apply in practice, that there are hundreds of examples you can come up with of the difficulties that companies have about when to announce, when you make a profit warning.

If you assume you are reporting six monthly, if you are two months in and sales haven't gone so well, but you expect to make them up, do you take a snapshot of the two months and decide you ought to tell people? At that stage, you don't know what to tell them because you don't know what the overall result is going to be. If you make an announcement, the market, history relates, reacts more adversely than it ought to simply by the fact that you have made an announcement. So all sorts of different considerations enter into the assessment about whether an announcement needs to be made.

MS. QUINN: But in a system that has mandated quarterly reporting, you could see someone making the judgment that even if you have made projections at the end of the prior quarter, that an updating within three months, essentially, is in a fashion may be a good or may be a way of saying, so we have sort of done the balance ourselves and said we are going to say you have to speak every quarter, and therefore, the likelihood that you are way off the mark for a long period of time -- I mean, there is a

sense of when do you figure, as you have said William, when do you figure that things are going awry.

And one thing I would say is Ed or someone has pointed out that a hundred and thirty-six London companies made pre-announcements, and that wasn't consistent with their obligation. Well, hundreds of companies in the U.S. have made pre-announcements voluntarily, for market driven reasons, as well as perhaps they were doing something in the market that needed updating.

I think just one point I would like to make in that goes to the litigation risks in the U.S., which cannot, I think, be underestimated or understated. In the U.S., the legal principle that governs is the general proposition that there is not a duty to speak to the market unless you find a prescribed, specific duty, either through SEC reporting, through the fact that you are doing a transaction that requires you to speak, insiders are trading, or other similar.

One of the most difficult issues, I think, in moving to a continuous reporting system is going to be a judgment as to whether it is going to be implemented leaving that basic principle in place, which is no duty to speak and simply increasing the number of prescribed duties to speak, or whether you go to a system that says there is a general ongoing duty to speak unless I have prescribed an

exception.

In a system where you have the potential for litigation so great, my own thought is that going to a system that says you have a duty to speak unless I can find a specific exception will substantially change how cases are brought, when cases are brought, what the defenses are, and in a fashion, I think that is the principal difference between what I see the European model to be proposing and what I think you would see, at least in terms of Ed's and my paper, proposing to say you continue to have no duty to speak unless you find a duty, and that the SEC, or whoever the regulator is, would prescribe more specific instances of having to speak as a way of getting continuous disclosure.

MR. GREENE: David, to close this segment, do you have any observations or thoughts?

MR. MARTIN: Which David? The Davids always win the votes here.

Well, I just follow on what Linda said. It seems to me that the only way you end up selling the duty to update eventually is to have no liability associated with it, and then you have the New York Stock Exchange model, which no one follows. So I think you have to find something somewhere in the middle, and I suspect when the chairman says, "Unquestionably material," that is an approach.

I also think, and I know this is part of the

section, I think the forward-looking information requirement really has an interesting connection to this because maybe you don't do much with the periodicity or the currency, but you have an affirmative obligation to provide forward-looking information with an affirmative obligation to update that.

MR. GREENE: It is interesting. I mean, the regulator can enforce a requirement, and in regulation FD, the Commission took account of the litigation exposure and explicitly said that it wouldn't overreact in forcing issuers to comply, and it has achieved a high level of voluntary compliance. If you had mandated forward-looking information, you could consider that as an approach temporarily or provide a very, very strict, safe harbor that would permit litigation, but only in the most egregious cases.

So I do think that there are some options here, but in our view, forward-looking information has to be addressed, and there are a variety of ways to do it, but I think what we heard from last night is that at least this Commission is going to consider changing the timing and flow of information to the marketplace, which we would support.

Now we are going to move on --

MR. MARTIN: Can I just ask one question of this section?

MR. GREENE: Sure.

MR. MARTIN: This is the section that I think raises an issue that goes throughout this, which is the ideal model versus a model which is possible and workable. And on some of these issues, in this area particularly, one wonders why if you have a system that all domestic issuers in every country have to follow and it is too hard for them, why not a system that a select group of global issuers will follow because they buy into it as a starting point?

MR. GREENE: Well, that is fair. Also it is fair to say that global issuers will be subject to the most restrictive regime. So even if we do nothing in the United States, if a company is listed in London or in Germany, it is going to have to comply with the ongoing disclosure obligations.

MR. MARTIN: Well, I guess I would suggest that we make this so inviting that global issuers would want to buy into this new system.

MR. GREENE: Right. I think that is a fair point. One of the things that people are not as sensitive to is that there are various requirements. People always look to the U.S. market as being the most regulatory and most difficult. In this area, other markets are ahead of the U.S. In fact, the periodic system is not something that is the experience, as William has said, in London and elsewhere.

So I think this is an area where we ought to have debate. And Linda is right, that probably for the U.S. to get this right, we ought to have prescribed information of a forward-looking nature that is required to be updated and not a general New York Stock Exchange rule or the directive.

We would now like to move on to regulatory review. Linda?

MS. QUINN: I am going to do this very quickly. You can see from the slide what the paper described as the EU proposal, which is home country review for all prospectuses, delineated time frames for the review of prospectuses and mutual recognition mandatory.

I think the ABA and the Greene/Quinn proposal are roughly comparable in their proposals. Underlying the proposals is a view that there is a role and an importance to regulatory review of disclosures. Not a 100% review, but selective review, sort of an audit mode review, and in the case of both the ABA and Ed's and my paper, we say that first time entrance into a public market should be reviewed.

But I think underlying all of this is the basic question whethere there is a role for review. Should we simply let investor remedies and regulators' enforcement actions, for for what is viewed as fraudulent disclosures, be the principal

mechanism and have the regulators get out of the way, or is the need for deterrence of corner cutting, is the need for keeping abreast of disclosure and accounting developments a reason for regulators to continue to review disclosures.

Assuming the answer is that people think there is a role for review, one of the points of the paper says long term the goal should be to be able to rely on home country oversight of the disclosure, with the host country relying on that home country regulation. That, of course, assumes that there is the development of review capability in the jurisdictions, as to which you are relying on the home country, that there is an agreement on what the disclosure standards are and how they are construed and applied and that regulators have a common view of the importance of those disclosure requirements.

So I guess just to kick it off to ask this panel, do they think review by regulators is necessary and secondly, what is the thought on home/host reliance? Bill?

MR. WILLIAMS: I think review is necessary, at least at the initial public offering stage and also probably of periodic reports. But I view with some skepticism the EU proposal to rely on home country review and wonder whether countries will really be willing to do it.

As you look at an expansion of the EU, and I don't

like to pick particular countries, so let's assume that an offering by a company from Outer Slaboria is reviewed by the securities commission in Outer Slaboria. Will France really be willing to accept that review as sufficient?

On the other hand, suppose that this company decides that the marketplace is going to discount the value of its securities because of questions about its disclosure, could that company elect, in addition to being reviewed by its home country, to subject itself to review by the COB or the FSA in order to upgrade the marketplace's view of its disclosure?

MR. GREENE: Well, one of the debates and comments on the directive is that companies should have the option to go to a particular market and not to be confined by principal place of business or incorporation, which is how you would currently define home country. I think markets like London, Paris and elsewhere would like to be able to say that they offer some investor protections that issuers should opt in for if they come from smaller countries in the EU. It is a fair point.

MR. MARTIN: Of course I think regulatory review is a good thing. No, we think about this a lot because I think you always want to go back to first principals. And I think what gets lost in these discussions is the fact that a huge majority of our time is not spent on regulating or

disciplining people in their disclosure, but it is helping them with disclosure.

If you don't change the liability system, people want to get what the Commission prescribes right. And we spend a lot of time answering questions. We spend a lot of time helping issuers and underwriters craft disclosure that is compliant. Sure, on the margins, we take on tough issues and get crosswise with people, but I would guess if you looked at most of our regulatory review time, it is spent helping issuers comply with the law. And I think if you take that out, you are going to subject the marketplace to a lack of discipline, but also a lack of help in terms of negotiating the liabilities and the risks.

MR. GREENE: There is a market in London, called the Alternative Investment Market, which does not have mandatory disclosure or regulatory review by the exchange.

William, do you want to talk about that? The reason I mention this is that they have basically opposed the directive because of the concern that imposing the requirements of mandatory prospectus and review on smaller companies increases the costs, and they would therefore rather have professionals assume responsibility of marketing those securities. There is no market that I am aware of like that, William. Would you comment on the English experience?

MR. UNDERHILL: I think the principle that AIM operates on in London is that it is a market where everybody involved knows that its standards are less than those for a full listing, that it is a market which is predominantly for professional investors. It is generally a fairly illiquid market. So it is not something which the ordinary man in the street is going to try to get into.

It achieves cost efficiencies by dropping out elements of the process which would be required for a full listing. It does, as Ed says, do without a regulatory review. It relies on the adviser to the company to perform that review. And it is fair to say that companies can achieve access to a trading market on AIM relatively cheaply. But it is also fair to say that I think you get what you pay for in this business, that you get a good prospectus if you devote a lot of time and effort, lawyers' time and other advisers, to getting a good prospectus.

And if you cut those corners, and those corners are still there whether or not you have a regulatory review, you end up with a prospectus which is less effective in serving the purpose of protecting investors. That is something the London Stock Exchange is not happy about it, but tolerates in the context of a market where people do understand the risks that are involved. For small companies, that is seen to be a reasonable tradeoff.

MR. WILLIAMS: I would suggest that your ordinary man in the street may not be interested in the AIM market, but the American ordinary man in the street would find it very attractive.

MR. GREENE: What about Brazil, the role of regulatory review?

MR. OSORIO: We actually typically, the Brazilian companies that have issued abroad are in the U.S. market and the U.S. market has more detailed requirements, and we are actually learning in MD&A something that we didn't require in the past now that the Brazilian issues that are listed in the New York Stock Exchange, they have to file and they have to file a Brazilian version immediately.

So for countries that don't have a sophisticated market, I think we can learn a lot from the host country that typically is a more developed market. So that is my reaction to this.

MR. GREENE: David Brown?

MR. BROWN: Well, not surprisingly, like David Martin, I believe that review is necessary, and particularly, IPO review, but I also think in this globalization era, that regulators have got to be comfortable in relying more and more on one another to perform some of these tasks.

I think the converse of that is that there will be multiple reviews with the possibility of inconsistent results

and inconsistent application. So I think our long-term goal has got to be to move to a situation where we can rely on one another to a far greater extent than we do.

But there are two conditions precedent to that and I think the paper addresses one of these very nicely. That is that our rules and regulations have to converge. We can't be relying on one another if we are imposing different regulations or different principles. So we have to move to a situation where the rules have converged around the world.

And secondly, we have to be comfortable in relying on the skills and diligence of the regulators in the other jurisdictions. And that is going to be a tougher objective to achieve. There are already, through IOSCO and through the SEC, a number of initiatives to try to make sure that regulators in jurisdictions around the world are up to and performing to the same standards.

The SEC in the enforcement area run seminars every year to bring enforcement people from around the world into the U.S. and to try to get consistent standards in the enforcement area. I think much more needs to be done on that, but I think it can be done. And I think prospectus review teams and continuous and periodic disclosure review teams can start to come together and have the same training and, hopefully, the same level of skill. It is going to take time, but I think it is an objective that we must entertain.

MR. GREENE: And in fact, the U.S. and Canada has developed a home/host country regime under which the SEC relies on the Canadian regulators. Now the question would be: Is that capable of being extended? In the long run we think it should be, but in the short term, we think it is likely that the Commission will continue, as the host country, to review not rely entirely on a home country review. And I suspect that is a sensible way forward until, as David Brown suggests, we have a convergence of standards and we have a chance to develop mutual standards together.

MS. QUINN: On the MJDS, one of the key ingredients was a two-year period where the U.S. and Canada sat down together and reviewed every single disclosure rule and actually brought them into convergence, with changes both in the U.S. and in the Canadian requirements so that there was in fact a convergence of the standards themselves.

Just to underscore a point that David made, when speaking of convergence, we are not just talking about convergence of how you treat cross border listings or offerings. We are talking a convergence of domestic standards because I think, at least from my point of view and I think Ed's and others on this panel, if the regulator is overseeing foreign issuers in a

different sense than they are domestic issuers, I think you are always going to have a concern that that review is a second class review.

So if the requirements are the same for domestic and cross border, and this is really the thrust of your oversight program, I think there is more likely to be a convergence of ideology in how you do reviews and what you are trying to accomplish and more prospect for cross border reliance.

MR. GREENE: We have three more topics to cover, which we will do quite quickly because we want to give time to hear presentations from our Brazilian and Canadian regulators. The three are ready access to market for seasoned companies, regulation of distributions and communications.

I am going to go through the first two because communications is where I think we ought to have more discussion on the panel. That, I think, is somewhat more controversial and is something that may require a difference of approach in the U.S. and in Europe.

The European proposal is shelf registration for seasoned issuers with fast track procedures. I think it is fair to say that if you read the directive, it is more like the Wallman company registration than it is the way the U.S. system operates because at the end, all that would have to be

delivered would be a term sheet with respect to securities plus updated information.

The U.S. system, because of the peculiarities of the '33 and '34 Act, isn't quite that simple. But for the first time, shelf registration now will be mandatory for seasonal issuers and we will use incorporation by reference to deal with liability issues with respect to information to the market, but that information does not have to be delivered, only updated and with a term sheet.

The ABA has some very helpful suggestions because it is predicated on doing this by rulemaking and not by legislation, and what it really calls for, in a sense, is as close as you can get to company registration, but in the context of the current rules in place.

It would be enhanced universal shelf registration. The universal registration statement would cover an unlimited amount of securities to be sold over an indefinite period of time by the issuer, affiliates, and holders of restricted securities. This is a very, very important change because currently you only can register what you reasonably expect to sell in the upcoming two years. You would have a very small initial registration fee and you would pay as you go.

One of the disadvantages to the current shelf system is that issuers registering large amounts of securities have to pay a registration fee at a time

different from when they are selling securities to raise capital.

Changes to the securities to be offered would be covered in Post-effective amendments and you would have automatic effectiveness on its filing. In a sense, if you had this system in place, it really does give issuers instant instant access to the market without regulatory review for all types of securities and all types of sellers. We would urge the Commission to go forward with this proposal.

We believe that in the end, it is going to be fairly easy to achieve this universal shelf registration. It might take different forms in different markets, depending on the legislation, but no one disputes that seasoned issuers ought to have ready access to the market.

I think the question will be twofold. One, what and how do we define seasoned issuers and secondly, can we really, in a sense, get away from having delivery of anything other than a term sheet which goes back to a system that seems very much like the system William described with respect to offerings up to 10 percent.

We also would think that we ought to, by following a model of up to 10 percent, really in a sense try to have almost no rules with respect to how distributions take place. Currently if you do a shelf takedown or a public offering, you have to do it at a fixed price, and there are various rules for changing that price.

We would like to see transactions of a certain size be handled much the same way the secondary market transactions might be, but that is, in a sense, a smaller aspect of the proposal. The key thing is that seasoned companies, and the definition varies, should be eligible. The U.S. looks at it in terms of not how long you have been publicly held, but also the float, the level of securities trading. The directive has not yet defined who would be eligible issuers for this, but I think it would be quite easy to get a consensus.

Again, the European Union proposal, with respect to prospectuses, is a step ahead because it will have separate segments, which can be delivered separately; a registration document about the issuer, a security note describing the securities and a summary note.

I think this is an attractive way because it recognizes that too often in the past what we have done is to focus on everything being in one document, which has to be delivered often one or more times during the course of a distribution. The ABA proposal tries to address that and basically goes on the notion that access should be equivalent to delivery in many cases, and I will leave you to the paper.

I am going to move on to communications, and Linda, do you want to take this going forward, because here we will

distinguish between communications. By that we mean advertising and solicitation generally. And there are two aspects to this. One is the private offer market and the other is the public offer market.

And just to provide background, as you know in the U.S., to do a valid private placement, there can be no general solicitation of offerees, and with respect to the public market, there can be no writing outside the prospectus during the preliminary prospectus period, and all information is channeled into the prospectus, with certain exceptions that research can be delivered with respect to certain companies by certain distribution participants.

We would propose some radical changes to the regime of communications. This, in a sense, was inspired by a talk that Linda gave several years ago when she came with a somewhat radical idea of deregulating the offer. Linda?

MS. QUINN: Just in brief, in terms of deregulating offers, that is not to say that anti-fraud prohibitions wouldn't still apply to whatever information is used in the marketing or made available to the public, but what it really does is say that what you are trying to do is allow a free flow of communications, whether about the offering or about the issuer, whether the company is raising capital or not raising capital, and that this would be true in the

private placement area, where you would say even though the public may see that an offering is going on, may see the marketing information that is directed at the private placement market, the fact that they can see it doesn't invalidate the exemption so long as they are not the people to whom the securities are sold and you only sell to eligible investors.

On the public offering side, and this is an area where the U.S. is considerably different from other jurisdictions, most other jurisdictions say there is a mandated disclosure document for a public listed offering, but do not really interfere with other communications that are being put into the marketplace by the issuer, either in the ordinary course or even with respect to that offering.

So you have a mandated document, as to which people are given the information that is needed, but there are other communications going on. In the U.S., it is the opposite. There is a mandated document, but that is supposed to be the sole source of information upon which investors are relying.

Now this may have made sense in 1933 and in the 1930s when offerings were very uncommon. They were not continuous as they are now and you could actually impose silence. But in today's market with the Internet -- with the fact that a lot of companies are newsworthy separate

and apart from whether they are doing an offering, to the extent that they are constantly communicating with the market if they are already public, the issues that come up in saying, "We are going to try to limit communications outside the prospectus" just don't comport with reality anymore.

And so what is happening in the U.S. is that you go through a lot of regulatory hoops to say, "Well, I have isolated disclosures," but you really still have those disclosures going on and it imposes a cost that really, I think from our paper's proposal and from the ABA's proposal, are not worth the candle.

And so the proposals that we have in our paper and the ABA has made, and I think are fairly consistent with other markets, is that essentially, you allow for free and open communications, whether a company is in a capital raising process or not, and that the chief obligation on those communications is that they not be misleading, that they are subject to anti-fraud regulation and that you have mandated disclosures either through your continuous reporting or through a prospectus requirement if it is a new company.

And so you have a mandated set of disclosures against which all this other communication is going to be measured.

MR. GREENE: I think, just to be clear, what we would say is on the private side, we would only worry about

whether buyers were eligible buyers and not have any regulation with respect to how one got there. On the public side, there is a distinction. With respect to initial public offerings, the ABA proposal would be free to have communication up to a certain period of time before filing and during that 30 day period, use the procedures we have in place --

MR. WILLIAMS: For IPOs only.

MR. GREENE: For IPOs. And for publicly held companies, you would deregulate communications generally as well. Now it is interesting to say that what is happening with respect to Europe having to address this is that they recognize, explicitly, that advertising and other forms of communication should be permitted in the context of an offering relying upon anti-fraud rules, but they would have the advertising submitted to and reviewed by regulators. That, we think, will not work.

The regulators may get some things right, but reviewing and commenting on advertising may not be within their competence. At least, the proposal recognizes that investors are interested in a variety of information in a variety of formats delivered in a variety of different ways and that we ought to get away from the rigidity that characterizes the current system.

Now the real test, I think, is how comfortable we

are going to be relying solely on anti-fraud rules and are we going to be comfortable allowing companies to, in a sense, market their securities the way they market some of their products? I think we ought to experiment a bit and get away from the current system, but it is not free from doubt that there may be abuses going forward, but there are regimes to address that, regulatory litigation. Let's open it up to the panel for a comment and discussion. William?

MR. UNDERHILL: Ed, just a comment on the advertising possibility. I don't know how many people in this room have seen any of the European privatization style advertising, but that was the same as selling sink powder, the same as selling any product. It is not a means of communicating information, it is a means of promoting demand for an investment. And I think you need to be fairly cautious about opening that door and encouraging that kind of advertising in the IPO context.

Also worth noting, at least in the U.K. position, is that that advertising is subject to some constraints to the extent that the advertising has to be approved by the financial adviser or regulated investment business who has to put his name to it to say that they have approved it for issue. They can get wrapped up by their regulatory regime to make sure that it is at least not unfair or misleading.

But we have had, as a matter of personal

experience, in the context of those privatization advertising campaigns, really large television advertising campaigns. You have had groups of lawyers sitting in a room looking at the adverts, which are going to go out, try to decide whether they are fair and not misleading and frankly, not knowing on what basis to judge that because the marketing is at a level of sophistication that no matter how sophisticated the lawyers may think they are, they are not understanding subliminal messages.

(Laughter.)

MR. UNDERHILL: Your assumption here is that marketing of securities to this extent is done in a relatively thoughtful way, that the prospectus remains an important part of the IPO, at any rate marketing, and that is simply not the case I think in Europe. I think you ought to be fairly cautious before you plunge down that way.

MS. QUINN: One of the things that may be different in Europe and the U.S. and one of the great reasons to talk about deregulating offers is that in the U.S., the concept of offer is quite broad. And so you can have communications by companies that don't mention the offer, but are viewed as conditioning the market for the offer. And I think it is also that context where there has been great concern because information that is being put out

by the company, one can say in the ordinary course, can also be viewed as offering material.

MR. GREENE: Another way is to pick up on something William has said is to recognize that prospectuses are often not read in the context of retail offering. We should perhaps permit advertising, but we could have regulatory oversight focus on the role of intermediary, its responsibility in terms of suitability and recommendation and monitor the process because there is a concern that the advertising may be the only message taken into account and full-blown prospectuses available simply may not be read. And it is a debate that is perhaps worth having, but at least we think that there is a need for flexibility.

What is the situation in Canada, David?

MR. BROWN: Well, our rules in Canada are very similar to those in the United States.

MR. GREENE: Any movement to change to deregulate the offer?

MR. BROWN: We have a sense that we need to address that. We frankly have been focusing more on our continuous disclosure because we believe if we get the continuous disclosure right, many of these concerns may disappear. And so we do indeed want to address this. We will probably address it in conjunction with the United States, but we will do it against a continuous disclosure background that we are

finalizing.

MR. GREENE: Final comment, Bill?

MR. WILLIAMS: I would like to make a couple of comments. One is that there is an underlying premise of this old versus new debate, that frauds don't take place under the existing regime, and we all know that that is not the case. The Enforcement Division keeps very busy, notwithstanding all The restrictions in the current regime.

The second thing is that there is a great fear of what will happen. Well, I notice that Larry Bergmann is sitting here in the audience. In connection with the adoption of Regulation M, there was concern about the effect of exempting from the manipulation rule securities with a large Average Daily Trade Volume. The exemption was adopted, and the world hasn't come to an end. I have not heard of any manipulation abuses.

The final thing I would say is that if we do what the ABA and the Greene/Quinn proposals suggest, companies, both domestic and foreign, can have websites that address what they are doing in the financial arena, what securities they are selling. Underwriters can freely use websites to sell securities. Road shows can be made available to everybody on both real time and repeat bases.

Brokers will be able to send

e-mails to all their customers, with a short synopsis of what a new issue is about in order to find out who is interested in it. There are a lot of good things that can happen. I think they are worth taking the risk, and I don't think the world will come to an end.

MR. GREENE: There is one interesting, and perhaps somewhat controversial aspect. In Europe and other markets, even in connection with an IPO, research will be generated and sometimes be made available to investors. That is clearly not the case in the United States. The only research that can be made available is for seasoned companies under Rules 138 and 139.

Our proposal would, if issuers and underwriters wanted it, allow research reports even in the context of an IPO. And the reason we do that is to have communication above ground rather than underground because even in the course of an IPO while research isn't made available, the sales force is going to basically put out the house's view as to what the prospects are for this company.

Now that is something that the Agency, I think, would have a hard time with, but we think it should be debated in terms of the larger issue of communications and not be artificially restricted.

MR. MARTIN: I would just add that I think it would be a shame if our concern about the larger issues meant that

we didn't get to this issue. I think this issue is ready to be picked off and dealt with. But as a footnote, which is a footnote in your paper and seems to be a footnote in most of these discussions, I think the battle will really be fought over the liability that will apply.

MR. GREENE: Yes. I agree.

MR. MARTIN: And I am not sure that Rule 10b-5 is enough. At least in this country, I think we have, under the '33 Act, three levels of liability and I am not sure that Rule 10b-5 would do it, but that is just a question and we will analyze that. But I think this is something that can be dealt with and I think to some extent, we are dealing with it, albeit not to the satisfaction of everyone, but on an administrative basis to try to reduce the friction. But there is, nonetheless, too much friction here and I agree we ought to get to it.

MR. GREENE: Brazil, and then we can go to your presentation as well.

MR. OSORIO: One comment on William's comments on Advertising in privatizations. I have seen some of the pieces, exactly what he has said, you know, to create demand for the paper, but a lot of the literature regarding privatization argues that the privatization in Europe help it boost equity culture.

We had an experience in Brazil where not a lot, but

interior, but we gave an exemption for a major sale last year. Exactly as William mentioned was -- two things happened. They wanted the regulator to approve the advertising piece, which we said no way. I mean, we barely understand about regulation. So imagine about advertising.

And second, we just said you have to put very clear risk words, which on the original piece didn't have anything on risk. But I agree with your proposals. I think it is time to change. More information is better in my opinion.

I would like to discuss an issue that arises in connection with the Brazilian ADR issues, and a lot of the things I was going to discuss here have been already discussed. So I will go straight through the major points. Just a second. I want to go to the page -- foreign investor participation in Brazil is important. It is 25 percent of our stock exchange. ADR, as we are going to see, is even as important as foreign Brazilian issues. So this is a topic that there was a huge development, both of foreign participation in the Brazilian market, as well as Brazilian companies issuing abroad.

And the majority of foreign investors in Brazil come either from the west, U.K., or a typical road show goes to Edinburgh as well to the usual places here in the west, on the west coast, Boston, New York, and so on, U.K. and Edinburgh, sometimes a little bit from the continent. But

the message is that this is a very important mechanism and I just want to go to the -- we have some legislation.

The first issue was in 1992 for a Brazilian company. We had previous legislation, but this is the local home country what we try to -- we use to require. I mean, it was still required that whenever the host country is, there needs to have an agreement between the Brazilian Stock Exchange, Bovespa, and either the New Stock Exchange or NASDAQ or London and so on. We revoked the need for trading suspension. The New York Stock Exchange would not follow whenever there was a need to suspend, and clearly that was misused by some Brazilian stock exchange.

The major, as we are going to discuss, the major issues arise on terms of cost, time, and detailed information for ADR issues. I already mentioned that the information filed either in New York or in London has to be filed in Brazil as well.

We -- similar to what Germany -- happened in Germany with the new market, the S u Paulo Stock Exchange developed a new market that it has stricter listing requirements. One of them was briefly touched base here is the sense that companies going to this new market in Brazil, they have to have either U.S. GAAP or IS standards. If what was -- I understand will be the topic on the next panel, the accounting issues, but if IOSCO approves IES, it would be

interesting if the New York Stock Exchange would accept -- the SEC would accept Brazilian issues to have IES as standards.

We are in the middle of a new view in Brazil that we would like to standardize the Brazilian accounting standards. Brazilian GAAP is not particularly bad; however, it is just a different system. In the world of more global investors, it is just harming the Brazilian companies having presets of accounting. Not only the cost, but in terms of transparency and comparability with other companies.

Let me go to the -- these are the major issues we have. The information flow between the depository bank and investors, there is always a problem with cost -- either with cost, time, or the right to vote. The ADR -- typically, the ADR holders are not informed of shareholder meetings in Brazil unless they have a local presence.

As most of you know, we are civil law country. Civil law countries, at least in the case of Brazil, we tend to have more shareholder meetings than the share -- a lot of decisions that are on the board in the west are taken in shareholder meetings in Brazil. And the New York Stock Exchange record date of seven business dates alone in the past used to create a stumbling block for ADR holders to vote.

For calling a general shareholder meeting, it

required -- in the past, you would require only eight days. We address that in the new law requiring at least 15 days, and the regulator now has time to extend that to 30 days if the matters to be voted are more -- are deemed complex or if there is a demand by investors that they need more time to analyze whatever is going to be discussed.

So until now, we can't address the problem that we have major complaints from ADR holders. We had a situation where there was a company in Brazil that they want to pass a vote that clearly favored the controlling shareholders, but they needed the votes from all shareholders. So they announce at the shareholder meeting, one day prior to Thanksgiving of two years ago.

So the time that U.S. investors learn that that issue is going to be voted, even if they have a local presence or if they want to unwind the ADRs and go into actual Brazilian shares, they could not vote.

There is a second problem, is that the companies have to ask the depository bank to inform the shareholder of the shareholders' meetings. And there is a cost issue here. A lot of the underlying assets in Brazil are nonvoting shares and therefore, companies don't -- they tend to want to save this money. We are in disagreement with that. And there is a lot of misinformation of what is going to be voting.

A lot of fund managers leave ultimate instructions

with the depository bank to vote with management. That has caused tremendous problems in our -- in the Brazilian market where -- in situations where management has harmed investors in general. And different than from the were governance here is really addressed to management. Governance in Brazil has to be addressed to the owners or the controlling of the companies where there is always a situation you can trace with a controlling group.

The other major issue, in my opinion, is the depository bank often sends incomplete shareholder meeting notifications. This is probably -- this is a monopoly. There may be only two banks that have 95 percent of the ADRs. I think competition here would be very much welcome. It is something that perhaps the SEC could do something. We cannot do much about forcing better disclosure by depository banks.

I would love to see them be required to disclose all shareholders' meetings for a change plus with detailed information of what the matters that are going to be discussed in the shareholders' meeting. I already mentioned that the Brazilian preferred share is really a common share without votes. So it is really a second class type of stock, but that represents the majority of the ADRs being traded in New York.

And because of all this misinformation, a lot of major foreign funds that participate in what we feel is

constructive shareholder activities, then that blaming on the local regulator on something that I -- in my view, we only can take part of the blame. The other part of the blame is that there are clearly some imperfections on the flow of information between the depository bank and investors.

If one sees the -- after the New York Stock Exchange establishes the record date, it is required 20 days between all the broker-dealers informing their investors and they return with their votes. If something using on the Internet could be done to speed up this process, I think it would be very much welcome.

The ADR market is a market that countries like -- I don't know if they are going to have a common regulation or not, but we -- all emerging markets meets and will meet in the near future. And in my opinion, it is not working. It is working short of a good situation. It is working okay, but in terms of disclosure and in terms of knowing the differences between the local markets and the U.S. market, assuming things work like here, has made some more incomplete markets.

So the message I would like to leave with my colleagues from the SEC here is that if it could be addressed on the New York Stock Exchange or any other stock exchange that approves ADRs, is that the depository bank need to do a better job on disclosing on a timely and a cost effective

manner the issues that are going to be discussed in Brazil. That is my brief comment.

MR. GREENE: It is interesting that you mention that because some companies, German issuers and Swiss issuers, have decided not to use ADR mechanisms, but to use global shares so that the share trading in Frankfurt is the same share trading on the New York Stock Exchange. You don't have the interference between the depository voting and so forth, not so much for the reasons you have mentioned, but to try to have a truly global company.

We would like to conclude this segment by turning to our Canadian regulator to make some observations as to whether or how we could implement these proposals should a consensus emerge around it.

So Dave, would you close our session, please.

MR. BROWN: Well, thanks, Ed. I actually would like to address some thoughts, not as a Canadian regulator so much, but as the chair, the current chair, of the IOSCO Technical Committee. I think clearly this paper and this panel address the regulatory challenge that has moved to the forefront of the globalization era. I think Chairman Pitt put it quite succinctly last night that while financial markets have become truly international, the regulation of them remains purely domestic.

I think that it is well known that the efficiency

of international capital markets is impaired by differences in regulatory regimes of individual national markets. We have talked about differences today in offering requirements and in continuous or periodic disclosure. We haven't talked so much about differences in licensing and oversight of securities firms, another big issue that has to be addressed.

I think as the world's capital markets have undergone these fundamental changes supported by new technologies, that the tolerance of these regulatory differences is diminishing and diminishing very quickly.

So I wanted to talk about some of the important developments in the international fora that I think may facilitate achieving the goals that Ed and Linda are advocating. The paper makes a number of references to IOSCO, and for those of you who aren't familiar with IOSCO, it comprises now over 100 member countries, the securities regulatory authorities in over 100 member countries. And together with affiliate memberships of the IMF, the World Bank, stock exchanges and SROs, the total membership of IOSCO is approaching a hundred and fifty members.

IOSCO's work is done principally by specialized teams comprised of experts from a wide cross-section of member countries and affiliate members. And in a very short period of time I think its role has evolved. I think that

IOSCO is now addressing the important issues facing securities regulators and is proposing solutions to assist members in addressing them, and at the same time, is an invaluable forum for information sharing and regulatory cooperation.

And I thought I would just highlight three or four of the initiatives that IOSCO has either completed or has underway that are relevant to the issues identified by Ed and Linda in their paper. I will start with the undertaking that I think best defines IOSCO and that is the articulation and promotion across all securities' markets of objectives and principles of securities regulation.

These were adopted by IOSCO in September 1998, and they consist of a handbook of 30 core principles with about 50 pages of explanatory text, which address all of the fundamentals of securities regulation.

It is a direct result of the globalization phenomenon and the consequent interdependence of regulators and the need for regulators to have confidence in one another. These core standards have quickly become the standards by which securities regulatory systems are evaluated. And Jose mentioned a few minutes ago that they are being used by the World Bank and the IMF in their financial sector assessment programs, FSAPS as they are called, under which financial systems of both systemically

important countries and emerging market countries are assessed.

Another undertaking that I think is relevant to what we have been discussing is the principles for oversight of screen-based trading systems for derivative products. These have been predominant in many markets, and as a result have provided access to derivative marketplaces from anywhere in the world. As a result, regulators in more than one country may have jurisdiction to regulate.

So IOSCO has issued 14 principles covering the regulatory oversight of these screen-based trading systems. Some relevant examples include principles dealing with regulatory cooperation to minimize duplication, information sharing among regulators and transparency of the regulatory framework.

The paper talks about two other of IOSCO's initiatives, which I won't talk about in detail, but they are designed to facilitate the flow of capital across borders. We have talked about the non-financial disclosure standards, as well as international accounting standards. I can say that by the end of this year, we expect all major markets, including the U.S., will accept documents prepared in accordance with international disclosure standards for equity offerings by foreign companies. These are the standards that have been promulgated by IOSCO.

The international accounting standards, which IOSCO has been working on with the International Accounting Standards Board, are going to be the subject of the next panel. So I won't deal with those. But this is just a sample of the many projects that IOSCO has completed. There are many others too numerous to mention, but you can find reference to them, and in fact, details on the IOSCO website.

But there are two other projects that are currently underway that I think as well define IOSCO and where it is heading. One of them is the regulation of market intermediaries and cross border environments. Not something that we have discussed here this morning. This involves the use of domestic regulation to oversee the cross border activities of market intermediaries, and this, again, has emerged as a major challenge.

And so a project team is at the early stages of developing guidance for reducing this duplication without compromising effective protection. And then last month in Rome, IOSCO began examining the challenges facing the global financial system in the wake of the September 11 attacks. A project team headed by Michel Prada, who is the head of the French Securities Regulator and who will be our luncheon speaker this afternoon, is coordinating three areas of inquiry.

Firstly, what are the essential elements of

contingency plans for markets, for market participants, and for regulators? In other words, what regulatory measures are necessary to cope with disorderly markets? We spend all our time trying to regulate orderly markets. We have to turn our attention to the possibility that we will be faced with disorderly markets.

Secondly, what additional information-sharing protocols are needed among securities regulators and between securities regulators and law enforcement authorities?

And thirdly, in order to combat financial crime, client identification by securities firm is a key link in the investigative chain. So what are the components of a robust identification regime taking into account practical implications for the industry?

So through IOSCO, I think there is already a platform for developing the uniformity and harmonization recommended by the paper; however, it is still only a mechanism for developing principles and standards, which are implemented by domestic authorities only if they choose to do so. More will be required if we are to address effectively the realities of the integration of the global capital markets.

And thus, the paper argues that to achieve optimal efficiency, international agreements should be reached on disclosure requirements that should apply to both domestic

and foreign issuers. And I think IOSCO is well positioned to broker such an agreement and to facilitate its operation.

So in summary, I think much progress has been made to harmonize securities regulation. As this paper points out, and this conference is demonstrating, the markets are demanding more, but I believe that IOSCO is well positioned to provide the forum to take us through those next stages. Thank you.

MS. QUINN: David, in the offering area and the continuous reporting area, it is interesting that IOSCO has historically focused on trying to reach agreement on how you treat cross border transactions, people coming into your country. And I think having beein in some of these meetings, understanding that we are not talking about domestic regulation.

One of the primary theses of the paper that has been presented today is that to have this international convergence really be effective and allow cross border reliance, you really need a convergence of the domestic standards as well. Now do you think IOSCO is in a position to lead that, or is this really going to have to be done on a bilateral, multi-lateral basis outside of IOSCO?

MR. BROWN: Well, your historical categorization is

quite correct, Linda, but I think that IOSCO is moving to a stage where it will be able, as I said earlier, to broker some of these. I believe that there still will have to be bilateral and multilateral discussion, but I think that IOSCO can perform a role of a coordinating entity, a databank, if you like. Hopefully, IOSCO will play a very significant role in harmonizing the domestic rules, which as the paper points out, are so essential if we are to be able to rely on one another and ultimately eliminate the duplication that cross border transactions currently attract.

MR. GREENE: We certainly hope that you are right, David. And with that, I will turn it back over to Dick Phillips.

CHAIR PHILLIPS: Thank you, Linda and Ed, and thank you, Panel, for a very informative discussion.

(Applause.)

CHAIR PHILLIPS: For the next couple of years, at least, this is going to be the hot topic in U.S. securities regulation and hopefully, on a global basis.

Let's take a 15 minute break and we will see you back here for a very important discussion on accounting.

(A brief recess was taken.)

CHAIR PHILLIPS: Let's move on to our panel on the development of accounting principals for a global securities market. Chairing this panel is Alan Levenson who is another

former director of the Division of Corporation Finance serving from 1970 to 1975 capping a 14 year career at the SEC.

Alan is now a partner, and has been since he left the Commission, of Fulbright and Jaworski in Washington, and in addition to a very busy private practice, his list of professional activities is too overwhelming to begin to recite here. Suffice it to say, insofar as relevant to the accounting area, Alan has been a counsel to the Public Oversight Board of the accounting profession, he has been a former public director of the AICPA, and he was the first chairman of the AICPA's advisory counsel to the Auditing Standards Board and a member of the AICPA's future issues committee. He is as well versed in accounting as he is in virtually every field of securities -- area of securities regulation.

Alan, I am delighted to turn this panel over to you.

MR. LEVENSON: Thank you, Dick, and for your gracious remarks. Before I say some remarks about an overview, I want to thank our panel for making time to share their views today with all of us. It is a distinguished panel and I am pleased at this point to identify them.

On my immediate right is James Turley, who is the chairman of Ernst and Young, and Jim has recently taken that

position, which is a very important position, as we can all appreciate, of one of the outstanding accounting firms not only in our country, but worldwide.

Jim, welcome.

MR. TURLEY: Thank you.

MR. LEVENSON: Next to me is Ed Jenkins. He is chairman of the Financial Accounting Standards Board and had a distinguished career professionally before that with Arthur Andersen. When we talk about accounting principles, we talk about Ed Jenkins.

Ed, welcome.

MR. JENKINS: Thank you. Thank you, Alan.

MR. LEVENSON: Next to Ed is Sir David Tweedie who is chairman of the International Accounting Standards Board London, England, who also has a distinguished professional career in accounting matters, as well as other activities.

And Sir David, welcome and thank you for coming.

MR. LEVENSON: On my immediate left is Dave Ruder, currently a distinguished professor of law at Northwestern, formally chairman of the SEC and formally dean of Northwestern University Law School. David's activities are wide in scope and he always has evidenced unusual foresight when it came to developments in our securities markets as well as securities law.

David, welcome.

MR. RUDER: Thank you.

MR. LEVENSON: Next to David is John Morrissey. John is deputy chief accountant of the Office of Chief Accountants of the SEC and we are very pleased that John is with us. Previously, John participated both in the accounting profession with an issuer as well as a partner in a national accounting firm, and John, we are very pleased, even though it was last minute, that you joined us. Thank you.

Next to John is Lynn Turner. Lynn is currently a professor of business at Colorado State University, former chief accountant of the SEC and is a holder of several honorary doctorate degrees.

Lynn, we are very pleased that you joined us today.

Finally, on Lynn's left is John Mogg. John is director general, internal market director general, European Commission Brussels, Belgium.

John, we were a little concerned whether you were going to show up. So we are delighted you are here and thank you for coming.

Just a few observations in terms of oversight of our panel and matters and some personal observations. The major issue facing any national or global securities market is the maintenance and strengthening of investor confidence, which is fundamental to capital formation.

What is the key to investor confidence? Well, first is honest and fair securities markets both in substance and appearance and public interest, investor protection must trump self interest in the development of fair and honest securities markets and the development of a global securities market.

Honest and fair securities markets in turn result from an amalgam, an amalgam of equitable principles of trade by all the participants in a securities market. Issuers, underwriters, brokers, dealers, investment advisors, financial institutions, government regulators, self-regulatory organizations and voluntary professional bodies.

Disclosure of information is essential to honest and fair securities markets. Disclosure is essential to investment decision and disclosure must be positive and negative. It must be adequate, accurate, and timely. We can't develop a global securities market without liquidity in our trading markets. We won't improve global public and private offerings without liquid secondary trading.

Full and fair disclosure is necessary to both primary and secondary offerings to capital formation, and the success of capital formation in a global market gets us back to investor confidence. Investor confidence is promoted when we attach reliability to the disclosure of information. The

accounting profession plays a key role in adding reliability to information by ordering and reporting on financial statements of issuers.

This leads me to our two companion papers for this panel. One by David Ruder about worldwide convergence of accounting, auditing, and independent standards, and the other companion paper by Lynn Turner about disclosure accounting and a look to the future. At this point I am pleased to turn our panel over to David Ruder.

MR. RUDER: Thank you, Alan. I am really pleased to be here. I wanted to make a couple of personal comments before I started. One is when I became chairman of the Securities and Exchange Commission in 1987, I met with the White House public relations officer and he looked at me and he said, "Mr. Ruder, your life will never be the same." And I must say, I agree with him.

One of the things that happened to me during the last five years was that I was called by the cChairman of the Financial Accounting Foundation and was told that the Financial Accounting Foundation was reorganizing due to the insistence of then SEC Chairman Arthur Levitt that public members be put onto the board of that foundation. As you may know, the FAF supervises the Financial Accounting Standards Board, and I was asked to be one of those persons.

I then participated in the hiring of Ed Jenkins

as the Chairman of the FASB. I have gotten to know Ed and the members of the FASB well, and I know more about accounting and accounting acronyms than I ever thought I would know in my entire life.

Since that time, the FASB and the FAF became interested in international accounting, and I was asked to be the FAF representative to the Strategy Working Party of the International Accounting Standards Committee. So for two-and-a-half years, I have spent time with, among other people, Sir David Tweedie working with the Strategy Working Party to attempt to reorganize the IASC.

Following that, I was asked to be on the board of the International Accounting Standards Committee Foundation where I have been serving, and I have the pleasure of supervising the new International Accounting Standards Board, of which Sir David Tweedie is now the Chairman, and I also helped in hiring him. So whatever happens in the accounting world, I feel I owe some debt and gratitude to these two men for having made life interesting and exciting during the past few years.

I have also, in the process of all of this, come to know Lynn Turner, the former Chief Accountant of the SEC. Lynn was very active in negotiations for restructuring the IASB and is a man whom I have great admiration. He and I undertook to prepare a joint paper for this conference, but we are both strong individuals and

it turned out that we felt it was easier if we each wrote our own paper.

So the reason you have companion papers is that you have two strong people with strong but compatible views. My paper lists four issues that should be considered today and Lynn's lists five. So if there is any confusion, there shouldn't be, it is simply two expressions of very similar views.

There are several issues that are confronting the accounting world today. The first one stems from the desire of foreign issuers to list and trade their securities in the United States. The question which they have faced in the immediate past is whether or not foreign issuers, using accounting standards other than U.S. GAAP, will be able to trade their securities in the United States.

The issue has been framed in terms of the words "cross border trading." But essentially, enormous pressure has existed worldwide to achieve the goal of allowing foreign issuers to come to the United States to trade in our markets.

This goal is good for our markets, it is good for our investors, and it is good for the world because it would offer an opportunity for our investors to trade easily in the stock of foreign companies. It would also offer foreign

companies access to our markets.

The goal of having worldwide acceptable accounting standards that could be used in all countries has been sort of the Holy Grail of the activities of a great many people in the last few years. I would like to spend some moments describing what happened historically and then identify for you what I think are the issues that will need to be faced in the future if this goal of cross border trading is to be achieved.

U.S. generally accepted accounting standards, as you know, are created by the FASB and are accepted by the SEC for filing in documents filed with it. These standards are comprehensive and detailed and they are characterized by being high quality, comparable and transparent.

In the 1990's, the International Accounting Standards Committee, a group which was composed of private accountants with a representative model of governance and which was controlled through the International Federation of Accountants, IFAC, undertook to transfer itself from a standard setting body that was attempting to create benchmark standards to a standard setting body that would create a set of international accounting standards that could be used worldwide for highly developed countries.

And IASC began to consult with IOSCO about whether IOSCO would endorse IASC standards. IOSCO, in turn,

encouraged the IASC to conduct what it called a core standards project so that IASC would have a set of comprehensive standards covering all of the key areas that were necessary for a global accounting network.

The core standards project was completed by the IASC and submitted to IOSCO, but in the process, the SEC, which had supported the creation of these standards, expressed some doubt regarding whether it would accept IASC standards for filing in the United States without financial reconciliation, that is, without a numerical reconciliation that would indicate what the results would be if U.S. GAAP were applied.

This, of course, was a roadblock and is a roadblock to the acceptance of IASC standards in the U.S. because the IASC objective is that these standards should be accepted without change, without reconciliation. The SEC's concept release in the year 2000 raised this question directly and since then, there has not been a subsequent statement by the SEC on the reconciliation question.

A second question that was raised was whether the IASC had the right structure for the creation of accounting standards. The IASC was a body composed of geographically represented delegates. Its due process was not the same as as FASB’s and the question was whether or not the SEC would accept future standards of the

IASC for filing in the U.S.

Concern about the IASC structure became the genesis of the Strategy Working Party of the IASC in which I participated. Eventually, a report was rendered and the IASC was restructured to create an entirely different structure with a new board, the International Accounting Standards Board, which is an independent board composed of 14 people, all of whom are chosen because of their technical qualifications and independence with David Tweedie as its chairman.

This board is in the model of the FASB with independence as its guiding star. It is supervised by a IASC foundation, with Paul Volcker as its chairman, and a geographically represented group of trustees. In the process of creating the newly restructured organization, the European Commission took the position that the proper organization of the new FASB would be one in which there was a representative group of standard setters. John Mogg, who is here today, is the head of the EC branch, which made comments.

And the EC's purpose was to encourage the acceptability of IASC standards. The proposition was that with a representative group of standard setters, the acceptance of IASC standards would be greater. Ultimately, the independence model was chosen, the board was selected, and the IASB is now engaged in a process of attempting to achieve what is called convergence. Convergence can be defined

as a single set of high quality worldwide accounting standards.

The objective is to create the best standards possible, not the only standards, but the best standards possible and not to emulate the standards of any single standard setter. The idea is to take the best of U.S. GAAP, the best of the British standards, the best of current IASC standards, and to create new IASC standards. The IASC will create international financial reporting standards, which are to be the next standards for the IASC. If I use the phrase "IFRS," that is what I am talking about.

The first question, which is going to be raised is whether or not the IASB will be successful in achieving convergence of accounting standards so that there will be a single set of global standards, that can be used throughout the world and will be available for filing in the United States.

There are some problems with achieving convergence. The first is that the FASB will be dealing with the national accounting standard setters to achieve a cooperative environment in which at the same time that the FASB is proposing standards, other standard setters will be doing the same thing. Convergence, hopefully, will come from that process.

But there are some problems, even if the convergence process is successful. The first of those that I

would like to raise is that the European Commission…

(John, I am going to be raising this for you to answer.)…

The European Commission has taken a position that may either be seen as very positive or may be seen as negative as far as IFRS and the IASB are concerned.

In the positive area, the EC proposes that by the year 2005 all EC listed companies must use IFRS in their filed financial statements. This is a positive development, and it has put a strong fire under the IASB to achieve convergence by that time so that those standards will be standards that can be used both in the European Union and in the United States.

It may also be a negative development, since the EC has proposed that there be a European Union endorsement mechanism. That endorsement mechanism will consist of a two level endorsement process. One will be a technical committee that will review IASB standards and make recommendations as to whether they will be accepted or not.

At the second level, in accordance with European Union procedures, there will be a political mechanism for accepting IFRS. There will be a representative committee, which will then make recommendations regarding acceptance.

Now the very positive spin on this would be that

the technical group at the European Union will assist the IASB in its creation of standards and that at the end of the process, the political committee will say that the standards are the best we have ever seen and we are going to endorse them without reservation. The negative would be, of course, if this process became one in which there was obstruction and interference. I am an optimist, and I don't think that is going to happen.

Now the second problem is one that I think the Securities and Exchange Commission has to deal with, and that is that when a financial statement is filed in the United States using either U.S. GAAP or other standards, the SEC will examine those financial statements to see whether or not the registrant has accurately applied the applicable standards.

The SEC itself will examine the financial statements and will insist that there be high quality auditing practices and high quality auditing standards in connection with those statements. Here the SEC is going to be concerned with whether or not the auditing practices are the same abroad as they are in the U.S. In that area, the IFAC internationally controls or is involved with creating these standards and oversight practices.

So the question of whether IFAC's current move

towards creating a series of processes and standards, similar to those in the United States, will be successful is something that the SEC is going to be examining.

The second area of their concern is likely to be auditor independence standards. Will the SEC insist that independence standards abroad be the same as those in the United States? Here too, the IFAC is proposing changes to bring their independent standards up to snuff.

The third area has to do with interpretation. If the SEC, as was discussed this morning, is the only body that is engaged in extensive review of filed financial statements, then there is the possibility that the SEC may become a de facto standard setter. And here, too, I think it is going to be important for the SEC to encourage other countries to engage in review and then insist upon coordination and convergence of the review standards used at the regulator level.

So in a sense, the word "convergence" includes not only the convergence of accounting standards, but the convergence of auditing standards, the convergence of independent standards, and the convergence of regulatory review standards.

My own personal view, which comes through in a very lighthearted way in my paper, is that the Commission's goal ought to be to seek the use of IFRS standards, assuming

convergence, in the United States and that for a period of time, at least, the Commission ought not to be as strict about auditing and independence standards as it can be, and that the goal of worldwide accounting standards being used throughout the world is such an important goal that the Commission ought to be willing to relax what might be its more strict view in another setting.

And with that, I will relinquish the floor to the other paper preparer.

MR. LEVENSON: Thank you, David.

We are now up to that other preparer, and that is Lynn Turner. Lynn?

MR. TURNER: Thank you, Alan. As the other paper preparer, it is actually nice to be back in D.C. Always in the past, though, when I had to do these comments, I would have to say the views I am about to express today don't necessarily represent mine and our fine general counsel, David Becker, at the Commission who always made sure we got that piece into the speech. For better or worse, the views I am going to express today are mine, and so I will get to tell you finally what I really think.

(Laughter.)

MR. TURNER: One thing that I think, though, this is a phenomenal panel and we have a great group here today not only up on the panel, but we have got the president of

the French Commission, Michel Prada, and David Brown, the chairman of the Canadian Commission, Ontario, and Commissioner Hunt who has been extremely active with IOSCO in the past. And so we have a phenomenal group here for the discussion today. And this group up here, it is amazing. For a young kid who grew up on a farm in Colorado and to be up on a panel with such a brilliant group of people up here is an absolute -- yes, maybe that is a sign.

(Laughter.)

MR. TURNER: Anyone hear planes? No. But at any rate, it is a phenomenal group. We have former Chairman Ruder who, for the last 15 years or so, has been extremely active. When he was at the Commission, he really did drive what was going on internationally in the accounting and auditing and he stayed active in the FASB, and without David, who was really a beacon of light, if you will, during the renegotiation and structure of the IASB, I don't think we would have ever got to the quality standard setter that we have today. And so I give David tremendous credit for that.

And of course, Ed Jenkins has done a fabulous job at the FASB, will soon be stepping down, but I give Ed tremendous kudos for taking on a very difficult job at a difficult time. And Sir David Tweedie, of course, is Sir David Tweedie. What can you say. He is the greatest chairman we have ever had at the International Accounting

Standards Board, being the only one.

(Laughter.)

MR. TURNER: And I think for one of the first times ever, we will have a chance to hear from John Mogg of the U.C., and I have had the chance to meet with John on a number of occasions over the last few years and I think you will find John very insightful, and certainly he plays a tremendous role in this whole thing.

But it really does get down to the issue of the quality of financial reporting and especially in the international arena, and this is not something that is new today. In fact, this issue has been around with us since the days when the Commission itself was formed, and in fact, David Ruder has been a tremendous mentor to me. He tells me he recalls the days when the Senate Banking Committee held hearings back in 1932. And --

MR. RUDER: I was alive then, Lynn.

MR. TURNER: And he holds his age well, doesn't he? But anyway, in fact, back in 1932, the Senate Banking Committee did have -- did hold the Pecora hearings, which actually is what turned then into the '33 and '34 securities act, but it was in the financial reporting area.

It was not about financial reporting in the United States, it was in fact about financial reporting by a large international company who had come to the United States out

of Sweden and raised a lot of money, and then it turned out that the financial statements were fraudulent and the U.S. investors had been -- suffered tremendous harm and damage.

And it was that hearing and the debates that came out of that that really started to form the financial reporting system that got incorporated into the 1933 and '34 Act. So the issue has been around with us for a long time and quite frankly, the issues haven't changed. It is the quality accounting that goes into those financial statements and the transparency.

It is about the audit and the quality of the audits done to ensure those standards are enforced and implemented in an appropriate fashion. It is about the independence of the auditors who were certainly a part of that debate at that point in time. So the issues were there then and they are still with us today. We certainly saw the quality of financial reporting become a major issue in '97 and '98 as we went through the Asian crisis most recently.

And just this summer, it was a major issue, not only in the United States, but over in Germany where on the Frankfurt in the newer market we saw a large number of German companies stand up and say they were actually going to delist from that market, in part because the lack of quality of financial reporting and timeliness and financial reporting.

So it brings us to today where we do have, though,

a large number of foreign registrants that have come into the U.S. If you look at the paper and the materials, you will see that well over half of those, though, basically come from three countries: Canada, the United Kingdom and Israel, none of which use, currently use, international accounting standards. And in fact, of all the foreign registrants that are here in the United States today, only 49 are following international accounting standards. The vast majority actually follow their home country standard or follow U.S. GAAP when they turn around and come into the United States.

But they do come. They have become over 10 percent of our market and they come for one reason, and that is because our U.S. markets are unequaled in terms of the quality of the product. The ability to come in and raise capital and attract the vast amount of capitals that have come into the U.S. markets is unequaled and in question.

The New York Stock Exchange, the NASDAQ, the two of those have over half of the capital in the entire world, notwithstanding the fact that there are only two markets, and they have been able to do that because of the quality of the system, the transparency, and the fact that investors know that when they come into that system, they are going to get the type of information that is reliable and credible, and it is the breadth of information that allows them to make informed investment decisions and allows them to allocate

their capital in the most effective and efficient manner and that, in turn, has turned around and allowed them to generate higher returns than they were able to get in other places that are going to move into other investments or other places in the world.

We were not always the largest capital markets. In fact, we did not achieve that until we put in the system, after World War I, when we put in the system that we did with the '33 and '34 Act. And so I think this issue, you have heard the issue teed up a lot as the debate between do we use international accounting standards or do we use U.S. accounting standards.

I don't think that is the debate at all. The real debate is how do we, in all of our capital markets on a worldwide global basis, come up with the quality of financial reporting that will generate the information that investors need in a timely fashion to make those type of decisions that will attract people into those markets so that they can get the highest returns?

I often hear people say, "Oh, let's get rid of the reconciliation or do away with it because we will attract more people in." And certainly that may, at least initially, bring more people to the capital markets. I mean, after all, there is a lot of people who have an interest in that. The more companies that come in, certainly the more the

professionals, the accountants, and the auditors will generate in fees, certainly the more money that attracts for the investment bankers.

The stock exchanges have a major revenue and profit source there from the listing and transactional fees. But the thing we need to keep in mind is that at the end of the day, that only works if the investors are willing to put their money there. As far as the U.S capital system, they will only put their money there as long as they know that it generates them the type of returns that they are looking for.

And I can tell you our European counterparts are very, very smart people and they are very good and they have seen what we have done in American, and I firmly believe that they are upgrading and will continue to upgrade their systems, and they will become much more transparent and get more familiar and more similar to what we do such that at the end of the day, their product could very well equal ours. And we need to keep moving ahead and find the type of reporting, the type of system that keeps our produce number one.

Having run a large international business, I know the one thing you can rest assured of is that if you don't have the top product out there, then you are not going to be the number one attraction for money, and certainly, we have no stranglehold on intelligence and ability to do this, and I

think we will see our counterparts around the world get much better. So we need to make sure that as we develop this system going forward, it does generate the quality that we turn around and need.

As far as we move forward then with respect to the international standards, I would turn around and tell you that we need to keep in mind that the IASC has done a phenomenal job and move forward, but there is still large holes in that project. Both the U.S. commentors on the concept release, as well as IOSCO, have come out and said there is major improvements still needed in those standards to be used in these markets, and I firmly believe that is true.

They lack much of the industry guidance that we have in the United States and they still lack much of the guidance in a number of the areas; although, the steps they have taken in the last 10 years have been phenomenal and I am tremendously encouraged by the initial agenda that David Tweedie has come up with to try to move it forward.

And when it comes to comparing, then, those standards with whatever else we might use, I would add in one additional thing. As Chairman Pitt said last night, he is a firm believer in the private standard setting process. I also strongly believe that. I think we ought to leave this issue of the reconciliation up to Ed Jenkins, up to David

Tweedie, and let those people work out the differences to where at the end of the day, we do get a single set of high quality standards, or something that is similar, that can be used in all the capital markets.

This is not a place for the standard setters to get involved just to achieve short-term convergence. In fact, what should happen is I think we should let David and Ed take their time, go through a process that allows public input, well-reasoned solutions and standards, and I have no doubt that over a time, that they will in fact, through the private standard-setting process, rather than regulation, turn around and eliminate most of the reconciling items.

Let me just briefly touch on a couple of other issues. One of the issue of training. People say, "Well, let's go to IASC standards." Quite frankly, that would be like in the United States saying, "Let's take everyone off of U.S. GAAP today and go to IASC standards." As you see in the thing, very, very, very few people use IASC standards, and I give John Mogg tremendous kudos for trying to come up with more consistent, comparable reporting in Europe and moving towards IASC standards in that regard.

But that is a mammoth project. That is taking thousands and thousands of companies off their home country standards and moving them to IASC where people don't even understand or know IASC standards. If you were to go in the

United States to the average accountant here, you could probably find 101 out of 100 accountants who couldn't tell you much about IASC standards. And so we have to go through that training. And how do we do that? That is a tough issue.

All the Big 5 firms are certainly struggling with it moving more resources into it, which they should be commended for, but that is not something that happens overnight, and if you don't know the standard, it is very tough to implement it or apply it, which takes you into the issue of auditing. We definitely need to take a look at the whole auditing scheme.

There is a vast difference of quality in terms of the quality control standards that we have here in the U.S. versus what is there internationally. The major accounting firms have and are working on that, but they have got a long ways to go. There needs to be much more public interest and oversight brought into that role than what currently exists.

In the latest annual report of the SEC, we talk about that and we talk about it is important, as we did with the International Accounting Standards Board, that it is the public interest that oversees that. It is the public interest that appoints those people so we don't end up with the fox guarding the hen house, so to speak. And I think if

we can get that high quality auditing and we can get those high quality standards, then we will get there close, but it leaves us with one last piece of the puzzle that we don't have today, and that is a regulatory scheme.

The Commission is about the only regulator worldwide that has the enforcement mechanisms and the statutory endorsement authority and responsibility to ensure that the standards and transparency actually do occur. As David Carne has noted and it is noted in the paper, surveys time and time again show that people in Europe are not following the standards, and it is not just Europe, it is elsewhere.

In fact, one of the major standard setters in Europe came to me a couple of years ago and requested that we at the SEC ask if we would enforce their standards because, and this is a country that is probably one of the five largest economies in the world, because there was no enforcement mechanism in that country to enforce those standards, and if we didn't enforce those standards at the Commission, there would be no enforcement and they felt that their standards would, in essence, never gain hold and gain credibility.

So you need to get those type of enforcement mechanisms in place. They don't exist today, for the most part, and those are not easy things to put in place because

the governments have to be willing to make those type of changes, and that is a tough road to hoe, not only for the Commissions, but for example, the auditing profession.

I think one of the greatest difficulties that face the auditing profession is getting some of the regulators and some of the governments around the world to the table to make the changes in the laws that are necessary that will actually assist the auditing profession and the accounting profession in doing what they think is the right thing.

And so with that in mind, I will cut her off and --

MR. LEVENSON: Lynn, thank you.

I would like to switch now to the European Commission view of these subject matters, and we are very pleased that John Mogg is with us for this purpose. John?

MR. MOGG: Thank you very much. I was very encouraged when I woke up at 4:00 this morning, as one does here in Washington, to hear on public radio the words, and I quote literally because I jotted them down, "This is Washington, where things don't have to make sense to add up."

(Laughter.)

MR. MOGG: I want to be the person who gives full demonstration to the fact in my answers to the four questions that I think are said, including one from the opening remarks, from the Chairman and from others, about our position.

We proposed the use of IAS, as being said in the, I think, quite bold and dramatic gesture that really gives true force to our commitment to IAS, that all EU listed companies would -- must adopt them by 2005. Indeed, even before there can be that adoption and indeed, for non-listed companies, some of our member countries can choose to apply those standards. I think that is putting our money where our mouth is, the demonstration of our commitment to this process.

We are confident that the proposal, the regulation that we propose will reach agreement very soon, I hope in the next few months, and on that basis, we will be incorporating IAS into our legislative framework. Interestingly, it is incorporating into our legislative framework.

IASB's at least short-term aim is to create convergence by publishing best of breed standards and by encouraging national standard setters to adopt consistent national standards. In Europe, our accounting requirements are encapsulated in law, and when I come to answer the negative comment, you will perhaps understand why that is a very important point.

That law is supplemented in varying degrees in the member states, the 15 member states, and as you will have seen from the comments in the press over the last 48 hours, soon to be enlarged by anything up to 10 more countries by

2004. This supplementing is by additional national accounting standards.

Convergence through the amendment, therefore, of 15 sets of national law and 15 sets of national standards, is hardly the most efficient or speedy approach. And instead, we shall apply directly IAS. And to achieve that, we have to incorporate the standards into our legislation.

Now automatic incorporation of existing IAS standards would fail a very strong case, which I think here in the U.S. is well understood. Assess the due political process. It is difficult to envisage for existing, let alone for future standards, that 15 governments could accept the automatic imposition of standards from an independent body however wonderful they were.

And that in part is the answer to the creation of an endorsement mechanism. Now before I go on, I want to say a word or two about the nature of the endorsement mechanism but also the fact, the endorsement mechanism comes at the end of our process.

I have said many times before that it is a failure if we have problems in the endorsement mechanism. This is not a process to create a standard. It is not a process that happens in the twinkling of an eye with much nodding and consent around the table. It is a process that will take, even with David Tweedie's enthusiasm and commitment, will

take many months and years to agree.

And it is, therefore, of fundamental importance that the union, that our representatives from the member states, from the industry make very clear where there are difficulties. And certainly for the Commission's side, the European Commission side, we shall do this in the hope that, and I would dare to say the expectation, that these will be resolved before we hit the endorsement mechanism.

But having an endorsement mechanism when you are incorporating standards into legislation is, I think, a self-evident political necessity. Now what is the endorsement mechanism. It is to allow us to scrutinize standards to ensure that they do meet the public interest, the political concerns. What it is not is a mechanism to create a European version of IAS. Why should the Union, why should the Commission embark upon this noble task of achieving, by 2005, the use of such standards.

If we then, at the same time, start trying to recreate those standards in the process, why should we, in our commitment to open markets, to capital raising on a global basis, try to strangle once again that process by having inconsistent standards within the world. It makes no sense. And certainly in my own analysis, it makes no political sense to do such as that.

So we are not trying to create the European version

of the IAS. It is not our intention to cherry pick. It is not our intention to modify standards by a word or two, or indeed by a sentence or two or a page or two, it is to stay with the standards, and we don't see any difficulties, given the anticipatory process that will be there to achieve this. In short, our endorsement mechanism fulfills both a political and a legal necessity.

We think that it will allow us to consider whether special circumstances mean that a particular IAS is just not appropriate for use in Europe, but that shouldn't come as news. That will be made clear very early on.

In practice, our direct application of endorsed IAS standards will ensure that convergence with IAS is actually quicker and certainly more easily understood by capital markets and with perhaps a distant, but nevertheless IASB goal of global uniformity in mind: a single set of high quality standards for all. We hope one day that the U.S. will be able to feel the same confidence in these standards and make them genuinely global.

There is also a concern abroad, in the English sense of that expression, concern abroad that in some way the Union will dominate the IASB process. I have to say personally in the run-up to the agreement, we were very concerned precisely about the opposite. We know and recognize that IASC is geographically balanced, that the IASB

has been built of independent and remarkably well-qualified professionals, and certainly it is unlikely, knowing the people like David himself, David Tweedie, of course, that he is going to pander to particular interests. That will be an interesting day.

Europe will also engage in the standard setting process primarily through the European financial reporting advisory group, which is already fully operational, and we will express through that group our views, and encourage our member states, of our preparers, users, auditors to do likewise.

We hope that our mutual support, that is, not only the Union but also the U.S., will allow the IASB to have the courage to tackle the difficult issues, which sometimes national standard setters have had to set aside. Do we think the IASB will result in convergence? The answer to that question is simple. It will if we want it to.

Second question. How can we ensure consistent interpretation of IAS, indeed, probably of any standard by regulators. I think the SEC has developed, I think understandably, very long arms in trying to protect U.S. investors. The regulation of multinational companies and their auditors across legal jurisdictions is certainly not becoming any easier.

And I have to say I think there have been justified

criticism of the application of IAS. But I think it will not be too long before those are remedied and before -- and by -- as we see, IAS being dragged into the limelight and with it the companies, the directors, the auditors, the regulators associated with financial standards -- which purport to be in compliance.

I avoid complacency above costs. It is not an easy task to achieve, but I think the plans to expand active regulatory oversight, the fifth tenant of the global financial reporting infrastructure, will certainly create new challenges for regulators, and the implementation will require close cooperation.

I don't think we have to have the same systems everywhere. Those many distinguished panelists that are associated with the SEC may find it understandable -- less understandable that perhaps we don't have to imitate the SEC in exactly the same manner to achieve the same fine achievements in each and every jurisdiction.

What is important is that we achieve the highest possible efficiency and the greatest possible level of convergence. On transparency, we just have to learn to live and have confidence in the view that different approaches will deliver the same high levels, and we are, ourselves, and the Commission, working hard to install regulatory oversight within our member states, which are

variable quality. I feel a slight nervousness as I see at least two of my European colleagues, Georg Wittich and Michel Prada sitting there. So if they disagree, they are very likely to scream at me during the course of the few remaining moments I have.

That is why we continue to work with the Committee of European Securities regulators, which Georg Wittich was the notable chairman in his days at FESCO, we shall work through them to encourage best practice and the application of extremely high minimum standards. Globally cooperation between our securities regulators, between IOSCO and the wealth of experience that have been gained by national regulators, including, of course, the SEC, Consolv in Italy, the FSA in London will, I think, ensure common results, not necessarily common approaches. But that is something in Europe that we are very comfortable with.

The third question. Audit. I will not be of such length at audit. But it is clear that without audit, and I think Lynn made this point very clearly, that audit is the first line of defense against inadvertent or mischievous misrepresentation and financial results. It is the auditors that know the company, know the tricks, know the people and have the clearest mandate to investigate and resolve any concerns they have.

That high importance of quality audit, the

consistency, the consistently high level assurance cannot be overstated, and that importance is reflected in the EU initiatives in the areas of quality assurance, auditor independence and auditing standards.

Perhaps I could mention just one. In very recent, November 2000, we adopted a recommendation on quality assurance for statutory audit in the European Union, which establishes a comprehensive set of high minimum requirements, particularly devised by considering international and U.S. capital market requirements.

In all member states, we have a system of peer review or monitoring under the control of some public oversight board. Many are in a rudimentary -- or some, at least, are in a rudimentary form, and we are looking at these to see where there are unsatisfactory elements and where we may need, if necessary, to take further action if they cannot be satisfactorily resolved.

We have, therefore, to build on the systems, to build on the auditing quality in order to deliver the strength of the new arrangements. And perhaps we may, but -- and I say this on a very personal basis, now sounding like Lynn's former SEC warning, we may think of some sort of auditing, international auditing body, comparable to the IASC in relation to audit control.

My fourth and final question is will the auditor

independence standards worldwide be of sufficient quality and sufficiently enforced. I believe it answers itself. An audit that isn't independent isn't an audit. And I think it is of no use to capital markets, as a level of assurance, unless it is a satisfactory high quality audit.

Within the Union, we are very near to the point of finalizing the recommendation, the recommendation on auditor independence. I hope it will be out in the next few weeks. We have consulted the SEC on this and of course our member states. And whilst the result is not complete conformity, with the views from the SEC, I think in practice we have a great deal in common.

More widely, the time when every jurisdiction in every geographical location achieves such a lofty goal perhaps is a little way ahead. That is irony when I say a little way ahead. As we are transforming our own or seeking to transform our own capital markets, I conclude really, by underlining the centrality of this, and I think one member of the panel has already mentioned the efforts that we are making, very necessary efforts within the Union, to achieve high levels of comparability within our markets as our capital markets integrates still more and in an effort to ensure that we can enlarge our scope into other market, into other global markets.

So I would thank the panelists for the opportunity

given to me to ask the questions. Thanks also for the opportunity to be able to answer the criticisms in one of the papers with regard to the endorsement mechanism gently, gently posed, but I have to say as somebody who has been around now far too long in the Union, without an endorsement mechanism, there would not be IAS in the Union. It is of that significance. Thank you.

MR. LEVENSON: John, thank you very much for those observations.

At this point, I want to shift back across the Atlantic to the FASB and setting of accounting principles in this country. And we are very pleased that we have Ed Jenkins to share his views with us. Ed?

MR. JENKINS: Thank you very much, Alan, and good morning to all of you. I think the two papers that David and Lynn prepared for this conference give us all an excellent review of what has transpired over the last several years that has led to the creation of the new IASB out of the shell of the old IASC.

And of course the papers also do an excellent job of highlighting the challenges and the important issues that are essential to the success of establishing a global standard setting environment. High quality auditing standards, auditor independence, and sufficient interpretation, application and enforcement of standards

certainly must all be in place for global financial reporting to be effective, and I think each of the previous commentators have made that point as well.

But today I would like to limit my remarks to the importance of an independent global standard setter for financial reporting and the development of those high quality reporting standards. I believe that the agreement that happened about 18 months ago to restructure the IASC into the IASB was a historical and a seminal event in the history of the accounting profession and that this restructuring does, in fact, provide a foundation for the development of global financial reporting standards in an independent and objective manner with a full and open due process.

Now this restructuring is consistent with the long-held views of both the FASB and the financial accounting foundation, as we expressed in our report issued in 1999 called International Accounting Standards, A Vision For The Future. It is this purple document that you see here. It is also available on your website if some of you are having trouble sleeping some night.

But we said in that booklet that the establishment of a fully independent international accounting standard setter was key and that convergence among national and international standards and a common conceptual framework for

the development of those standards was essential. Now that we have those things in place, proceeding to develop these high quality standards is our mutual goal.

As Chairman Pitt said last night and others have said today, we do have a global capital market system today and we do need one set of high quality financial reporting standards to serve that global capital market system.

I think this is as simple as the fact that it is going to be driven by demand. Both companies and investors deserve to have to deal with only one set of high quality standards, rather than multiple sets, as they go about their business. Companies are increasingly seeking capital and acquisitions outside of their home country and investors are seeking diversification and higher returns by doing the same thing. And there certainly is a clear connection between efficient and effective capital markets and high quality financial reporting standards.

Thus, we, at the FASB, are strongly supporting the implementation of the new structure and we are going to make every effort to see that David s new board is a success.

In our vision for the future paper, we discussed and identified the functions and characteristics that we thought were essential for a high-quality financial reporting standard center. There were eight essential functions, and I am not going to describe them in detail because they are in

the outline, which is available to you, but they include such things as being a leader, being innovative, being responsive to the needs of the capital market, being objective, achieving acceptability and credibility and having accountability as well.

In order to carry out those functions, we believe that a high quality standard board must have five essential characteristics. The first of those is to be independent. We must have an independent decision-making body, one that primarily supports the function of objectivity and standard setting, which means serving the public interest, rather than serving the objectives of the private interest groups.

The independence of the standard setting body might be characterized in some of the following ways. Is there a balance representation of interest with decision-making authority such that no particular interest has the power to overrule that of another?

The foremost role and responsibility of representatives on the decision-making body is that of a standard setter that would serve the public interest. And members of that decision-making body should vote as individuals, rather than of spokespersons elected to express the views of any particular private interest group.

Does the decision-making body have the full authority to set standards. I think this is one of the

critical characteristics that a standard setter must have. That is, is it independent from other decision-making bodies. Does it have the power to innovate and where its decisions are not subject to the approval of another body that could veto decisions based on self-interested political or public policy objectives.

And this is where I have some concern with the European Union proposal because one of the oversight activities suggested in that proposal is to consider the public policy concerns that might be evident from a standard developed by the IASB.

Now here in the United States, we have oversight by the SEC and we have oversight by Congress, but that oversight is really limited to a concern about making sure that our open due process is adequate. Are we listening carefully to constituents and taking constituents' views in mind as we reach final conclusions? Are we addressing the right issues? But normally delving into the technical activities and decisions that are made by the FASB is not a role assumed by either the SEC or Congress in our environment.

We believe that providing the best transparent financial information is useful to those who set public policy because it provides them with accurate information, but to develop standards that would influence public policy would obfuscate the very type of information that is needed

to make the best public policy. So I believe that the success of the IASB is very important, and we all need to be careful as to how we apply our oversight of that new body.

A second characteristic, is there adequate due process. The nature and extent of due process is perhaps the most efficient device for providing the opportunity to achieve the important functions of innovation, relevance, responsiveness, objectivity, acceptability, and credibility, understandability and accountability. All of these things can arise if we have adequate due process.

This is the way the decision-making body interrelates with parties that are external to it in whose interest it serves. That is the way to ensure that standards are not set in a vacuum by decision-makers that are insulated from the public interest. And once again, this is where I think that all overseers of the process should focus.

Does the board have adequate staff. As all of us have found that are in the standard setting business, it is necessary to have a core group of highly qualified individuals whose time is devoted fully to the standard setting process and to supporting the needs of the decision-making body.

Fourth is the fund-raising independent from the technical body. Separation of fund-raising from recommendations and voting responsibilities help preserve the

independence and objectivity of the decision-making body. And that is why one of the roles that David Ruder has as a trustee of the International Foundation, is fund-raising. And that is why it is not one of David Tweedie's responsibilities.

And finally, is there independent oversight. This oversight helps to ensure that the standard setter maintains its credibility, responsiveness and so on. And that role is carried out by the International Foundation. It is necessary that that group make sure, as far as possible, that changes are made as necessary to assure that the objectivity and independence of the board is maintained.

Now I believe that the new organizational structure of the IASB, including its trustees, its advisory council, the required due process procedures and the independence and technical quality of the board and staff can easily assure that the essential functions and characteristics of a high quality standard setter will be met by the new IASB.

And now that it is established and functioning, we must achieve observable progress towards this convergence goal. It is key to the early success of the IASB, and we at the FASB, along with other national standard setters and the IASB, have developed already detailed procedures and protocols as to how we might work in partnership on joint projects and in other ways to achieve convergence.

And for projects that are not carried out jointly with the IASB, national standard setters will monitor and otherwise contribute to the process. And national standard setters have all agreed that we will consider convergence opportunities as we establish new projects on our own agenda.

The FASB and the U.K.'s accounting standards board have each agreed to undertake a joint project with the IASB and work is underway on each of those projects. In our project, for example, we will lead one portion of the project and the IASB will lead another portion of the project. In the U.K. project, it has been determined that the IASB will lead that project with the assistance of the U.K. board, and we all will participate as we develop the standards going forward.

There has been a lot of comment about reconciliation between U.S. and IASB standards. Both David's and Lynn's papers referred to the SEC's concept release that explored this issue. Our conclusion is that the reconciliation should continue. The existing IASC standards, the standards that are in place now before the IASB issues any of its new standards, in our judgment are not complete.

They contain too many alternatives. They are subject to wide interpretation in their application, as has been suggested already here, they don't provide for sufficient disclosures, and they are significantly different.

And this is the important point. They are sufficiently different from U.S. standards that a significant lack of comparability would exist between IASC and U.S. standards.

This morning, in the earlier panel, both David Brown and Linda Quinn talked about convergence of requirements for disclosures and that they needed to be the same, both for international filers and domestic filers. The same needs to be true with respect to convergence and with respect to the reconciliation issue.

And here is one of the few times that I think I would part ways with David Ruder in his comment on perhaps the auditing and independence standards don't need to converge quite as neatly as we need to have high quality on converged accounting standards. I think two points. One is the point that John Mogg made. Without high quality auditing standards and independence, then perhaps we don't have high quality international standards, at least in practice.

And the second point is to keep the pressure on. If we don't keep the pressure on achieving convergence with respect to high quality accounting standards, auditing standards, and independence through requirements for reconciliation or compliance, then we will never achieve that goal.

So we support the idea of global standard setting for these high quality standards and we conclude that the

restructuring, indeed, can lead to that happening. But right now, today, the current international standards do not meet the tests of high quality and comparability and thus, the reconciliation should continue.

The ultimate question for those of us in the United States, at least, is will we have a level playing field, a level playing field between those who access our markets from outside and U.S. companies. And will investors, U.S. investors, have the transparency of information they need to help keep our market sufficient.

Well, let me conclude at this point. We at the FASB, as I said, fully support the new IASB and we will work towards making it the global standard setter with the ultimate goal of one set of high quality financial reporting standards. The demand. The demand for these reporting standards to support our global capital markets will drive that answer. Thank you.

MR. LEVENSON: Ed, thank you for your insights.

Everybody seems to be focusing on the International Accounting Standards Board. And for that purpose, we are very pleased to turn our program over to David. David?

SIR DAVID: Thank you, Alan. Could I first of all say what a great pleasure it is to be back out here in the colonies to continue the missionary work.

What I want to do, first of all, is to talk about

the British move towards global standards, and I appreciate that is fairly remote for some of you, but coming from Scotland, I am used to that. When I was with KPMG, I remember taking one of my London partners up to the Hebrides Islands off the west coast of Scotland for an investigation, and being a London partner, he wanted to keep up-to-date and went into the news agent and asked for a copy of The Financial Times and was rather taken aback when the old lady behind the counter said to him, "Will you be wanting today's or yesterday's?" But coming from London, of course, he had to keep up-to-date and wanted today's. "Well," she said, "you will have to come back tomorrow."

(Laughter.)

SIR DAVID: Well, 10 years ago when I became chairman of the U.K.'s Accounting Standards Board, we had major problems. British profits were high. That would have been great if it was the economics, but sadly, it was the accounting. We had accounting policies that were quite different from those in the rest of the world. Goodwill, we wrote off to reserves; deferred tax, we provided what management thought they were going to pay, that was the world's best after-tax profit smoothing device; valuations, we revalued when we felt like it, but didn't bother if they went down; acquisition provisions we just provided whatever liked.

So we had a real problem. We were quite remote from some of the things that were going on elsewhere. And we were given very precise instructions, when this new board was set up in 1990, that we were to have to get consistent British standards and have them in line with international practice.

And what we did was one of the reasons I think that convergence is on the cards -- we adopted the U.S. conceptual framework. It had been developed and is now used in many countries, including the IASB. Now basically when we did that, we really had to look at what was going on. My partners in KPMG wouldn't have recognized a conceptual framework if they had fallen over one, and I gather many of you here are lawyers, and I often thought if you have half a mind to be a lawyer, you are overequipped. So I thought I would show you a picture of a conceptual framework. There you are. One thing built on top of the other.

And what we had in accounting in 1990, of course, was something more like that. Those of you who know London recognize the headquarters of the English Institute of Accountants or rather the Institute of Chartered Accountants of England and Wales. I keep forgetting the Welsh, but then so do they.

One of their council members was heading for Wales on the motorway and was stopped for speeding and apologized

after being given a warning by the policeman. He said he was very sorry. Because he was going to Wales, he was distracted. He hated Wales, hated the Welsh. Everyone he met in Wales he said was either a prostitute or a rugby football player. "Oh, well, that is interesting" said the policeman, bringing his notebook out again, "My wife is Welsh."

"Really," he said, "What position does she play?

(Laughter.)

SIR DAVID: Well, this conceptual framework really is the foundations, if you like, of international accounting because it gave us the ideas. The objectives, when I was taught, was stewardship. Now it is information for decision-making as well. It defined what is an asset, the right to a stream of benefits; what is a liability -- an obligation. When do we recognize them? When we can measure them reliably? So it really gave us a focus for our new standards.

And that is where we started developing the U.K. standards. We pretty well had to look at the particular problems. We had all these abuses going on, but when we looked down at it, we found really there was only two major problems at British accounting and that was the income statement and the balance sheet.

(Laughter.)

SIR DAVID: And we started with the income

statement. And the real problem with that was the focus on the bottom line. And I, as a Scotsman, have always likened the bottom line to a haggis. If you knew what was in it, you wouldn't touch it with a barge pole. And we used the American standards to break up that. We introduced continuing income, discontinued income, and tried to focus people on different components. We also brought the MD&A into the United Kingdom -- and that, I think, is going to be more and more important in financial reporting -- and we aligned the cash flow pretty closely with the income statement.

So these are the things that we were actually borrowing from elsewhere. The balance sheet, in 1990, in the U.K., was a bit of an optional extra. There was so many assets and liabilities missed off the balance sheet, it was hardly worthwhile showing what was left. And we used the conceptual framework to define when an asset was really there and when an obligation actually existed.

Similarly, debt and equity. British companies didn't know the difference. Convertible debt was presumed to be bound to be converted so we showed it as a deferred equity on the grounds that the stock market never falls, and we asked them to use what we called “duck accounting.” If it looks like a duck, waddles like a duck and quacks, it is a duck. And if you pay interest on it and it can make you belly up, then it is a debt.

But these are the sort of things that were out there at that time. And we spent our first three or four years stamping these things out, but mainly borrowing from the United States standards. And then we started getting into other areas. We found we had common problems on provisioning and we started discussion with the FASB. The Canadians joined in and the Aussies and we started working on common issues. And suddenly we started meeting three or four times a year. This was the beginning of a group called the G-4 plus one. The New Zealanders eventually joined us, but as a former auditor, we didn't think the difference was material. So we kept the number G-4 plus one.

(Laughter.)

SIR DAVID: And we gradually started getting into some of the seminal issues right at the heart of accounting, right at the leading edge. Leasing. We have all got leasing standards that perfectly converge and none of them work. These are areas we looked at. There is going to be different types of standards, financial instruments, stock options, and so on.

So these are all areas we started discussing, and if we would be blunt, and Scots are usually renowned for that -- there was an obituary note that appeared in our national newspaper, which is surprisingly called The Scotsman. An old farmer's widow from

Fife County north of Edinburgh, sent in this note. It shook the little girl that took it, and it was pretty stark. It just said, "Smith Highfield farm Kirkcaldy. Jimmy's dead."

And the girl said, "Well, for the minimum payment, you have another three or four words. Would you like to say, “Until we meet again” or “dearly beloved husband" -- so the old lady thought for a minute and back it came, "Smith Highfield farm Kirkcaldy. Jimmy's dead. Tractor for sale."

(Laughter.)

The blunt fact was that the G-4 was going to be the international standard setter unless IASC changed itself. And I think IASC was quite aware that that was going to happen. The IASC itself had been doing various things. It tried to eliminate many of the alternatives that were in the standards, it set up with IOSCO, as you have already been told, the agreement to try and get the core standards. It didn't quite make it, but it became clear that if it had of made it, then perhaps these standards would have been used by many companies to come on to the New York Stock Exchange.

They restructured, which David and Lynn talked about at some length. The EU gave us the 2005 incentive that countries within the Union would revise the consolidated accounts. The 7,000 listed companies based on these standards by 2005. So all these things built up to make the international standard setting body that much more important.

As everybody said, the aim is very simple. We really want to have one set of high quality global standards, so that it doesn't matter whether a transaction takes place in Singapore, Seattle, Strasbourg, or Sydney, we are actually going to count for it the same way.

Where did it come from? Well, first of all, it was the multinationals complaining that they had all these subsidiaries scattered worldwide. They had to have different accounting rules that they had to bring together for their consolidation. But it was the Asian crisis that really woke everyone to the need for international standards because suddenly companies went bankrupt in Asia and yet their accounts looked all right. And investment was withdrawn from other companies that were perhaps perfectly sound, but people wouldn't take the risk. If any company did get cash, then it was at penal rates because of the risk premiums. So growth and investment just stopped.

So suddenly accounting became very important and how were these countries going to recover from the position they were in. They had to clean up their standards. Well, it took us five, six years in the U.K. They hadn’t got that that sort of time. They had to look around and decide they had to accept an internationally accepted set of standards. Two candidates: U.S. GAAP or international standards.

Here, I think, as a non-American, I should say that we have to hand it to the Americans for the

clear international view. This was a situation where you could have played hardball and gone for U.S. GAAP. And three members on this table: David Ruder, Lynn Turner, Ed Jenkins have a lot to do with the actual outcome of what happened. They realized, before many others, that seven Americans, no matter how well qualified, sitting in Connecticut could not set the standards for the rest of the world. If I could borrow a phrase from your own history. No accounting without representation.

And basically, that is where it came from. So it really was a U.S. push to make this happen, and the fact is we were trying to just get our standards closer together. There are problems. The rest of the world tends to use more Judgment in standards; in the U.S., you tend to have more rules.

Now the rest of the world doesn't want to go that way. So how far can we go down the road of principle-based standards? We will have to write them down fairly skillfully because we don't want wide open interpretations. On the other hand, we do want professional to be used where it matters. We can write “80 percent standards” (dealing with 80% of the problem) in about 50 pages. If you want 95 percent standards, they are going to be well over 200 pages long.

And that is the issue that is ahead of us. The signs aren't good. And if you noticed, the Lord's Prayer has 57 words, the Ten Commandments 297, the American Declaration of Independence -- big mistake that was -- 300, and the

European Community's directive on the import of caramel products 26,911.

(Laughter.)

SIR DAVID: We have the problem of the acceptance of standards. John has talked about the endorsement mechanism for the -- with the European Union. That is going to be critical to us. If I have to give advice -- and I am always wary of giving advice.

When I moved into my home near Edinburgh, I was confronted with a rather large plant in the front garden, which I thought was overgrown parsley, but the neighbors who didn't like the lifestyle of the previous occupant thought it was cannabis. So I took the advice from a horticulturist. He didn't know what it was either, but he gave me advice I have never forgot. He said, "Look, if you are worried about this plant," he said, "pick it, dry it and then smoke it, and if you are still worried about it, then it is parsley."

(Laughter.)

SIR DAVID: I think the advice I would like to give the Union is, and as John has said, get in early. The beginning of the debate matters, not at the end when say you don't like the result, and the mechanism is set up for contact. There are things that politicians could do to upset the move to globalization -- I probably shouldn't say these things in Washington, but politicians always like to get their fingers in and there are phrases in the EU law that worry me

such as an international standard can be rejected if it "is not conducive to the European good."

I don't know what that means. Does it mean if the the standard reduces transparency or if it damages investor protection? I could understand that, but "conducive to the European good" is an all encompassing phrase. And I know John wants to keep the politicians out of it, but there is a phrase that can get them into it.

The SEC, too, is it going to judge our standards? We are going to go for what we call "the best of breed," but what happens if that is a different view in the U.S.? What if the international standard is better? Do we have to reconcile downwards to some inferior American standard? And that is an issue that really has to be asked. Are we going to have to do that? Perhaps the U.S. should actually reconcile upwards to a better quality standard. But these are things that clearly are going to have to be discussed.

Auditing standards are very critical. We had very bad auditing standards in the U.K. in the early nineties. I used to compare an auditor to an airport luggage trolley. The only difference being that the airport luggage trolley had an independent mind of its own.

And of course enforcement. IOSCO. We need their help. If we have good accounting standards, they will be ineffective if we have bad

auditing because you won't rely on the accounts. The auditors, however, need to be backed by enforcement. There is no use having qualified audit reports. We want to actually find out what the results really were and force people to produce them. So that is very critical.

The national standard setter is a key player. As Ed has mentioned, this is a partnership. We want dialogue backwards and forwards and the agendas to be aligned. National issues can be addressed by the national standard setter. We can't force them to take our positions. We hope that if they disagree, they will come in line, provided all the other standard setters agree with us. And after three or four years if we don't have a good standard, then we will bring it back on the agenda again. But these are things that we have still to discuss.

The agenda. We have taken the points that have been made. A new improvements project is underway. The IOSCO criticisms, the criticisms by the SEC, by the European Union, and other standard setters all being addressed. We are trying to get rid of other alternatives. It is quite likely LIFO is going to go internationally. That will be interesting for you over here, but that is the sort of thing that has happened. We are looking at that.

Borrowing costs. Should we capitalize them? All these items are being discussed. Twelve standards are going

to be amended and hopefully by the end of 2002, to enable those European companies to produce comparatives for 2005.

Differences. We will look at the differences very quickly. These are key issues. This is where the harmonization really counts. Just to look at some of the issues there, business combinations – a major change in the U.S. in the last few months. That has helped us enormously because the U.S. was the outlier. Fifty percent of your business combinations or more were poolings - one percent in the U.K. I think it is very likely that the IASB will adopt the U.S. approach and ban poolings.

I also think we will also take up the impairment test for good will. I find that very interesting because the U.S. actually opposed impairment testing when it was first introduced by the U.K. and later became the international standard. In fact, I remember a senior member of the SEC (nobody here) getting quite upset about it and saying it was outrageous that the U.S. had solved this problem 30 years ago and the answer was to write off good will and brands over 40 years.

As I pointed out to the gentleman, we have brands in the United Kingdom, such as Gordon's Gin and Johnnie Walker. They are actually older than the United States, and in my humble opinion, have done more for the sum of human happiness than the United States, and personally I would

write off America before Johnnie Walker.

(Laughter.)

SIR DAVID: Income taxes. A standard that was written at the FASB Christmas party and published before they sobered up. We will have to look at that one. Pension costs, in conceptual issues such as revenue recognition, and how we define debts will all be considered.

Leadership issues - financial instruments - we all have flawed standards. Leasing, performance reporting - how do we deal with volatility if we mark to market are other issues. Stock base payments is another –the proposed FASB standard went down like a rat sandwich across here especially with industry. But basically this is now a European issue. We have no standards on stock based payments. So companies are handing out options to advisors and employees and are recording nothing in between revenue in profits. So we have to handle this issue and decide whether such payments are an expense and what sort of value should be attributed to them.

This is sounding a wee bit like a sermon and I appreciate that sermons can go on for a long time. I remember being in the church listening to a minister banging on and the old lady in front of me turned to her neighbor and said, "Is the minister not finished yet?" And back came the answer, "Aye, he is finished, he just canna stop."

(Laughter.)

SIR DAVID: Well, let me assure you I can. This could still go wrong. We could be second guessed by the EU or the SEC. I think people are trying to help and the regulators are definitely trying to help. We are going to have international standards one way or the other. If this collapsed, then I reckon the G-4 would come back again and do it or FASB would internationalize. The markets want it, this is going to happen, but we do need good auditing and we do need good enforcement too. Thanks very much.

MR. LEVENSON: David, thank you so much for a substantive presentation spiced with a sense of humor.

We are now going to shift to views from the accounting profession. And I am very pleased to turn our panel over to Jim Turley. Jim?

MR. TURLEY: Thank you, Alan, and John Morrissey, in case you are worried, I promise to be brief and I have already told Alan that he owes us one for putting us at the end of a two hour plus set of panels and after a Scottish comedian.

(Laughter.)

MR. TURLEY: Nonetheless, it is a great pleasure to be here. This is a truly unbelievable panel and I mean this, what I am about to say, with great respect. There are people up here who have spent time committed to accounting and reporting since I was a little boy, and this is one of the

reasons, I think, that the capital markets are as strong as they are here in the United States. It is one of the reasons I have chosen this as a profession. So I mean that with great respect.

David and Lynn, I think, you know, we have all commented on some of the issues and the topics in your papers. I find that I agree with all and I am not going to rehash the points made. I think the focus around the quality of accounting reporting, the focus around the quality of auditing, the focus around foreign issuers registered here in the U.S. are precisely the write issues.

Some three weeks ago I flew to Moscow to chair what is called the Foreign Investment Advisory Council. It is a group of companies, big direct investors in Moscow and we get together twice a year, talk about issues that we believe are necessary for the Russian government to implement to become more attractive, more conducive to direct investment. Companies like ABB and Siemens and Deutsche Bank and Coca-Cola and on and on and on. And I have only been doing this for the last 18 months, 3 meetings, and the meetings have been going on for 7 « years.

And imagine my surprise and my pleasure when the first meeting I attended, international accounting standards was one of the key issues that these companies feel is necessary to attract direct investment into Russia. So this

isn't just an issue for developing countries -- for developed countries, it is an issue for developing countries clearly as well.

To show you how dumb I am, I flew back from Moscow to New York for literally a two hour meeting with a very important client of ours, turned right around and got back on the airplane and flew to Tokyo for a trip to Tokyo. And one of the things that occurred to me as I was sitting up here is both in Moscow and in Tokyo every company I talked to that was based there, and there were many, many companies, clients of ours and non-clients, was talking about registering here in the U.S. So we are clearly, clearly on the right issue.

I think what I would like to do is drill down a little bit into one of the issues that has been on everyone's agenda, really, and that is the quality of auditing around the world because the firms are doing a number of things. There is still obviously a long way to go, as many have said. There are things we are doing individually. There are things we are doing collectively, and I will comment briefly on both of those.

Individually, I will speak for our firm, but I know the others have similar initiatives going. Major efforts underway, major investments being made, continuing investment needed clearly around methodology, technology, knowledge tools and making sure that we have consistency in application

of each of these around the world.

We are making huge progress, as an industry, around this. I, for one, don't view methodology and technology as being frankly a source of sustained competitive advantage, one firm versus the other, but I do believe that the consistency and application around the world is a distinct advantage. And so the commercial realities of this are driving all of the firms to push there very, very quickly.

Another area that we are investing quite, quite heavily in is training in the whole learning environment around the world. Because of, you know, Internet capabilities and connectability, we have businesses that our firm has sponsored and owns that are in the learning space driving the programs and driving the tools and driving the technology from the U.S. around the world to really try to enhance the quality of the audits everywhere around the world.

One example of that is a process that is not electronic, but is instead face to face, that we call focused in coaching. It is a process of taking people from global teams here in this country, from the U.K. from developed economies in Europe, sending them to work with our teams on the ground in the lesser developed countries and making sure that the training is sticking and that there really is learning that is taking place. Major commitments around

that.

Probably the biggest commitment that we are making, and I think all the firms are making, is in the area of people. I can't tell you how many more people we have in expatriate roles all around the world today compared to just five years ago. It is probably three or four times as many people on the ground getting work done, advising the practices, reviewing the work, making sure the standards are up to speed.

But it is not just a one-way street. The flip side is the practices around the world are seconding people to the United States, to the U.K. to get their own training in working within a more developed environment, and similarly, clients are beginning to ask us if they could second some of their people into our practices in the more developed parts of the world from an accounting perspective because the clients, too, want to learn about accounting standards and audit processes.

And so there is a major commitment of our firm, and all the firms I am quite sure because I talk to my counterparts around the issue of people mobility. The good thing is this is happening at a time when our people are demanding this. Our people -- five, ten years ago it was an imposition, frankly, for us to find someone and say, "Would you please go work in Tokyo." But today with the mobility of

the workforce, more and more of our people wanted that opportunity and are actively seeking that out. So it really does match quite well with the desires of today's people.

Fourth in what we are doing today is ongoing, robust global audit quality reviews. Making sure that we send our own people to get on the ground and review entire practices. That is separate from the focus team coaching, which is specifically helping a team move forward. These are actual reviews that take place on a triennial basis around the world.

So those are things that we are doing individually, the other firms also are doing individually. What I am very happy to say is that we are also starting to do things collectively. I was talking before this session with both John and Lynn Turner about how, as recently as a year ago, you couldn't get the five leaders of the Big 5 together in a room because, you know, there would be anti-aircraft fire and everything else going off. There were real problems in the group.

Today we are working together to support, to commit to international accounting standards and to global audit enhancements we are all talking about. We all got together, for example, when we were in Davos last year at the World Economic Forum, which I understand will be in New York this time. So sorry. It is moving over this way a little bit.

But anyhow, we had a great visit with members of our global steering committee and committed ourselves to support IFAC, to support some of the things that the IAPC is doing, to support the global POB as an oversight body, to support global peer reviews, and to move forward with some of the initiatives that from an industry perspective, will, I think, go a long way towards furthering what we are each trying to do individually.

And, you know, as I have talked even with Alan when we met at the POB here in the States, it is a great testimony to the power of the rest of the people on this panel that even when the Big 5 were splintered, you were able to help us get back together, and I think we are all moving in the same direction, and I am very, very pleased with that.

One of the things that I will close with, and then John, I will turn it to you. I think there is an overriding issue here that, as the Big 5 have gotten together, we talk about a lot. We see this as a three-legged stool. We have to have strong, robust, international accounting standards. We spent a lot of time talking of that today.

Secondly, I think there has to be strong corporate governance in all parts of the world. We really haven't spent much time talking about that. And the third leg is strong, consistent, global audit quality. And I think those three legs of the stool stand together. If one of them is

not there, the stool is going to fall over. And we can't, we believe, as a profession, do it alone. We can't totally, by ourselves, drive audit quality without everything that is happening with the IASB, without great progress on the governance front as well.

And so we have taken it upon ourselves to go to other constituent parties to get the World Bank, to get the SEC, to get IOSCO, to get to -- I went over to Bazel, Switzerland and visited with Andrew Crockett from the financial stability forum to make sure that we are all together viewing the key initiatives that have to take place to ensure the kind of robust, high quality capital markets that we are all after. And so I am pleased to say we are together, and I think we will stay together and make sure this comes alive.

Thanks, Alan.

MR. LEVENSON: Jim, thank you, and also for emphasizing the governance aspect and tone at the top because that will be the key, whether it is standards or the development and furtherance of our capital markets.

At this point I am very pleased to turn our panel over to John Morrissey for his views. I might say, and let me make the disclaimer on his behalf, as you all know, as a matter of policy, the SEC disclaims everything. So therefore, the views that you are going to hear are his

individual views.

John?

MR. MORRISSEY: Alan, thank you very much, and I appreciate the disclaimer on my behalf. It saves me doing it, and I know you are all tired of hearing it from the staff.

I would like to discuss some developments in international accounting and auditing today and provide some of the views and insights and current thinking of the staff about the use of international accounting standards by foreign private issuers.

More than ever, recent events have clearly demonstrated how interconnected we all are and how the world has changed. The countries and capital markets of the world are increasingly interdependent. A shock in one area may affect others. Investors have shown increasing interest in cross border investment opportunities, and indeed, technology is making borders disappear.

We have seen dramatic changes in both domestic and foreign markets. Consider the following points that we heard yesterday. U.S. holdings of foreign securities now stand at approximately 2.5 trillion, up seven-fold from 1990, and foreign holdings of U.S. securities are now approximately 4 trillion, an increase of almost 340 percent over the same period.

Capital flows to opportunities everywhere and information, particularly financial information, is the critical currency for investors seeking returns and for companies seeking capital to grow. In the last 18 to 24 months, there has been tremendous change in the area of international accounting standards. Many interesting and important developments have occurred. Let me mention a few of these.

The structure of the international accounting standards committee was significantly revised in favor of a full body of technical experts. The SEC has issued a concept release regarding the use of international accounting standards. IOSCO completed its work on the assessment of the core standards and issued a resolution related to it. The IASB became fully constituted. The IASB agreed on its initial agenda, which includes some very difficult and controversial topics, as David has mentioned.

The European Commission issued a draft regulation on the use of IAS. The structure of the CESR, or the Committee of European Security Regulators, was agreed upon, and lastly the International Federation of Accountants, or IFAC, has drafted documents on international oversight mechanism.

I just wanted to take a few moments to marvel at some of these remarkable events that have occurred in such a

short period of time. The SEC staff has always had a keen interest in IAS and been leaders in several developments related to such. As we worked in those arenas, we heard from issuers, among other things, keeping two sets, two or more sets of records for home country GAAP and our IAS and U.S. GAAP and reconciling the difference can be costly and burdensome.

It is easy to understand that form filers would like to avoid the necessity of doing this. As part of the SEC's staff reconsideration of the requirements for foreign registrants, the SEC issued a concept release in February of 2000 seeking public comment on many aspects of IAS use and potential SEC acceptance.

The concept release described accounting, auditing, and regulatory issues that impact the effectiveness of financial reporting in a global environment and sought comments on 26 questions relating to the quality and use of international accounting standards and other aspects of global financial reporting infrastructure.

The release also requested comment on requirements for form filers to reconcile financial statements to U.S. GAAP. What we learned was that there was a wide variety of views on the present quality of international accounting standards and on the reliability of information produced in IAS based statements for investors.

A number of commentors noted the improvements that have been made in IAS over the years while other commentors cited improvements that still need to be made. The comments varied on how consistently and reliably IAS is applied, audited and enforced throughout the world and on what the SEC should do regarding the use of IAS by foreign issuers listing in the United States. In summary, some said drop the reconciliation to U.S. GAAP, others said keep it.

During the past year, the staff has been considering the views expressed in the comment letters and related research in evaluating alternatives for SEC action. Part of this work involved examining the differences between U.S. GAAP and IAS and how those differences show up in the reconciliation.

Another aspect has been to consider what other potential differences might emerge if reconciliation requirements did not exist. Another consideration has been the quality of individual international accounting standards, which includes the information they would produce and how consistently they may be understood and applied.

What is interesting is that many of the responses were written in the months around the issuance of the IOSCO resolution in May of 2000. The remarkable events of the last 18 to 24 months have an impact on how people responded to our questions if they were re-asked in today's environment. I

think it is an important question and one that begs further consideration. However, let me now talk about other -- some other events that have occurred in the last 24 months.

As we have heard earlier this year, the European Commission proposed a draft regulation, which would require all EU listed companies to apply IAS no later than 2005. While the final proposal is still working its way through the legislative process within the European Council and then Parliament, the passage -- the message is pretty clear. By 2005, over 7,000 publicly listed EU companies would be required to prepare financial statements in accordance with IAS.

This is a monumental leap from the approximately 350 companies in Europe that currently use IAS. The EU's proposal would significantly change the landscape of financial reporting in Europe and have served as a catalyst in bringing increased attention to the work of the IASB. While the proposal is still just that, a proposal, the 2005 deadline seems to provide a reasonable milestone for the SEC to consider as a target date for foreign private issuers to be permitted to use IAS without reconciliation to U.S. GAAP.

With that said, I think there are some very important aspects to think about as part of the SEC's consideration, including principal differences between U.S. GAAP and IS, the mechanisms in place regarding application

and interpretation of IAS, the infrastructure issues for the application of IAS by preparers and any potential processes in which the SEC would transition from a full reconciliation requirement of today in its requirements for 2005.

On the issue of consistent interpretation and application, there appears to be a tremendous challenge in front of us all, but especially for those that will be affected by the EC's 2005 deadline. Clearly, there is an issue on how to address the potential differing interpretations by preparers and auditors of IAS. Clearly, all of us want to avoid the emergence of two or more interpretations of IAS for identical transactions. A significant amount of work would seem to be necessary to gain consistent interpretation and application of IAS.

In that vein, the SEC considers this issue and may consider working with those regulators and other interested parties that will be applying the IASB standards to discuss general parameters that would help prevent the creation of multiple interpretation of IAS for identical transactions. In order to explore further some of these aspects, let me talk for a moment about the means on how we get things done -- on how we get there and the notion of convergence.

Historically, the staff of the SEC has called for convergence to a single set of high quality international accounting standards. While convergence can have a lot of

different meanings, it has assumed that all standards should agree on a single high quality answer. In the long term, this definition of convergence is laudable and something to which all should aspire so that a single set of high quality accounting standards could be used by all preparers. In fact, the strategy working party talked about this as a long-term aim, as was mentioned in Professor Ruder's paper.

Yet, there is an immeasurable need for standard setters, like the FASB and the IASB, to converge the principles in their standards in the short term as much as possible. In order to do so, the FASB and the IASB have to work closely together. I recognize that they have a joint project on business combinations and reporting financial performance, but with that said, I believe there is more that could be accomplished and would strongly encourage the IASB and the FASB to give serious consideration to reexamining their short-term agendas.

Their reexamination should be made in the context of achieving short-term convergence as rapidly as possible. The desire to eliminate reconciling items is as great as it has ever been. What is different, however, is that there is a full-time mechanism to accomplish this objective. Working together, I would encourage the FASB and the IASB to develop reasonable and pragmatic short-term solutions to eliminating as many principle differences as possible.

Let me follow up with some clarifying remarks here. The staff has advocated the concept of convergence before, but I think it is important to focus on a few key points. First, short-term convergence is a two-way street not a one way street. This means there may be times when the U.S. experience points to the best way to go, times when an IAS answer may be better, and times when both need to work together and with other standard setters to create a new approach.

Second, we are putting forward the idea of short-term convergence on principles. Certainly, we all know that comparability is an important component of high quality information for investors, comparability across companies and comparability across time periods.

But exact, absolute hundred percent comparability may be an illusive or an even impossible goal. Does this mean that like transactions should be accounted for in a different manner within a set of accounting principles? No. However, the detailed application of similar principles on accounting topics may result, from time to time, in differences.

Lastly, the staff would like to see agreement on as many principles as possible, but recognizes that agreement on all principles may not be achieved in the short term. As such, the liaison mechanism will continue to play an

important role in shaping the creation of a single set of high quality accounting standards for use throughout the world.

Does this mean that the SEC would judge an IAS standard as something other than high quality if agreement on principles were not attained? No, because I don't think we will ever get agreement on the single highest quality answer in all cases, but with adequate qualitative disclosure, I think it is possible to provide U.S. investors with high quality information even if a specific transaction would be accounted for differently under U.S. GAAP.

So where does the SEC go from here? The staff will be monitoring the work of the IASB and the national standard centers, including the FASB, as new standards are developed. We believe it is possible to strive towards convergence in a practical and pragmatic fashion and not sacrifice quality or investor protection.

While the IASB develops and improves further standards, both in the short term and the long term, the SEC needs to address questions such as what should be done about further acceptance of IAS and SEC filings by foreign issuers and when and must there always be a single accounting answer for investors to be well served.

The SEC also needs to sort out the rules and conceptual differences between international accounting

standards and U.S. GAAP and how IAS should be treated in U.S. securities markets, and we are looking at this. The matter of what kinds of accounting differences is an important part of a high quality standard, or an overall high quality accounting system is an important question.

Similarly, how much difference can be tolerated in between multiple accounting systems and the financial statements results they produce due to differences in accounting principle and in accounting details, and what kinds of reconciliation should be required or at the heart of the -- of considering acceptance of more than one system of GAAP in a countries securities market system?

These matters, in additions to any effects on domestic registrants, will need to be considered by the staff as it moves to determine whether and under what conditions it might propose to permit the use of IS with less than the current reconciliation requirements.

I want to touch briefly upon another area, which is auditing. Ensuring that high quality financial information is provided to the capital markets does not depend solely on the body of accounting standards used. Auditors have a key role and responsibility to test and opine on whether the financial statements are fairly presented in accordance with generally accepted accounting principles.

For the last several years, the SEC, in a number of

international organizations, have begun urging the audit profession, and particularly the major global audit firms, to improve the quality of international auditing. The SEC and other international organizations are among some of the groups that have engaged in a dialogue with the International Federation of Accountants, or IFAC, and with the International Forum of Accountancy Development, or IFAD, to encourage further work on these private sector initiatives.

The staff expects to work cooperatively and positively with the audit profession, auditing standard setters, and with other national and regulatory -- and other national regulators in the coming year to improve international audit quality. In addition, the SEC has noted the initiatives of IFAC. We have seen the creation of a task force to increase the quality of the standards of the International Auditing Practices Committee, or IAPC, as well as the publication of the draft documents that describe the creation of a self-regulatory mechanism on an international basis.

With that said, the staff of the SEC believes that during the time these efforts to convert the auditing standards are underway, the current requirements for foreign private issuers, related to auditing and independence, provide adequate protection for U.S. investors.

As mentioned in the papers presented at this

conference, foreign private issuers, among other things, must have their financial statements audited, in accordance with the U.S. auditing standards, or U.S. GAAS. The auditors must also comply with the independence rules of the SEC, and almost all firms that are associated with foreign private issuers are subject to certain requirements of the IACPA's SECPS section.

This does not mean that the staff believes there is no room for improvement in the quality of international auditing, because clearly there is. However, the staff sees its short-term efforts being directed towards working with the profession on the self-regulatory mechanisms that are currently being created and working with the IAPC through IOSCO on raising the quality of international standards of auditing.

In summary, in the interest of moving to greater convergence between IAS and the U.S. GAAP as quickly as possible, I would continue to encourage the FASB and the IASB to develop reasonable and pragmatic short-term solutions to eliminating as many accounting differences as possible while preserving high quality solutions.

All convergence decisions not only should be ones that will provide high quality information for investors, but also should recognize the fact that the job of improving the accounting model and accounting rules is going to be a

continuous job that will go on for many, many years to come. We are not going to solve all of the accounting model and standards and improvement needs in the next few years. In the meantime, the focus should be on finding ways to achieve greater similarity in the near time while we continue to improve both over the long term.

The ultimate end game in accounting standards development and SEC financial reporting rules work should be providing investors with high quality information to support decision-making and capital allocation. Accounting and reporting rules can provide a clear roadmap for producing the best information on a world wide basis. Thank you.

MR. LEVENSON: John, thank you.

Before we close, I am going to go around the panel and ask each of our panelists the same question. What do you foresee as the most significant accounting disclosure development for global markets within the next five years. And we will start out with Lynn Turner and then go straight across the panel in 30 seconds or less.

MR. TURNER: Do you want me to go first?

MR. LEVENSON: Your first, Lynn.

MR. TURNER: I will pass for the moment.

MR. LEVENSON: John?

MR. MORRISSEY: I guess when it comes to making predictions in forecasts, you know, particularly when they

have anything to do with the future, I try to run for cover because I am not very good at predicting the future. So I will pass on that on for the time being as well.

MR. LEVENSON: David.

MR. RUDER: I get a minute and a half then, right?

MR. LEVENSON: Absolutely.

MR. RUDER: I think that we are going to see, in the next five years, the FASB be successful in its convergence attempts. I think we are going to see the EC and the EU accepting the IASC standards without attempting to create their own version, and I look forward to the accounting profession and the SEC and foreign regulators working towards audit and independence standards that will bring our entire world accounting system in a total convergence. I think the latter problem is currently more serious than the accounting standard convergence problem and needs more work, but I am confident that the auditing firms and the regulators will get together to achieve the right result.

I just want to say that I am not urging leniency, I am urging an attention to the timing problem so that we don't have accounting standards converge and then suddenly have the regulators say, "Well, we have to wait another 10 years before we get the auditing standards together."

MR. LEVENSON: David, thank you.

Next up is Jim.

MR. TURLEY: I would say in the next five years is probably going to be more continuous disclosures by companies as opposed to periodic. It is going to be, perhaps, a trend towards more non-financial key performance indicators as opposed to purely historic financial metrics, and possibly, because of those things, a trend away from, you know, single point estimates that analysts have on earnings for this coming quarter and a move towards some other measure of expected performance.

MR. LEVENSON: Thank you, Jim.

Ed?

MR. JENKINS: Well, I concur with what Jim said. But in addition, I believe that in the next five years, we will solve internationally the problem of the level at which standards are most useful, the principle base or detailed standards, as it is sometimes called. We have to do that. I think we also see a convergence of our conceptual frameworks. While they are similar, if we are going to achieve convergence of accounting standards, they have to be made virtually identical. Fortunately, work has begun in that area.

MR. LEVENSON: Sir David?

SIR DAVID: I think we are going to start to tell

the truth in accounting statements. At present, we actually smooth things, we hide things. Take the Pension Standard FAS-87, for example. If you had a pension scheme in equilibrium, say 40 million in both assets and liabilities, and you suddenly had a fall of 10 million in the assets(that is a deficit of 10 million appears), what you would do is you would take 10 percent of 40 million, you would knock that off the deficit, that is 4 million. That reduces the deficit to 6 million. Then you would spread that 6 million over the working life of the employees, let's say that is 10.

So you would show a deficit in the financial statements of 600,000. The deficit was 10 million. You explain that to your granny. You may as well take that 10 million and divide it by the square root of the number of miles to the moon and multiply it by your mother's shoe size. That is the sort of thing I think that is going.

You will suddenly find that accounting is going to show a deficit of 10 million. That is going to lead to volatility, that is going to lead to more explanation. The MD&A, I think, is going to become more and more important, especially as you move towards fair values, and that is another thing I can see happening because there are lots of problems that can be solved with fair values. They create others, I know that, but I think you are going to find more volatility, more explanation, and actually having to describe

exactly what has happened rather than smooth it away and pretend it hasn't happened at all.

MR. LEVENSON: Before I turn our program --

MR. TURNER: Alan?

MR. LEVENSON: Well, we have got a latecomer here.

MR. TURNER: I reserved my time.

MR. LEVENSON: We have got a latecomer. Okay, Lynn, you are up.

MR. TURNER: If you are looking out over the next five years, I think what will continue and what will be probably the biggest item that I see is what I see today almost on a daily basis, and that is people have gotten much into the quality of the numbers, much into the truth and financial reporting that David talks about. I think you are going to see that culture, that growth and that notion that the numbers need to speak the truth, and the quality is going to become much more important, and I think people are going to be much more focused.

There is no question that there is going to be additional information out there. Companies are going to have to get on the bandwagon with that, as Jim mentioned, but I will say one thing. If there is a rush to short-term convergence, if we don't let the standard setters work through this on their own pace and go through a diligent process and we try to just boom, get there, then I think that

will be probably the biggest item because I think it will lead to a disaster and do phenomenal damage to the markets in the long run and to investors. And I think we ought to be very careful that we go through the processes that we have set up that have been very good and that people don't try to short circuit those or go around them.

MR. LEVENSON: Lynn, thank you.

Before turning it back to Dick Phillips, I just wanted to thank our panelists for making their time, sharing their views, and at this point, we turn it back to Dick.

CHAIR PHILLIPS: Yes, I want to thank --

(Applause.)

CHAIR PHILLIPS: Yes, I just want to thank you, Alan, who put this panel together and all of the panelists for a stimulating and another great panel.

Let's adjourn for lunch next door. Michel Prada will be the luncheon speaker, and we will see you back here right after lunch.

(A brief recess was taken.)

MR. RUDER: Good afternoon. Good afternoon. It is my privilege today to introduce to you Laura Unger who will in turn introduce Mr. Michel Prada. Before doing so, I would also like to acknowledge the presence in our midst of Commissioner Hunt of the Securities and Exchange Commission. And I notice that he is sitting next to Commissioner Unger,

and although I am not the ethics officer at the Commission, I would like to hope that you haven't discussed any SEC policy because we know that that is not permitted under the Sunshine laws. We could have another whole conference on the Sunshine laws, I think.

Commissioner Unger has been commissioner since November of 1997. Before coming to the Commission, she was a securities counsel to the U.S. Senate Committee on banking, housing and urban affairs, and before that, her early training was, of course, where it should be, as an enforcement attorney at the SEC staff. I have known Laura for these years she has been commissioner and while she was serving as acting chairman, and I have the greatest admiration for her.

She absorbed the technical problems of the markets and wrote a marvelous report on it and has, during the time when she was acting chairman, she did so so that there was nary a glitch in the way the Commission was operating. We were all so appreciative that you did that in such a wonderful way, Laura.

So it is my pleasure to introduce to you Laura Unger.

(Applause.)

COMMISSIONER UNGER: Well, thank you very much, David. And since you asked, Commissioner Hunt and I did have

a conversation, but it was really one-sided. When I said to him, "I am so happy you are going on vacation." And he looked at me and he said, "Why?" And I said, "Because then we can't meet as a commission."

(Laughter.)

COMMISSIONER UNGER: We have been doing a lot of meeting, I am sure you all know. So and all three of us need to be there.

Well, I have the distinct honor of introducing your luncheon speaker today, Michel Prada, as you know. I will give a little background. As David said, I have been very much focused on technology, and we have a lot of interesting technologically related issues domestically. We have capital raising, online trading, the operation of our markets and training platforms. But really, I think you see technology most clearly and the challenges it presents perhaps most urgently and most clearly in the context of the global marketplace. And there has been probably no greater player in that market than Michel Prada.

He actually is part of Euronex, the Paris Bourse is, that is planning to merge with LIFE. So he is not just sitting by the sidelines waiting for the SEC to come up with the global accounting standards, he is definitely moving ahead, and he has been a very active, played a very active role in developing the International Accounting Standards,

which, as you know, is one of the two-part challenges facing regulating the global market, which is the -- arriving at an international accounting standard and then providing access, foreign access, for foreign exchanges or U.S. access.

Michel, again, he has been chairman of the executive committee and technical committee of IOSCO and he has been a colleague that you would like to be on the same side of the table with, certainly formidable. He is the chairman currently at the Bourse and although he is not a man of fashion, as his name might suggest, he is certainly a man of style. I can't think of Michel Prada without thinking that for some reason. I know that is not something I should admit, but I just did.

(Laughter.)

COMMISSIONER UNGER: But he studied law and business in Bordeaux. Now think of that challenge. That is a dual challenge. Studying law and business and doing it in Bordeaux, and he made it out and obviously managed to do both quite successfully. So he is also most relevant to what he is doing, then, the director of public accounting at the Ministry of Finance and the director of budget management. So again, I will welcome him and introduce our speaker. So welcome and thank you for all the work you have done in the global accounting arena. Michel.

(Applause.)

MR. PRADA: Thank you, Laura, for your kind words. I don't know. If I had to choose between fashion and wine, I think I would choose wine.

(Laughter.)

MR. PRADA: Mr. Chairman, ladies and gentlemen, it is a great privilege and honor for me to be invited to address such a distinguished audience on such an important occasion. There is no need to underline that participating in this meeting has a special meaning nine weeks after the tragedy of the 11th of September and while our American friends need the support and solidarity of those who share their mourning and stand beside them to fight against terrorism.

Coming from a country, which one of its great sixteenth century poets, Joachim du Bellay, considered, with the so-called French arrogance, the mother of arts, arms and laws, I have to recognize that we are hosted today by the mother of securities regulation, the U.S. Securities and Exchange Commission, and I would like to express my thanks to its chairman, Harvey Pitt, to have given me the opportunity to input a French touch in your debates.

The scope of securities regulation is extremely diversified, and the way it is implemented differs significantly around the world. We, in France, have established for quite a long time the basic distinction

between prudential supervision and market regulation. The former deals mainly with the surveillance of financial intermediaries of all kinds, and aims at preventing or managing the risk of default and the possible consequences of this event from a systemic point of view. The latter is rather focused on the technicalities of day to day functioning of the markets and on the protection of investors in their relation with issuers and intermediaries.

We, of course, recognize that the two pillars are complementary and should establish links of close cooperation, which can be organized on the basis of cross membership or other devices. But we consider that this dual approach is best suited both in order to prevent conflicts of interest and to establish authorities which can be effectively managed on the basis of collegial and independent decision-making.

The COB was therefore established in 1967 to deal with market supervision from the triple point of view of protection of investors, surveillance of financial information, and surveillance of the proper functioning of the markets.

With the exception of the prudential supervision of brokers, which is not in the remit of the French prudential supervisor, the COB's framework was clearly inspired by the SEC model. While thinking about today's debate, I therefore decided to focus

my speech on one of the most important topics which SEC and COB have addressed for many years and which is at the center of the issue of globalization of financial markets, that of the financial information disclosed by issuers.

It happens that this topic is one of the most debated within the European Union where the Council of Ministers and Parliament are presently considering a new proposed directive on prospectus to be published on the occasion of IPOs and issuing of financial instruments offered to the public and a draft directive on permanent and periodic disclosure of information.

After this morning's most interesting presentations, please allow me to present my views on three different questions which underlie the issue of transparency of financial information and condition the possible acceptation of mutual recognition on which depends the opening of our national markets to cross border operations.

The first one is related to the content of Information: its standardization, the template of its presentation. The second is related to the discipline of disclosure: how, when, to whom and by whom? And the third is related to the issue of assessment of the quality of information, namely, the role of regulators, auditors and others.

As for the content of information, my feeling is

that we have made significant progress on the way towards harmonization, but a lot remains to be made. I shall address two different issues, that of accounting standards and that of other types of information. As for accounting standards which underpin financial information and valuation, I am confident, but watchful.

Confident because strategic decisions have been made by governments, regulators and practitioners worldwide. After a rather long period of hesitation, an important signal was given by IOSCO on the occasion of its annual conference in Sydney in May 2000. The endorsement of the 30 core IASC standards paved the way to a number of steps in direction of a true global system of accounting standards. May I mention but two important ones: The reform of IASC with a most significant commitment of members outside the sort of federal structure of the G-4 plus one, and the choice of IAS by the European Union for listed companies as from 2005.

Watchful because there still remains some risks to monitor. One is related to the ability of IASB to deliver standards which are accepted worldwide through a due process which takes into consideration the practicalities and specificities of its client. Sir David has given us evidence of his awareness of this tricky problem and I have no doubt that under his leadership, IASB will succeed.

But success will need close and confident

cooperation with other fora among which the IOSCO and the regional authorities, such as the newly established accounting standards committee of the EU, by the way, the first and demanding client of IASB.

The second is, of course, related to you, regulators of the U.S. markets. Having talked about your concerns with Arthur Levitt and his staff, I can understand your cautious approach of globalization of standard setting in the accounting field. Nevertheless, I would like to urge you to follow Paul Volcker, who chairs the Board of Trustees of IASB, on the way he has opened towards U.S. acceptance of the IAS.

Considering your leading role, is it not relevant to foresee a not too far away situation where U.S. GAAP would be the U.S. implementation of IAS? Finally, having listened to this morning's debate, I am a little more optimistic as for the answer to this question. Coming now to other information, my feeling is that we now internationally agree on a basic template. We, nevertheless, have to consider new questions which in fact have been raised on both sides of the Atlantic and elsewhere.

The template has been clearly defined by IOSCO in its recommendation on non financial information. We basically required three kinds of information on issuers respectively related to industrial and commercial issues, material risks

and governance. I don't see any significant difference from this point of view between the most advanced markets and again, the proposed European directives are in accordance with the IOSCO recommendation.

The questions are related to the relevance of information requirements which are at the same time too detailed and too static. One of the main issues here is that of economic analysis, trends and forecasts, and it is even more important when considering the issuers which deal with the so-called new economy.

I am well aware of the difficulties raised by legal risks in that field, namely liabilities for issuers and auditors, but on the other hand, I am not comfortable with a situation where investors who, after all, are buying the future are deprived of clear and sound information on trends and forecasts.

I would like to come now to the issue of disclosure. Issuers are supposed to have sound information systems. Here again, I believe that we have to build a global consensus if we wish to build a global market, and I can see a series of issues. The first and most important one has been raised in the recent months in the U.S. Should there be a difference in disclosure according to the nature of those to whom it is addressed, namely, analysts, professionals, the public at large? For many years, the

answer in France has been no.

This answer complies with the proposed directives of the European Commission, which considers public solicitation, directly or indirectly, as a trigger for disclosure of information to the public. And I must say that we were quite happy when we contemplated the decision recently made by the U.S. SEC. For once, we had the feeling we were ahead and for good reasons.

Of course, there must be no misunderstanding on that point. We certainly can understand that information could be more or less detailed, that explanations or demonstrations could be specifically addressed to specialists. But I am definitely convinced that no information, which might have an influence on the price of a security, should be delivered on unequal footing. This must be cautiously monitored by those responsible for the communication disclosed by issuers.

A second question is raised by the issue of secrecy versus timely disclosure. Secrecy has been a tradition in continental Europe and other countries in the world. This was based on a system where most companies were not publicly owned and where intermediation by banks prevailed, the clients having no secret for their bankers who, in return, would establish their reputation on their capacity to keep information secret.

Since the big bang of desintermediation some 20 years ago, and the development of market economy, things have changed. And we are today very close to the U.S. standards, which means that most regulations impose issuers to disclose as soon as possible any information which, if made public, might influence the price of securities.

However, we all admit that there is room for secrecy in some special circumstances provided that secrets are well protected and that secrecy doesn't harm investors. The question here is whether regulators should be involved in the management of secrecy and systemically deliver safe harbors or impose disclosure, and it is presently debated within the EU.

My personal view, in that such a situation could be dangerous both from the point of view of the protection of secrets itself, sharing secrets with more than yourself increases dramatically the risk of leaks and of the risk of the regulator to be the instrument of the issuer. Again, there is room for practical solutions in that field, and this is one of the characteristics of regulation when compared with classical administration.

The third question often raised in Europe today, and apparently raised anew by some U.S. issuers, is that of periodicity of disclosure. As volatility has dramatically increased during the past three or four years, many have

criticized the consequences of the development of quarterly reporting, which is considered as a major cause for short-termism and erratic markets.

It seems to me that regulators are certainly not the ones who should make a decision alone on that topic. In my country, this matter is of governmental competence. I shall, therefore, express a personal view. My first remark is that periodicity is not primarily led by regulatory concerns, but by market demand. And it is interesting to mention the example of Euronext, the new multinational exchange between France, Netherlands and Belgium, which has established a segmentation of its listed companies where a segment is opened to those companies who, besides complying with IAS and observe the most demanding corporate governance principles, deliver quarterly reports.

My second remark is that short-termism should not be a consequence of improved disclosure. While it is true that Eric Tabarly, a famous French sailor, when he won the transatlantic race some 30 years ago, didn't give the slightest information on his strategy, tactics, gales and weather clearings, today's races are scrutinized on a permanent basis. Information is available at any time to all competitors and to the public. It doesn't lead the skippers to be short-termist and less efficient.

Not only should information be disclosed on a

timely and regular basis, it should also be interpreted, reasonably, and it is not because you will hide the facts that investors and traders' behaviors will get more sensible.

Let me now come to my last set of concerns: quality of information and its control. This is probably one of the most sensitive and tricky issues of globalization. For it is true that one should not rely only on principles, rules, and standards. One should be aware of the way they are implemented.

Let me put it bluntly. We Europeans have the feeling that if our U.S. counterparts are reluctant to open their markets to foreign securities and exchanges, it is not because of mere protectionism, but because they are still doubtful about compliance with implementation and enforcement of regulation in foreign countries.

Therefore, progress has to be made to give evidence of high quality information and establish mutual confidence in that field. I can identify two or three issues, among others. The first one is related to the role of public regulation versus self-regulation and the respective responsibilities of exchanges and regulators.

Things have changed in this domain, but there is an ongoing debate. As exchanges have demutualized and have become for profit and competitive entities, my view is that they have lost credibility with regard to the supervision for

the sake of public interest of information delivered by their clients.

I don't say that they should have no interest in that matter, but it seems to me that their role is based on their contractual relationship with the issuers. It can be complementary with that of statutory regulators, but statutory and independent regulators should be the ones who are responsible for controlling the consistency, coherence, and timeliness of disclosure.

This has been the case in France for many years and in a clear-cut way since the implementation of the European investment services directive of 1993. Therefore, I welcome the ongoing evolution in that direction within many European jurisdictions, U.K. or Netherlands, for example.

The second point is about the roles and responsibilities of issuers, auditors and financial intermediaries. It appears that there is some difference between the countries where intermediaries, the underwriters, play a significant role through their due diligences and commit themselves and other countries where the responsibilities are firstly those of issuers and secondarily those of auditors.

France is, for the time being, part of the second grouping, but we are considering a possible evolution towards a deeper involvement of intermediaries, and this is precisely

one of the topics which is being debated in a public consultation that COB has initiated a few weeks ago.

The third question has become a major concern throughout the world and is related to audit standards and more precisely, to principles of auditors' independence. I addressed this issue yesterday on the occasion of a board meeting of IFAC. As we know, there are a series of decisions taken and ongoing debates. The SEC has issued a new set of rules after a rather lively discussion with industry. The European Commission has started a consultation on this issue, IFAC is addressing it. Once again, my view on that topic is quite simple. Auditors' independence is of utmost importance for the soundness of financial markets and should not be questioned.

Commercial activities, such as consulting and delivery of services in the field of accounting, corporate finance and so on, can, by nature, hamper the independence of audit both from the point of view of substance and appearance. The line should be driven clearly according to international standards.

On the other hand, while I support the view that auditors should focus on the control of firms for the sake of the public, I also believe that audit activity should be enriched and extended besides the classical checking of accounts to a number of items in relation to financial

assessment of firms and why not, consistency of forecasts, from the point of view of methods, and coherence of models.

Lastly, I do not believe that self-regulation, which I consider useful and necessary, is enough to enforce the principles and standards of auditors' independence. Rules should be set clearly. Independent bodies, namely, POBs (public oversight boards), should be responsible for supervising the implementation, and regulators should take part in their enforcement.

Mr. Chairman, ladies and gentlemen, I hope you shall forgive me for having taken rather strong positions and expressed my views without too much diplomacy, but I did so because I do believe that globalization is speeding up and that regulators have to keep pace with it and deliver clear and sound standards on time.

From the many examples I have given, you may easily conclude that the French regulation is very close to the U.S. one. This is certainly due to the fact that the protection of the public has always been our first mission and concern, as it is for the newly network of European securities regulator named CESR. This is one of the reasons why I personally would like our markets to work more closely together and the barriers which prevent them from competing and cooperating to be removed.

This should be an objective for all regulators

around the world under the leadership of IOSCO, but I certainly take the view that it is a reasonable and short-term objective for the COB and the U.S. SEC. I shall take to conclude but one example.

You at the SEC have patiently built a well-known database called EDGAR. We at the COB have patiently built a similar system called SOPHIE. The importance for regulators is to be earnest. So why should not we work together to get strong and handsome EDGAR and lovely SOPHIE married under the auspices of the Internet. Thank you for you attention.

(Applause.)

CHAIR PHILLIPS: Thank you very much for a very entertaining and informative address.

Our next session will start in 15 minutes in the main conference room. We will see you there to talk about what has become apparent from our panels yesterday and today, international enforcement.

(Whereupon, a luncheon recess was taken.)

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A F T E R N O O N S E S S I O N

CHAIR PHILLIPS: It gives me great pleasure to introduce Dave Becker, general counsel of the Commission, and a panel leader on this very important discussion of international enforcement.

David has a wife and five children.

Notwithstanding that, he has had a distinguished academic and professional career. Editor in chief of the Columbia Law Review, clerk to Justice Reed of the Supreme Court, appellate court clerkship, partner at Wilmer Cutler, and now general counsel of the Commission which he has led the general counsel's office for the latter part of Chairman Levitt's tenure and is remaining with Chairman Pitt. It gives me great pleasure to hand the panel over to David for the final discussion of our program.

MR. BECKER: Thank you, Dick, and on behalf of myself and I venture all the other folks who have been here over the last two days, my thanks to you and the Historical Society and my colleagues at the Commission and the folks at Northwestern University for making this panel and all the other panels possible. I think it has been an absolutely wonderful conference.

Before we start, as you know, the Securities and Exchange Commission has a requirement that everyone's remarks start in the dullest way possible. So I am obliged to remind you what you have heard several times before, that anything that I and other SEC speakers say this afternoon constitutes our own views, but not the views of the Commission or other members of the Commission staff.

I understand that this is the last panel of what has been a full conference, and ordinarily, this is not an

enviable spot to be in, but fortunately, the Historical Society, in its wisdom, has saved the most important panel for last. I say that really not so much, you know -- I mean, it is a matter of fortuity that we are on it, but the truth is is that the panels that preceded us have been devoted principally to describing standards, standards that should govern various aspects of securities transactions throughout the world.

This is, of course, extremely important business. And yet, it is the easy part and it is the part that no matter how important it is, it is not as important as enforcing the standards because without enforcement, their standards lose a great deal of their meaning and their relevance. If tribunals don't enforce standards of conduct agreed upon by the international community or if they depart significantly from the terms of the formal standards, the result is either no law or law that is very different from what the standards, in their formal articulation, would lead you to believe.

Now our chairman has directed us that the movies are the source of all wisdom. So I may engage in the occasional cinematic metaphor, which is, I must say, better than our former chief accountant who used to rely principally on agricultural metaphor, which some of us found rather challenging.

Think of all the Frankenstein movies that you have ever seen. Dr. Frankenstein and his accomplices, assistants, spent all their time creating the perfect, or at least perfect in the level of science, body and yet, it is lifeless until it gets put on the table and strapped to these, you know, these machines with all the electrodes and the transistors and the transformers, and it is not until that switch is turned on and you have got the, you know, you have got the moments with the thunder and the lightening, until you get the marvelous words, "It's alive. It's alive."

And it is the same thing here with substantive standards. Enforcement is what brings the law to life. There is no law, in the full sense, unless it is enforced. Enforcement serves a variety of purposes, but its principle purpose, no matter what the context, no matter what the place, is to vindicate the rule of law.

So unless this exercise involves enforcement, this is this is sort of the equivalent of a bunch of very intelligent, learned, earnest people sitting around and devising the twenty-first century version of Esperanto. You need enforcement to make the ideas and the written word a reality.

Our panel this afternoon is marked by its wisdom and its diversity of experience, and I will introduce them -- I will probably do it in the order I have here, but I will tell you an additional hint is that the faces sitting behind

the name tags with their names on it are the ones that I am talking about.

Tony Neoh has been chief adviser to the China Securities Regulatory Commission since 1998. Before that, he was chairman of the Hong Kong Securities and Future Commission, and he chaired the technical committee of IOSCO of 1996 to 1998.

Steve Cutler is the director of the director of the Division of Enforcement at the SEC. He joined the Commission in January 1999 as deputy director of enforcement. Before arriving at the SEC, it says here, Steve was a partner at Wilmer, Cutler and Pickering in Washington where he specialized in securities enforcement and broker-dealer compliance and regulation.

Felice Friedman has been the acting director of our Office of International Affairs since June of this year and served as deputy director of the office for two years before that. Before joining the SEC in 1993, Felice practiced with the New York law firm of Curtis, Mallet-Prevost where she specialized in transactional work for U.S. and foreign clients.

Georg Wittich has been president of the German federal securities regulator, the BAWe, since October of 1994. Before that, he held various positions in the Federal Ministry of Finance a Bund, including financial counselor

at the German Embassy in Tokyo. At the ministry, he headed the Division for International Securities and Stock Exchange matters and IOSCO before he became president of the BAWe. Between May 1998 and September 2001, Georg chaired the Forum of European Securities Commissions known as FESCO.

George Schieren is senior vice president and associate general counsel of Merrill Lynch and Company, Inc. He is a member of the Executive Management Committee. He also serves as senior vice president and general counsel of Merrill Lynch, Pierce, Finner and Smith, Incorporated. George is responsible for the Office of General Counsel, which manages all legal and compliance functions for Merrill Lynch's global operations. George, it should be noted, began his career at the SEC and he has carried that credential and torch with him ever since.

Here is how we will proceed. Each panel member will provide a presentation of about 15 minutes, and after each presentation, we will have an additional 15 minutes or so for discussion. The hope is that rather than waiting for the end, that each of the presenters will give you an opportunity to hear their thesis and then we can have some discussion about it in which we can, perhaps, bring out other aspects, challenge ideas, and do so in a lively way.

Before we move into the particular points -- topics for our panel, I would like to make a few general

observations. As we look forward into the future of securities enforcement over the next decade or so, we should understand that what we call here one matter is of course at least four. Enforcement to support a world of converging substantive standards; how in a converging but not yet converged world to achieve cooperation among nations; to enforce standards that may differ among nations; how to achieve multinational enforcement of standards in the face of enforcement procedures and remedies that differ among nations, and then the role of private enforcement mechanisms.

Clearly, each of these issues contains issues within issues and we will not be able to discuss them all, but I hope that our discussions this afternoon will take into account some of these matters, and let me just give you my take on one of them.

As I have mentioned, international standards are not fully meaningful without consistent enforcement among nations. And just to underscore something that Linda Quinn said this morning, that is to bring international standards to life, they must be vigorously enforced domestically by the nations that adopt them.

That means, in my view, that a discussion of what the substantive standards should be should be accompanied by discussions concerning the ways in which these standards become something more than aspirational and they become a

living force in the nations that adopt them.

Effective enforcement requires development and constant reevaluation of enforcement infrastructures. These infrastructures are, themselves, complex organisms, and they need resources to survive, and they are composed of many interdependent parts. All nations, including the United States in developing new international standards, should address how these infrastructures can develop and thrive.

I think a consideration of these issues should consider the following. First, how is compliance with standards monitored. Financial accounting, to take a plain example, is monitored by auditors. They are paid by the persons whose financial statements they monitor, but their monitoring standards, a counterbalance in a way, are prescribed by a code of monitoring called generally accepted auditing standards.

It is probably the case that there is no GAAP really without GAAS and I would think that this will hold true, and indeed we heard this in the panel this morning. There will not be an effective international body of accounting standards without an international set of auditing standards.

In the securities business, we place enormous reliance on front-line supervisors augmented by a highly developed company by company compliance structure. At the

corporate level, we have placed increasing reliance on internal controls and corporate governing structures.

There are different views as to how well these monitoring mechanisms function, and I don't presume to address them here, but the important point is that the first part of an enforcement infrastructure is monitoring at the point at which business is done. Second, what is the role of self-regulation. In the United States, for some professions, we rely heavily on self-regulation as the first line of enforcement. Again, there are differing views as to how well self-regulation has succeeded in the markets and in the various professions.

But I think there is a growing consensus that this is an important first line of defense, one that reflects and teaches commercial values beyond compliance with the letter of the law. Third, there are the enforcement agencies themselves. At the SEC, we think we do the bulk of the heavy lifting, and I think many regulatory agencies feel the same way. Enforcement agencies must have the resources necessary for them to do their job.

Allocating these resources, I understand, is a political decision and is not one for the regulators to make. But if we are to make for a safer worldwide economic neighborhoods, there have to be worldwide economic cops on the beat.

In the United States, we also rely on private enforcement mechanisms, the extent of our reliances, perhaps peculiar to the United States, but it is a key way in which we supplement the work of the public enforcers and save a lot of resources in the process.

Now I understand that there are differing views about whether this is the most efficient way, efficient and fair way to promote enforcement in the sense that it is not always the case that the consequences are predictable nor, some would say, proportionate to the offense, and indeed, the social costs of this type of monitoring are not spread broadly, but they are imposed, one might argue, disproportionately among some of the folks who find themselves at the receiving end of private enforcement efforts.

This, too, I think is a matter that should be considered in the context of arriving at international, substantive standards. Finally, of course, there are tribunals that adjudicate the instances of wrongdoing and enforce judgments from home and abroad. This, I suspect, is most of what we will be talking about this afternoon. And then again, in adopting standards, I urge the folks who think about these things to consider whether they have the tribunals to adjudicate them and what tools adjudicators need to promote seamless international enforcement of generally

agreed upon standards of conduct.

I think I am going to skip the next two pages because I want to -- part of my job here is to make sure that we run on time, and I have to apply those standards to myself. I understand that our panelists are going to address some of these issues and I am looking forward to hearing from them. Indeed, I look forward to hearing from everybody whether or not they address these issues, and I won't stand in the way any longer.

Steve Cutler is going to start these discussions with a consideration of jurisdictional issues. How one country, how the United States in particular, acquires how it asserts the legal authority to project its law into places outside the United States.

Steve?

MR. CUTLER: Thank you, David. First, let me thank both the SEC Historical Society and Northwestern Law School for sponsoring what I think is a very timely conference. Issues of global cooperation and coordination are, I think, particularly important these days as we all look for ways to prevent exploitation of our capital markets, both here and abroad, and creating ways to protect the investing community all over the world.

Second, let me echo something David said. I think that the strength of our capital markets, both here and

abroad is due, well, to many factors, but certainly due, among other things, to rigorous enforcement. And just to provide something of an analogy, let me tell you about conversations I have had with George Schieren.

You might think that a broker-dealer would say, "Gee, we would love it if you guys weren't so tough on the broker-dealer community," but George Schieren and Merrill Lynch have never said that. Indeed, George would say to me, "We think it is in our interest as a broker-dealer, as a responsible broker-dealer, to have you enforce the laws vigorously when it comes to potential abuses by the broker-dealer community."

And I think enforcement in the international arena is no different. I think some might, at first blush, be inclined to say, "Gee, when you guys extend your reach to entities, to individuals, to conduct that looks in some ways as though it emanates from outside of America, don't you incur the wrath of regulators abroad?" Well, the answer is no. We all have, I think, a collective and common interest in enforcement that extends well beyond the shores of this country.

Although it is a little bit awkward in the context of a discussion of international enforcement, I am going to be a little bit parochial in my remarks and focus on SEC enforcement efforts. As a number of our actions, I think,

amply illustrate, our enforcement program does extend to persons and entities situated outside the United States in a number of circumstances, and what I would like to do is discuss the development of the law on the jurisdictional reach of the federal securities laws.

Number two, talk about how we have applied these principles in recent Commission actions. Three, mention some of the practical problems we face in trying to achieve our enforcement objectives when they involve foreign actors, and then fourth, how these practical problems affect us in the context of Chairman Pitts' real time enforcement initiative.

All right. First, the development of the jurisdictional tests. On their faces, many of you know, the laws we administer are silent as to their extraterritorial application, and that silence has generally, though not uniformly, been interpreted to mean that Congress did not contemplate, indeed could not have contemplated how they would apply in today's globally interactive markets.

As a result, when confronted with questions of subject matter jurisdiction, courts have sought to discern what Congress would have intended had it considered the question of extraterritorial application. And courts generally have been guided by the principles that Congress would have wanted first to protect American investors and markets from fraud, even if the fraud is perpetrated upon

them from abroad.

And second, to ensure that the U.S. is not a base from which securities fraud can be perpetrated on investors even if those investors are abroad. In devising these two tests, and they are the so-called effects test and the conduct test, courts have been mindful that U.S. laws are generally presumed only to apply domestically, unless Congress has stated otherwise, and that they must consider whether Congress would have wished the precious resources of the United States courts and law enforcement agencies to be devoted to predominantly foreign transactions, rather than leaving the problem to foreign countries.

The effects test was first articulated by the Second Circuit in 1968 in the Furstberg case where the question was whether to apply the anti-fraud provision of the '34 Act, Section 10(b), to an allegedly fraudulent sale of stock involving two foreign corporations, one of which traded on the American Stock Exchange. The court said that there was jurisdiction over actions that take place outside the U.S. "when the transactions involve stock registered and listed on a national securities exchange and are detrimental to the interest of American investors."

The Second Circuit subsequently refined and narrowed the effects test in the Burst case in 1975 to say that the detriment to American investors has to be

particularized; that is, it is not enough to say that a fraud could undermine confidence in the American capital markets; generally, instead, only when a transaction results to purchasers or sellers of those securities in which the United States has an interest does jurisdiction exist.

The conduct test was first articulated also by the Second Circuit in the Lesco case in 1972. The primary focus of the conduct analysis is the location of the fraudulent conduct that caused the victims' loss. Courts have applied this test under both a strict and more lenient standard under the stricter standard, which is applied in the Second, Fifth and Seventh Circuits, as well as the D.C. circuit. There is a requirement that the U.S. conduct must directly cause the fraud; the conduct must be substantial in comparison to the allegedly fraudulent conduct committed abroad.

The more lenient standard, which is applied in the Third, Eighth and Ninth Circuits, allows jurisdiction if the U.S. conduct substantially contributed to the fraud. Conduct deemed within the United States for jurisdictional purposes does not require that a person be standing within our borders sending mail, faxes, e-mails into the U.S., making telephone calls into the U.S. from abroad. All of these things work to create jurisdiction.

Finally, I guess the most recent development in the legal standard comes also from the Second Circuit in 1995 in

the development of what the Second Circuit has called, the ad mixture test. The court held that there was no requirement that either the Commission, or any other party seeking to establish jurisdiction, satisfied both tests. One is sufficient to establish jurisdiction. And indeed, even if you had conduct that might not rise to the level of satisfying either test independently, you could, by a mixture of the two standards, satisfy the jurisdictional requirement for reach of the U.S. federal securities laws.

Let me give you some recent examples of how these tests have been applied in SEC enforcement actions. In a recent action, actually one that we brought just a month ago, I think it is a good illustration of the application of the conduct and effects test. The -- it is a settled cease and desist proceeding against Eric John Watson where the Commission found that Watson, a New Zealand citizen, had misled U.S. office products, a U.S. issuer, whose securities were listed on the NASDAQ, in connection with USOP's 1997 acquisition of McCall and Printers, a New Zealand business supply company.

During the relevant time period, Watson was the CEO of USOP's wholly owned New Zealand's subsidiary, Blue Star group. And Blue Star was the vehicle through which USOP, using its own stock, acquired McCollum. Watson first identified McCollum to USOP as a potential acquisition target

and later acted as chief negotiator on behalf of USOP.

Unbeknownst to the parent company, unbeknownst to USOP, Watson had previously purchased McCollum shares and continued to buy shares in McCollum with two of his associates during the course of the negotiations. He and his associates ultimately bought over 200 McCollum shares, which were traded, by the way, on the New Zealand stock exchange using corporate nominee accounts, including foreign accounts.

Following the announcement of USOP's offer to purchase McCollum, Watson and his associates sold their entire position in McCollum stock making profits of over half a million dollars. Application of the jurisdictional tests in that case? Well, we had conduct, faxes, e-mail telephone calls to the United States by Watson repeatedly contacting USOP officials in the United States. Those contacts contained material non-public information concerning the status of the deal, and that conduct, we alleged, was essential to Watson's violation.

The effects test? Well, Watson informed -- had Watson informed USOP of his insider trader, it is possible, of course, that USOP might have wanted to halt everything and may have wanted to cancel the deal, but in addition, what Watson did was deprive USOP and its shareholders of a corporate opportunity. Essentially, he bought the stock that the company would have bought.

Thus, the Commission found that Mr. Watson's purchases and sales, which took place entirely in New Zealand, had the effect of defrauding USOP and its shareholders here in the United States. The Commission stated that it will hold accountable all violators of the U.S. federal securities laws, including foreign entities and individuals, when their actions adversely impact U.S. issuers. Without admitting or denying the Commission's findings, Watson consented to the issuance of the Commission's order, which requires him to cease and desist from violation 10(b) again.

The next case I wanted to mention is E.On AG, which was brought in September of last year. There the Commission voiced a similar view in another C&D action, this one against Germany's third largest industrial holding company. The action stemmed from the company's repeated public denials of ongoing merger negotiations with another German company during July and August of 1999.

Senior management of E.On, known before the merger as VEBA, directed the company's issuance of press releases and responses to press inquiries denying merger negotiations at a time when those negotiations had advanced to a point where they were material. The denials were widely disseminated not only in Germany, but also in the United States were VEBA's ADRs traded on the New York Stock

Exchange. The ADRs were registered with the Commission under Exchange Action Section 12(b).

Certain of the denials were made with the expectation that they would be reported by the U.S. and read by U.S. investors. And the ADR's fluctuating price reflected the investor confusion caused by the conflicting news reports about a possible merger. Clippings of news articles reporting the denials, including articles from the Wall Street Journal, were circulated to VEBA's senior management.

VEBA's management directed the issuance of the denials because of its concern that any hint that there were merger negotiations, including a no comment response, which is so common here, would compromise the company's ability to gain governmental and labor support in Germany for the merger.

The Commission rejected this claim as a basis for excepting VEBA from the strictures of the federal securities laws stating that the Commission recognizes that disclosure practices and laws regarding the existence of merger negotiations may differ in other jurisdictions, but where jurisdictional requirements are met, there is no safe harbor for foreign issuers from violations of anti-fraud provisions of the U.S. federal securities laws.

When a foreign issuer voluntarily avails itself of the opportunities in the U.S. capital markets, it must adhere

to the U.S. federal securities laws. Although the Commission's order does not explicitly discuss the question of jurisdiction, its findings clearly illustrate, I think, an awareness of the requirements of all three jurisdictional tests: The effects test, the conduct test, and the ad mixture test.

The Commission found that VEBA was registered with the Commission and that its ADRs were listed within New York, that U.S. investors owned approximately 11 percent of the outstanding stock, that in 1999, companies under VEBA's control had 12,300 U.S. based employees, and that VEBA derived approximately $4 billion of its revenues from U.S. operations. VEBA also owned a controlling interest in another New York Stock Exchange listed company.

All of these facts illustrate that VEBA's false statements and material omissions, though made in Germany, could have adverse effects on U.S. markets and U.S. investors. Communications from Germany with the U.S. press, including the Wall Street Journal, also would support a finding of jurisdiction under the conduct test. Without admitting the -- or denying the administrative findings, E.On agreed to a cease and desist order in which 10(b) was the focus.

Finally, I want to mention a recent insider trading case, and before I do, let me give you a little bit of

context. Insider trading cases comprise approximately 10 percent of the enforcement actions that we bring. That percentage has remained fairly stable for some years now. It is an area, I think, in which foreign actors are frequently able to have a detrimental effect on U.S. markets and investors, and let me share some statistics with you in that regard.

Since 1994, of the insider trading cases filed by the Commission, 14 have involved trading through offshore accounts, 10 have involved international merger or tender offer transactions, and 8 of those have resulted in the freezing of over $28 million in illicit proceeds.

We have received, either through settlement or litigation, more than fourteen point eight million in disgorgement plus prejudgment interest and approximately thirteen-and-a-half million dollars in civil penalties in these cases.

The recent example that I wanted to mention is the case that we brought against Ballesteros Franco. On June 13th of this year, we filed a case alleging that a former director of Nalco bought Nalco shares and tipped family members to buy those shares based on inside information about a pending takeover.

One of the family members, in turn, allegedly tipped a friend who tipped his father. And prior to the

public announcement of the merger, the 15 defendants in the case purchased over 260,000 shares of Nalco at a cost of over nine point eight million and made illicit profits of more than three-and-a-half million dollars.

The trading was conducted through offshore entities, but we were able to catch it, and ultimately the matter was settled with respect to all but two of the defendants without admissions or denials of the allegations. We have received a disgorgement, prejudgment interest, and penalties of just under $5 million, and the U.S. Attorney's office has indicted two of the individuals.

Of course jurisdiction isn't the only question, and it is really only the beginning of the analysis that we go through, and I wanted to spend just a couple of minutes talking about a couple of practical problems that we have even if our reach as a legal matter extends beyond our shores.

And the first problem is accessing information, which sits overseas. Our subpoena powers don't currently extend beyond the United States, I am afraid. And this doesn't mean that documents -- but this doesn't mean that documents located physically outside the United States are always beyond our reach. We can still exercise our subpoena power if we can identify a person or entity within the United States that has possession, custody, or control over

materials located outside, and we can also ask to be notified by immigration and customs in the event that a particular person enters the United States so that we can serve a subpoena.

And this is something actually people I am not sure know about, but we do quite frequently. We have many border watches out for folks who are sitting abroad that we have reason to believe may come into the United States and as to whom we wish to serve a subpoena on.

If we can't use our subpoena powers, however, we can still try to obtain access to documents and witnesses first, of course, by requesting voluntary production of documents and voluntary appearance for testimony and if that fails, requesting authorities in the countries where the documents or witnesses are located to assist the Commission in our investigation.

A great many developments have enhanced our ability to bring cases against entities and persons outside the U.S. We have MOUs with about 30 countries under which we have mutually agreed to provide assistance, and that assistance can entail compelling production of documents and testimony.

There are a number of recent examples of investigations facilitated by the cooperation of authorities in other countries and without their invaluable assistance, our enforcement efforts would have been significantly

hampered; indeed, I am not sure we would have been able to bring cases at all.

The McCollum matter, we were helped greatly by the New Zealand securities commission. In the VEBA matter, the German federal oversight office for stock trading was of terrific assistance to us. And the Swiss federal office of justice in the aisle of Jersey Financial Service folks assisted our staff in the Nalco insider trading investigation.

One specific problem that we seem to be running into more and more in recent days, and I think you can imagine, it is a function of the increasing globalization of our markets, is accessing records of foreign accounting firms. More and more operations of U.S. registered companies are offshore and those operations are, on many occasions, audited by non U.S. accounting firms. We will often, of course, want to determine auditors' involvement in or failure to detect a financial reporting failure, and we are forced to rely, most frequently, on our subpoena power to require auditors to produce work papers and other relevant documents and to appear to testify.

We have had a number of occasions where foreign auditing firms have refused outright to permit the Commission access to work papers and relevant documents related to their audits of foreign issuers or foreign subsidiaries of U.S.

based companies.

In a concept release relating to international accounting standards, issued in February of 2000, the Commission requested comment with respect to ways to assure access to work papers and the testimony of accounting firm staff located outside the U.S. That matter, I understand, is still being reviewed.

My predecessor, I think said quite publicly, that he was intent upon pursuing subpoena enforcement actions where we had issued subpoenas to U.S. accounting firms that told us that they really had no affiliation with a foreign accounting firm that somehow magically and coincidentally bore the same name as the U.S. entity.

Let me just say that I feel just as strongly as he did that it is striking to many of us that a global Big 5 accounting firm will advertise its global network the way it can get things done for those clients, no matter where those clients are, but as soon as it comes to an SEC subpoena, seem not to recognize anything about the reach of its global network. That is something that we are prepared to test in court. It really has not been tested to date, but it is something that I think I and my colleagues, at least at the staff level, are committed to trying to do.

Let me just touch on a second problem, and I am not sure what the answer to this one is, but the second problem

is getting our judgments enforced. Foreign courts often don't recognize our judgments, particularly, the penal aspects of our judgments, and particularly administrative proceedings. I think that is just a problem that I am not sure we are going to solve. I don't know that that does or should or will stop us in any way from pursuing enforcement activity, but it is a reality that we all recognize.

We have made some progress in the area. For example, the British Columbia Supreme Court in Canada ruled in 1999 that the SEC could enforce in that province a default judgment, to the extent that that judgment related to disgorgement of ill-gotten gains, that we obtained here in district court.

Finally, just to sort of tie some of this into Chairman Pitt's initiative on real time enforcement, let me begin by just giving a little bit of context and background on what I think real time enforcement is. A lot of people actually are still wondering what real time enforcement is.

I think the Chairman, like his predecessors, believes firmly in vigorous enforcement of the federal securities laws. His innovation is the introduction of a concept of real time enforcement. And this is the goal of really achieving quick, effective, and efficient response to wrongdoing, taking swift and decisive actions to stop fraud or other investor harm expeditiously in an ideal world as it

occurs.

One significant, and I emphasize one, significant component of real time enforcement is our effort to encourage meaningful cooperation by issuers in the form of self-policing and then self-reporting if and when wrongdoing is discovered. And the Commissioner articulated his views in this regard in the recent 21(a) report on cooperation.

I should note, though, that the message of the 21(a) report is not that the enforcement program has entered an era of laxity, as some have suggested. I think everyone should keep in mind that rewarding cooperation is only a piece of the puzzle, and you are not going to induce cooperation if at the end of the day you are not also prepared to take tough action against those who violate the law.

With respect to the question of how real time enforcement will apply in an international context, I have just a few observations. First, there is, to some extent, a natural tension between the focus on speed and efficiency that is fundamental to real time enforcement and what can be done, given the deliberate pace at which the international process for sharing and exchanging information operates.

As a result, I think it becomes even more important that we build and maintain strong relationships of trust and cooperation with our foreign counterparts. We recognize that

we are more likely to find a receptive and responsive audience among regulators with whom we have established ongoing, working relationships.

I don't think that any of us at the Commission, myself included, relishes the notion of rule changes in order to further facilitate our investigative process, and I am hoping that we can achieve what we need to achieve through the informal process of international cooperation, rather than moving to rule changes, but the jury is out.

Second, I think we recognize that at first blush, some might believe that foreign issuers have less incentive to provide meaningful cooperation to the Commission along the model of the 21(a) report because it is difficult to enforce judgments against them. However, and I think Felice will address some of this in her remarks, but I do think that even absent the enforceability of our judgments here as our markets globalize, I do believe that foreign issuers will find it more and more in their interest to come in and self-report in the same that I think domestic issuers will be inclined to do or more inclined to do in light of the 21(a) report.

The program that attaches to one of our judgments, even if the judgments are not enforceable abroad, is such that in this day and age of globalization, I don't think any issuer wants to take it on. There is a real value, indeed a

premium, on being viewed as a good, global corporate citizen. International corporations want to be welcomed into the major markets of the world and, maybe even more acutely, they want access to our capital markets.

Third, I think it is important to note that even where we find that the need for foreign assistance in conducting an investigation or building a case will slow us down, we will not be deterred from pursuing wrongdoers. Those engaging in fraudulent cross border transactions and schemes should not, for a moment, believe that our focus on speed and efficiency will cause us to pass by a tough or complex scheme. We will pursue those cases with as much diligence as ever, regardless of the time involved.

With that, let me hand it back to David for a discussion.

MR. BECKER: Just one quick question for the panel. The VEBA case is certainly within the power of the Commission to bring, but it illustrates a -- it rises in the context of a set of facts that are only going to be more problematic. In the VEBA case, we had someone speaking thousands of miles from the United States and behaving in a way and saying things that, as I understand it, were not unlawful where whoever was speaking and nonetheless, the Commission, I think quite appropriately, thought it was appropriate to bring an enforcement action in the United States for violation of

United States law.

The Internet has made this a little more complicated because when one speaks on the Internet, one speaks simultaneously everywhere and it strikes me that there is some question about whether there will be practical difficulties in various nations who may have jurisdiction over the matter to subject someone to a variety of standards of conduct.

And I also note that remedies involving speeds sometimes can be a little problematic, and I am just curious if anyone on the panel thinks that the Internet raises particular enforcement problems where what is going on is that folks are making fraudulent statements everywhere simultaneously.

MR. NEOH: I will have a crack at this question. I think the Internet doesn't really bring in a new set of problems because it is -- yes, it is a ubiquitous method of passing information. It goes everywhere, very hard to trace the originator. Nonetheless, a piece of information is sent through, it affects people, people get hurt. And the people who get hurt tries their best to get a remedy for that hurt.

Now -- so I don't think, per se, it really brings to it a new set of problems. It certainly makes enforcement more difficult, but it does not bring a new set of problems. Therefore, really in the VEBA case, certainly the

jurisdiction that gets hurt must be entitled, really, to help itself.

The question, therefore, would be really what are the processes which would be recognized internationally as being something where people have an obligation. It sort of engages an obligation to assist other people.

Now there are many ways, in the past, that assist that. Of course, in civil litigation, we have, of course, the Hake conference in private international law, which assists people in taking evidence, for example, in the course of civil proceedings. And one question is whether, in fact, an enforcement action, which is civil in nature, in fact engages these various Hake conventions in taking evidence.

The Hake convention also goes into reciprocal enforcement of judgment issues as well. And perhaps one way to deal with that is to engage the Hake conference in private international law and have the discussion broaden to include civil actions because more and more jurisdictions around the world now are in fact using civil actions to enforce security laws because in the end, of course, people can get hurt and the result is a monetary loss or an economic loss, which should, in fact, be the result of a civil action. That is one method.

Now another method might be that if you look at IOSCO guidelines in relation to international cooperation,

the guidelines have so far been on exchange of information. I think we might then consider taking that up one notch into giving guidelines on mutual help in investigation of security offenses.

Many jurisdictions do have, of course, these bilateral agreements in relation to enforcement of security infractions, security law infractions. And I still remember when I was chair of the Hong Kong Commission, there was one insider trading case which affected a U.S. corporation listed on the NASDAQ, but the tipping was done through Hong Kong and because we had these bilateral agreements, we were able, actually, to subpoena the phone company and actually got a list of the whole -- list of the cell phone conversations and as a result, in fact, the culprits were caught.

Now so I think IOSCO could, in fact, issue standard guidelines, almost like a model law or model guideline for laws, which countries could enact to assist each other. Perhaps now these are the two areas that we might consider.

MR. BECKER: Felice?

MS. FRIEDMAN: Thank you, David. I am pleased to be here also. When I was asked to participate in this discussion, I was curious to hear Steve talk about our international enforcement successes. I don't think I have ever heard him give such a string of them as he did this morning, and it sort of makes my day to hear that.

MR. BECKER: It just seems like this morning. Actually, it was a mere 10 minutes ago.

MS. FRIEDMAN: Oh, is that what it was? It is true. I guess it is afternoon now.

I want today to make three very simple and related points and take some time, hopefully not too much time, to illustrate them with some of our recent experiences. The first point relates to the relationship between sovereignty and global markets. The ability to enforce one's own laws within one's own borders is impossible without the cooperation of foreign regulators and law enforcement authorities. International cooperation enhances sovereignty, it doesn't interfere with it.

My second point has to do with what that means for securities enforcement in a global marketplace. And I think we started to talk about that already. Regulators should no longer operate with solely a national mind set. Pursuing enforcement actions in an international environment is not simply an issue of jurisdiction, but also of discretion and global coordination. Just because we have jurisdiction, doesn't mean we should bring a case. Assistance makes bringing a case possible. Discretion makes bringing it sensible.

And third, since cooperation is necessary for international enforcement, how can we do it better. Here I

want to mention some ways we can improve bilateral solutions as well as how we can use multilateral initiatives in our enforcement work. And as Tony suggested, I think that multilateral initiatives may be what we need to pursue in the enforcement of judgments area.

So first, turning to the question of sovereignty, the issue is, what is the relationship between securities enforcement and sovereignty in a good marketplace. And before answering that, let me say just a little bit about what I mean by the term "sovereignty." Sovereignty can be defined as the supreme political authority of an independent state. Included in this concept is the idea that sovereignty is fundamentally the ability to enforce your own laws.

And David, in the paper that he wrote for this conference, described some of the judicial decisions of courts in different countries, as well as securities regulators worldwide that show that securities regulators and the courts in different countries are grappling with these issues -- with the need to bridge different legal and regulatory systems so that we can each effectively enforce our securities laws.

This is our prime responsibility in the SEC's Office of International Affairs. When we need to investigate a case where information lies overseas, we must first figure out what options are available to us to obtain the

information. And that often depends on how a foreign country's sovereign interests are reflected in its legal and regulatory system.

I believe that exercising effective sovereignty in today's world -- the ability to enforce one's own laws within one's own borders is now impossible without the cooperation of foreign regulators and law enforcement authorities. This is no longer a question of choice.

The events of September 11th and their aftermath demonstrate this all too vividly. As Jack Blum, a former special counsel to the Senate Foreign Relations Committee, which investigated the BCCI scandal a number of years ago recently noted, "What we really need in order to crack down on terrorist financing is a system that operates relatively seamlessly where all of the countries cooperate in the course of an investigation. However, it doesn't work that way. It is all tangled up in questions of sovereignty."

Whether the U.S. is trying to identify the source of terrorist financing or is investigating whether there was suspicious trading activity in the days and weeks immediately preceding September 11th, we need the cooperation of foreign governments, and this is equally true for securities regulators on a daily basis.

Securities regulators must be able to cooperate with foreign authorities in order to enforce their own

securities laws and protect investors. There is, perhaps, no clearer express of this than in the Canadian Supreme Court case, British Columbia Securities Commission v. Global Securities Corp.

This case arose from an SEC investigation into the activities of a Canadian broker-dealer. During the course of the investigation, we asked the British Columbia Securities Commission to assist us by providing documents and testimony from the Canadian broker-dealer. The broker-dealer challenged the subpoena that the BCSC issued on our behalf arguing that British Columbia statute, which enabled the BCSC to assist us, violated Canada's constitution by making the BCSC, the British Columbia Securities Commission, an enforcer of our laws, of U.S. laws.

But the Supreme Court of Canada rejected this argument. It held that the British Columbia Securities Act permitting information sharing was constitutional because, and I quote, "The pith and substance of the provision in question is the enforcement of British Columbia Securities laws." The Court continued, "The statute's dominant purpose is the enforcement of domestic securities law, both by obtaining reciprocal assistance from foreign regulators and by discovering foreign security law violations by domestic registrants."

Other national legislatures have recognized this as

well. Last year Singapore enacted a new law that permitted the Singapore Monetary Authority to assist foreign regulators, and just this past year, Mexico changed its law so as to permit its security regulator to share bank account information with other countries. In both cases, these governments recognized that they could better enforce their own securities laws by providing assistance to foreign authorities.

Perhaps the importance of international cooperation to securities enforcement is best shown by the numbers. Last year the SEC initiated over 500 enforcement actions. In that same period, we made over 345 request to foreign authorities and we responded to 519 incoming requests. By comparison, 10 years ago we made only 145 enforcement requests to foreign authorities and responded to 160 incoming requests.

This increase is consistent with the growth of global markets. For those of you who have been at the other panels, you will have heard these numbers before. Ten years ago there were only approximately 400 foreign private issuers registered with the SEC, today there are nearly fourteen hundred.

But even as the need for cooperation grows, old concepts of how to best guard one's sovereignty remain. Some of these old concepts are, in fact, detrimental to national sovereignty. For example, many countries continue to impose

a dual criminality standard as a prerequisite for cooperation. Dual criminality requires authorities to provide assistance only to foreign regulators investigating violations recognized in both jurisdictions.

In the 1980s, dual criminality requirements prevented the SEC from obtaining assistance in insider trading investigations. Insider trading, in those days, was not prohibited in very many places other than the United States. Switzerland, for example, only adopted insider trading prohibitions in 1988, Germany outlawed insider trading in 1994. Thus, neither the Swiss or German authorities could share information from within their countries about insider trading that affected our markets.

At the same time, this inability to share raised serious questions in our minds about whether we should reciprocate by providing assistance to them during their investigations. In fact, the statutory basis on which the SEC relies when it assists foreign regulators, Section 21(a) of the Exchange Act, requires us to consider reciprocity before providing assistance. It also, explicitly, disavows dual criminality.

Legislatures that impose dual criminality requirements seek to limit the extent to which a foreign authority can reach into their own country; however, in doing so, they may cut off their own authorities from the

reciprocity that cooperation provides with a larger effect being to limit their own reach.

Well, perhaps originally envisioned as a fence keeping foreign authorities out, dual criminality is, in fact, a cage holding domestic law enforcement authorities inside what, in the global Internet age, are ever shrinking borders. As such, dual criminality requirements do nothing more, I believe, than damage the sovereignty they are meant to preserve.

One way to address this may be harmonization of laws. If we all have the same laws, then it is no problem if we have dual criminality requirements. However, while harmonization of laws can mitigate the damaging effects of dual criminality requirements, I don't believe that they are a long-term answer to the dangers that are posed by old ways of thinking about sovereignty. Rather, as some differences are eliminated, new ones will emerge.

Many countries now prohibit insider trading; however, interpretations of insider trading laws continue to differ, raising questions about compliance for industry and for regulators. The same is true of the EU's proposed scheme for addressing market abuse.

E.J. Dionne, Jr. recently observed in the Washington Post, the paradox of national sovereignty is that it almost certainly can't be protected unless nations act in concert.

Securities regulators need to provide assistance based on a foreign authority's assertion of its own sovereignty without assessing whether it matches their own.

This is exactly what is needed to combat securities fraud in this day and age and what the U.S. Congress recognized when it added Section 21(a)(2) to the Exchange Act approximately a dozen years ago. Yes, Section 21(a)(2) is broad, but we think it has been extremely effective and represents the way forward. Just ask our foreign counterparts. We believe the Global Securities Court got it right.

So international cooperation is necessary for the effective exercise of sovereignty. Because we can now get access to a wide variety of information from many different places, we have more chances to bring more cases, but just because more opportunities exist doesn't mean that we should pursue them all. Pursuing enforcement actions in an international environment is not simply an issue of jurisdiction, but also of discretion. Jurisdiction is simply the starting point.

In international cases, we need to ask ourselves, should we be prosecuting this case? What are the implications of an SEC action here? Is a foreign regulator in a better position to act? How will the SEC's case affect the foreign case and vice-a-versa? How will investors be

best protected? We need to consider what international cooperation implies from the outset and take those implications into account in considering whether to pursue a case at all and if so, what our strategy should be.

Steve mentioned the Section 21(a) report that the SEC just issued listing the broad factors that the SEC will consider when exercising prosecutorial discretion. For international cases, the fact that a foreign regulator may be prosecuting the case should also be considered. No one regulator can, in David's words, be a worldwide cop.

Tony also talked about what the International Organization of Securities Commissions, IOSCO, could do in this regard. Just this past year, IOSCO issued a guidance paper on joint and parallel investigations that illustrates what I believe is this new type of cooperation. The IOSCO paper recognizes that when multiple securities regulators have interests in a case, they should communicate with each other up-front and on a continuing basis. The report addresses issues such as allocating responsibility for collecting information, methods for sharing, permissible uses of information, and the practical considerations involved in bringing cross border enforcement actions.

Three recent SEC cases exemplify what I mean when I talk about how we exercise discretion in international cases. In each of those cases, we talk with our counterparts about

our jurisdictional interests. As Steve suggested, these interests were not views as being incompatible with those of our foreign counterparts, though in some of the cases, we needed to work closely together to ensure that conflicts did not arise.

The first case I want to mention is the case that Steve talked about in the matter of E.On or the VEBA case, and since he described it, I will be brief here. As Steve indicated, we really did not believe there was any question of U.S. jurisdiction in this case, but what I would like to add to what he said is that early on, we consulted with the BAWe, with Georg's organization, about the issue of whether there were any potential conflicts on the issue of the -- of making materially false statements and whether there were conflicts between U.S. law and German law in this issue.

In fact, although German law did not prohibit VEBA's misstatements, neither did it require them. Had VEBA been caught between two conflicting laws, we might have felt differently in pursuing the case, but given the absence of such a conflict and the egregiousness of VEBA's misstatements, we felt it was important to make a clear statement that those who take advantage of U.S. markets must comply with rules.

Similarly, in our SEC v. Stephen Hourmouzis and Loughnan, the SEC and the Australian Securities and

Investments Commission took action against two Australian residents who used the Internet to falsely tout stock to millions of investors in the U.S. and abroad. More than six million messages were posted on Internet sites and made to appear as though analysts had written them. While the fraud emanated from Australia, the victims mostly were here in the United states.

ASIC and the SEC cooperated closely throughout the case from gathering evidence to strategizing about our respective proceedings. Each of us had key pieces to the other's puzzle. Ultimately, ASIC brought criminal charges against the defendants. In addition, because of the impact within the United States and because we wanted to make clear that we would not accept manipulation of U.S. markets from outside the United States through the Internet, the SEC brought a civil action here in the U.S. to safeguard our own sovereign interest. However, we did not seek penalties in the case so as not to impinge upon the criminal case in Australia.

By cooperating closely with ASIC from the inception of the investigation through its conclusion, we were both able to take action that together achieved a comprehensive and effective resolution. The crooks went to jail and the SEC sent an important message about use or misuse of the Internet to affect our markets.

Finally, in the last case that I want to mention, in the matter of ABN Amro, Incorporated. In that case, a U.S. investment advisor specializing in international stocks and a U.S. broker-dealer attempted to pump up the value of the advisor, Oechsle, of its portfolio by purchasing a large volume of foreign securities during the final minutes of trading on the last day of each quarter. The stocks that were subject to the manipulation including Renault, Volkswagen, Banca di Roma, British Biotech and Pohang Iron and Steel ADRs. This will give you some idea of the range of markets affected by the manipulation.

Because the scheme was initiated in the United States and carried out in various overseas markets, we needed assistance from many of our foreign counterparts to obtain the information necessary to reconstruct the pattern of trading that was used in each market. We consulted with them about our findings and demonstrated that the SEC will use its cooperative relationships to prevent U.S. firms from exporting their misconduct abroad.

These cases show how in exercising our discretion, the SEC now needs to consult with and consider the interests and capabilities of our foreign counterparts and not just get information from them. In one, the SEC sanctioned behavior there was a clear violation of U.S. law and no conflict with foreign law.

In the others, while there were no concerns about conflicts and each regulator had the jurisdiction and the ability to sanction violators, we either sanctioned different players or imposed different sanctions while indicating our respective interests. In each instance, assistance made bringing the case possible while discretion made bringing it sensible.

This brings us to our third topic. Given the need for international cooperation and consultation from the outset of an investigation, are bilateral arrangements between regulators sufficient in a global market? I believe the answer is no. Clearly no. But before I explain why and what we are doing about it, let me make clear that the focus should not be on the mechanism through which cooperation occurs, it should not be on the MOU or the treaty, but on the underlying legal authority.

It doesn't matter whether we are talking about a memorandum of understanding, an MOU, a mutual legal assistance treaty or any other formal written arrangement. What is important is not the instrument of cooperation, but the authority and willingness to cooperate. While the SEC's MOU's are terrific, what really makes them effective is the underlying local law, ours and our foreign counterparts.

You can sign as many MOUs as you like, they can be with a single other regulator or with scads of other

regulators. If those who sign the MOU do not have the legal authority and the willingness to cooperate and share information, the MOU is not worth the paper it is written on.

That being said, what can we do to adapt bilateral solutions to a global Internet economy? You can tell, from Steve's remarks, that we are very mindful here of Chairman Pitt's concerns about considering real time enforcement, and this truly is a challenge in the international environment. Existing mechanisms can be and need to be used more creatively and quickly to provide real time responses.

For example, we are developing protocols for emergency matters in international investigations. This is not very difficult in insider trading cases when what you need is information sufficient to identify the owner of the account that traded. We already are at real time enforcement in many insider trading cases.

In a recent case, in SEC v. Midpoint Trading Corporation, the SEC alleged that insider trading had occurred in advance of an announcement of Nestle's takeover of Ralston Purina. In that case, we literally obtained assistance around the clock. In other cases, we now receive real time, almost around the world, assistance.

I am pleased when I need to get some information from Hong Kong because I can submit a request to my counterpart at the Hong Kong Securities and Futures

Commission when I leave the office at night and have an answer waiting for me the next morning. The time difference works in our favor.

We also need international rapid response teams. In some cross border cases, we have begun to work with foreign authorities to mutually identify matters deserving priority and develop rapid response, as teams, to address them. These teams can work to ensure that the case is given mutual priority treatment. This could include sharing key information early on allowing certain parts of the case to be segregated and moved ahead rapidly.

And we need to better harness technology. For example, in a recent case, we recently pooled our resources with and created a joint database accessible by us and by a foreign authority, and thereby, we were together able to develop information that neither one of us was capable of discovering on our own. Through technology, the sum of our shared information was truly greater than the parts.

I can tell you how -- the commitment that we have to this when I tell you that -- you will get some idea of the commitment that we have to this when I tell you that we actually, we are willing to share the cost of this.

We also need to expand our bilateral approaches. Information sharing needs to be expanded beyond securities regulators to regulators of all types, as well as between

regulators and criminal law enforcement. Most securities regulators share information only with their counterparts, if at all, and have very different relationships with their domestic criminal authorities than we do with the Department of Justice.

This is often the case in continental Europe, for example. At the SEC, we have become very aggressive about seeking information that we need for our enforcement investigations from all domestic and international authorities that have relevant information or that may have access to it, whether they are securities regulators, banking supervisors, or criminal law enforcing authorities. This is critical in the international context because many countries have different legal and regulatory regimes and information is not only in the hands of or available to our foreign counterparts.

However, bilateral approaches, even expanded ones, are sometimes not enough. Going forward, we will need to use multilateral approaches to improve cooperation. Our experience with offshore financial centers illustrates how this can work.

For years, we used bilateral approaches to try to expand our ability to obtain information from offshore financial centers, sometimes known as secrecy havens. We met directly with our foreign counterparts when they existed. We

worked with the Department of Justice to try to develop criminal routes. We sought changes in law and changes in attitude.

Offshore, however, remained largely impenetrable. Legal and political hurdles to obtaining assistance were high and assistance was only available on an ad hoc basis. So we turned to those that could help us. We recognized that we could piggyback on the anti-money laundering fight to expand international cooperation and information sharing to combat securities fraud. The information needed by Treasury and Justice in money laundering cases was the same information needed by the SEC in securities fraud cases.

Collaboration with Treasury and DOJ brought the SEC added clout. By the same token, Treasury and DOJ recognized the SEC's special expertise. The result was an effective partnership. Together with Treasury and DOJ, we worked on the financial action task forces' review of offshores of non-cooperative jurisdictions. We ensured that regulations mandating customer identification by financial institutions and laws authorizing local authorities to compel financial records and share them with their foreign counterparts were key factors in FATF’s determination of whether a jurisdiction is non-cooperative.

At the same time that FATF was considering offshores from the money laundering perspective, the

Financial Stability Forum was looking at them as a possible source of international financial instability. We worked closely on the FSF's offshore financial center initiative. Through this multilateral group, we were able to ensure that the issue of international cooperation was a critical element in the FSF's determination of whether an offshore was problematic.

The early returns show that these multilateral efforts have paid off dramatically. New laws have been adopted in the Cayman Islands that for the first time enable securities regulators in those jurisdictions to compel the production of a wide range of information, including bank account information, on behalf of the SEC. Other offshores have new cooperation laws, including Jersey and the Turks and Caicos. Indeed, we already have obtained cooperation from offshores in a number of SEC enforcement investigations.

In going forward, there is renewed interest in expanding information sharing yet again. Just this past month, in the wake of September 11th, IOSCO created a special task force that will focus on expanding cooperation in information sharing, and we are fortunate that Michel Prada, our luncheon speaker, has agreed to spearhead that effort.

These initiatives underscore what I described earlier, the paradox of national sovereignty in today's globalized environment. Solving this paradox requires a new

type of comprehensive cooperation. Like any shift away from old ways of doing things, this new type of cooperation will not be easy. It may, itself, create new conflicts among national regulators as we mutually expand each other's ability to investigate securities law violations and enforce our sovereign interest.

But whatever conflicts arise undoubtedly also can be mitigated by expanded consultation and cooperation as we learn to better understand one another's approaches. By coordinating our enforcement cases while practicing discretion in how we bring these cases, we ensure that both our sovereign interests and our investors remain protected.

MR. BECKER: Thank you, Felice. When I listened to this, and Georg, maybe you have some comments on this, I wonder if it isn't a little bit -- how to put this, a little too reasonable. What we consider the right approach is -- makes a lot of sense, and there is a part of me that says, well, it is so self-evident that every nation will fall into line and reach agreement probably the day after we achieve world peace.

I -- there is an element, it seems to me, of concerns of sovereignty that arise from the national gut and that there is an irrationality, if you will, an insistence on it, that is political in the non -- in the broadest sense, that considerations of sovereignty are like considerations of

individual autonomy projected large, that academics and even securities regulators with a, really a commonality of interests, can agree on these things, and to the extent that we don't get into the political dimension, that it works fairly smoothly.

But when one gets to sort of where governments live, that somehow there is a stubborn insistence, at times, in doing things their way or our way simply because it is -- there is something that rebels against doing it someone else's way too much of the time.

Georg, I know you have a lot of experience in trying to achieve international cooperation in matters that run directly into these interests, and perhaps you can share with us some of your experiences.

MR. WITTICH: Thank you very much, and let me say how very pleased I am to be on this panel to speak from the European perspective on cooperation and enforcement. And certainly Europe has extensive experience in its efforts to harmonize the legal system and regulatory standards. The 15 member states of the European Union, they show certainly a lot of differences in terms of history of culture, of the development of their financial markets and their regulatory systems, but on the other side, I think they are a rather homogenous group with the common vision to build up a truly European financial market.

Therefore, I think the challenge in Europe to coordinate and to harmonize regulatory standards is certainly different compared to that to achieve that goal in a global marketplace. Just to tell you how and which way the harmonization of standards works in Europe, harmonization through European directives has been instrumental in shaping the European financial markets in their current form. Directives are adopted by the European parliament and by the European Council and they have to be implemented into the national legislation of the member states.

However, when we have looked at the securities legislation in Europe, we see a great variety of different regulations and rules. This is due to the fact that all member states are allowed to introduce more severe rules than in the European directives, and very often, the directives give a sort of choice and options for various measures and, and this seems to me also important, there are quite a lot of areas where the standards have not been harmonized at all until now. For instance, the roots of conduct for the protection of investors.

And it is just due to these remaining regulatory differences that so many barriers exist for cross border activities in the European economic area. For instance, issuers who want to raise capital on a pan European level, meet numerous difficulties due to complicated procedures for

the mutual recognition of prospectuses. One could also mention, which is really an achievement in Europe, the so-called European passport. It means that investment firms can provide cross border investment services to investors in other European countries or they can even set up rounds for it without any further organization in the host countries.

However, they are obliged to comply with the different conduct of business rules of the various host countries, which is a serious impediment to cross border services. Also, when we negotiated cross border alliances between exchanges, which is really a fascinating issue, and new territory, we became very quickly aware how different national regulations are still in Europe concerning, for instance, prohibitions concerning market manipulation, surveillance of the market or transparency rules. As far as the cooperation between securities regulators for dealing with cross border cases is concerned, this is only likely covered by the existing European legislation. Of course, we have general prohibitions with the obligation to cooperate.

In addition, the investigative powers of national regulators and sanctions are not yet defined at the European level. Now with the introduction of the Euro, we have a new situation. The Euro works as a powerful catalyst in the development towards an integrated European capital market. With a single European currency and the elimination of

currency exchange risks, one major obstacle for cross border activities has been removed. Additional investors benefit from increased transparency in the pricing of all financial services.

The importance of the Euro is also evidenced by the already very significant market share of Euro denominated corporate bonds. This demonstrates, I think, the broad acceptance of the Euro currency in the capital markets worldwide.

On the same token, the European focus of investors is reflected by the growing importance of European stock indices. For European and foreign institutional investors, national borders have already largely lost their significance. Rather than to ask about the nationality of an issuer, they will structure their portfolios according to the type of business that issuers in Europe are engaged in.

Retail investors are also gradually following this development. However, in spite of all these encouraging developments towards a more integrated financial market in Europe, I think one has to be aware that Europe will draw the benefits of an integrated market only if the appropriate regulatory framework will be realized if we remove the barriers which still exist in Europe between the national financial markets.

And in that context, the European Union has agreed

on two important steps in order to achieve that goal. First, an action plan to update more than 40 European directives in order to achieve a common regulatory framework with the aim to overcome the still fragmented markets has been decided.

This includes the European passport for issuers. I mentioned already to raise capital on the pan European level is extremely complicated. So what we have to give to the issuers is also a kind of a European passport. It means, in practice, that the prospectus of the issuer will be adopted by the national authority of the home country of the issuer, and this prospectus will then be notified to the relevant authorities of the other countries.

Another issue are common standards are regulated markets. We all have high standards for the exchanges, but they are not harmonized. Therefore, cross border alliances are so difficult to be achieved. And of course, we need, also, a common approach in Europe for alternative trading systems with all the complicated issues, which were discussed yesterday on the panel here.

Also, of course, implication of international accounting standards for all these companies, not later than 2005, in order to achieve comparable financial information in Europe. Common rules on harmonization is also very important because it is a chance for investment providers to contact investors, retail investors, in the other European

jurisdictions.

Secondly, in addition to that, the European Union agreed on a more flexible system for European legislation in order to react to the dynamic developments of the financial markets. As I said, harmonization of standards in Europe is based on European directives, but as it is now, to negotiate the European directives in Brussels, it takes about four years. Then you can count another two years to implement this directive in the various national legislations.

So we cannot go on with such a system because we have to respond very quickly to the dynamic changes of the financial markets. In this new approach, which has been adopted now in the European Union, it means that the European parliament and the European council will agree only on framework directives, and these directives, of course, would be rather abstract just maintaining the main principles to regulate securities markets in specific areas, and they will be flushed out in the way that a new securities committee consisting of member state nominees will adopt the implementing standards.

This can be done very quickly so we can respond then also to changes in the markets. What is the role of the European regulators in that context? I think the regulators have got a very important role because they are expected to provide advice in the preparation of new directives or the

preparation of the implementing rules for framework directives thus bringing technical expertise and extensive consultations with the market participants and investors to this process.

Better day to day harmonization with a second task of the Committee of European Securities Regulators, which is called now CESR. In particular, they will have to look for it, that European rules will be applied in a consistent manner, for instance, by producing consistent guidelines for the administrative regulations to be adopted at the national level.

The European regulators, in the last years under the heading of FESCO, the predecessor of CESR, they are already very active to develop common standards in non-harmonized areas. Our most important and I think also our most ambitious project was to agree on a common set of rules of conduct for the protection of investors.

The development of a single market in financial services in Europe warrants a common level of investor protection, to force the public confidence in the market. In addition to that, the harmonization of the rules of conduct will make it possible to apply the investor protection rules of the home country of investment forms, thus, supporting the freedom of such firms to provide services throughout Europe.

We are now in the process of final consultations

after more than three years of very intensive negotiations. Why did it take so long to come to a final document? I think it seems to me quite clear that rules of conduct, it is a very complex and comprehensive challenge.

We all agreed on the -- based on the principles of IOSCO, that we want to protect our investors, but really there the devil lies in the details because we have different rules, and certainly it couldn't be the task to agree on the lowest common denominator, but what we needed are high quality standards, which are very often inspirational for many participants in Europe because they had to change their legislations.

But finally, I am very optimistic that in the coming months, we will have a common set of rules of conduct in Europe, which we will apply, and I think this will be a remarkable achievement, I think, between 17 jurisdictions.

I think when we speak about protection of investors, we may not lose out of sight the problems of individual investors when they take the services of foreign investment firms. Very often the legal protection of individual investors may be in cross border cases a problem. And therefore, I am quite happy that the European Commission made a new proposal in order to cope with that question.

Rather than reinvent the wheel, the European Commission suggested to use the existing national

infrastructure to address cross border dispute settlement by linking the national bodies into an EU right complaints network. The objective of this newly established network called FINET is to facilitate consumers' excess to out of court settlement to cross border disputes when the consumer and the financial service provider come from different member states in Europe. It is basically built on mutual recognition between the national redress bodies and exchange of information.

The basic idea is that the investor will get access to the alternative dispute settlement body to which it is service supplier adheres to via the repressed body in its own country of residence. Out of court dispute settlement schemes for financial services take various forms in different member states. Sometimes there exists a central scheme at the national level. Sometimes schemes of each are even local.

Some of the schemes are public and some are private. Also, the statutes of decisions varies from recommendations from both parties to decisions which bind the service provider. For example, a most private banking ombudsman and a true ombudsman schemes. It is important to underline that apart from few specific arbitration procedures, out of court complaint schemes, in the area of financial services, never deprive consumers or investors from

their right to go to court if they are not satisfied with the result given by the out of court body.

Let me make finally some remarks on the international cooperation. I think for a long time we will have to live with the contradiction that we have global markets, but on the other side, we are national regulators whose powers are limited to national boundaries. So I think the only remedy can only be to agree on common standard, but in particular, to be sure that we have reliable mechanisms for the exchange of information and mutual assistance.

And up to now, if we have a look worldwide, we have a rather impressive network of bilateral agreements from mutual assistance, but a closer look, I think, shows that the quality of this bilateral agreements may be very different. There are many, and this is very essential I think, bilateral agreements of a high standard for the exchange of sensitive information, but it is also true, in my view, there exists many bilateral agreements with many restrictions with not so much substance. So I wouldn't like to rely on such agreements if one really needs the assistance of that foreign regulator.

When we started our cooperation in Europe, we had 17 European regulators. So as a group, we took a new approach to that and we signed very early, already in '99, a multilateral memorandum of understanding on the exchange of

information and surveillance of securities activities. This multilateral agreement establishes a general framework for cooperation and consultation between the authorities to facilitate performance of the supervisory functions and the effective enforcement of the laws and regulations governing the markets and the cross border contacts.

Under this MOU, the authorities are obliged to provide each other the fullest mutual assistance in any matters following the sort of competence of the authorities recognizing that the duties and competence of the authorities vary until now from country to country in Europe. And I must say since '99, we have made very good experience so far with the functioning of this multilateral agreement.

One reason for that certainly was the creation of a permanent group of certain officials of the members under this MOU. This permanent group, called FESCO board, is responsible for the surveillance of securities activities and the exchange of information.

The purpose of this group is to facilitate effective, efficient, and proactive sharing of information and make cross border information flows as rapid as for domestic matters. An important component of each FESCO board meeting is an exchange of information about cases with cross border implications, which involve problems that might concern other regulators as well. Where necessary, a course

of action is agreed.

The survey, conducted by the FESCO board on the existing powers of cooperation, revealed, for example, that there is still room for improvement in FESCO members' ability to exchange information in situations not covered by European directors, particularly in the field of market abuse and the field of market manipulation.

And I think it is very essential that the European commission in its new draft for a directive on market abuse has proposed now that we need really more convergence in investigative powers, also concerning sanctions. I think this is the right way.

And therefore, I think that this mighty letter of approach for the exchange of information could be explored, perhaps, on a more global level. And I am quite happy that a project team was set up in the last meeting of the technical committee IOSCO under the chairmanship of Michel Prada with the mandate to analyze the experience made in connection with the terrorist attacks of September 11th and to find ways to improve cooperation and the exchange of information, given also attention, of course, to the problem of non-cooperative jurisdictions.

It may be that the multilateral MOU between the CESR members in Europe can stand here as a model for comparable agreement in enforcement and cooperation matters

between IOSCO members. To make sure that the MOU is enforceable, only those countries which are able to conduct investigations are foreign requests and to exchange confidential information with foreign counterparts should be invited to sign an MOU. This would cause, I am sure, along with the activities of other international fora, as the financial stability forum at the FATF, additional, well, I would say, pressure on those countries, which until now are still uncooperative. Thank you very much.

MR. BECKER: Thank you. We have a break scheduled now. We will start back here in 15 minutes. Thanks very much.

(A brief recess was taken.)

MR. BECKER: We would like to begin again. First of all, to whomever lost his or her glasses, we are giving a reward for whomever comes forward and claims the glasses. The reward, of course, being the pair of glasses.

Tony comes at these things from a different set of experiences, and I think Tony is going to talk a little bit about the roles of intermediaries here and some experiences that Tony has had in cases involving multiple jurisdictions.

MR. NEOH: Well, thank you, David.

I was interested in David's last comment about it all being very logical and neat to try and assume that people will help each other. I think that is right because if there

is any principle which is observed in international transaction is that no country, in fact, feels itself obliged to help another unless there is an obligation to do so or unless, in fact, it is in its own interest to do so or unless it feels it is in its own interest to do so.

And really the trick is to ensure that people do feel that it is in their interest to help other's jurisdictions. So I work, as you know, in China and there are, of course, free Chinese markets. The first being, of course, in Taiwan where there is a very different set of problems at the moment. The essential problem in Taiwan at the moment is that the government is in so deep in the stock market and the stock market has come down so much that the public coffers have been depleted in helping it out.

And so every time the market goes up a little bit, the government feels that it should sell down a little bit, but cannot because if the government sells down more, the market goes down further. So a lesson to be learned is that any government who wants to intervene in the market, they better hold their hand until the market goes way down.

In the domestic market in China, in the mainland of China, I was very interested in the discussion this morning on international accounting standards because one of the basic tenants in that particular discussion was that really the name of the game was to try and keep people, or stop

people, from finessing accounts or finessing financial statements.

Well, in the mainland of China, we haven't even come to that stage. The problem is, how do you stop people from cooking the books. And it is when they get a lot better at cooking the books, then you talk about finessing financial statements.

So I cannot talk about these two Chinese markets because they have got their own very local problems, and at this stage, it is sort of hard for them to feel that they have an interest in helping international enforcement.

Now but there is, of course, one other Chinese market, which feels very much a part of the international financial community. And that is because it is a market that really lives or die, in fact, by international participation. In fact, international participation in the Hong Kong markets represents at least half of its transaction, and indeed its value as a market to mainland China is very important. Last year alone, of course, through Hong Kong, mainland Chinese corporations raised, in fact, 15.4 billion U.S. dollars, and that is through IPOs in Hong Kong sold in continental Europe and in the United States.

So the regulatory authorities in Hong Kong do feel that it is in its own interest to be part of the international financial community and to really, therefore,

fashion regulatory ideas, which assist international cooperation. So I would like to draw from that experience and put forward to you, again in the interest of time, just three things.

First, a set of propositions, four propositions, which focuses on how one can establish a basis or a platform for international cooperation. Secondly, I would like to go to an actual case, which applies these principles, and thirdly, I would like to put forward a set of recommendations for our friends to think about.

Now firstly, the four propositions I would like to put forward. I think, perhaps, one of the best places to start in establishing any platform for international cooperation is to look at the behavior of financial intermediaries because they really are the people who are central to financial transactions and therefore, they do have a responsibility.

So the first proposition that I would put forward is that there should be common principles, which govern the behavior of licensed persons, whether they be corporate or natural, and these principles should be universal. Now we do have, in fact, IOSCO principles, which have been published as early as 1990. In fact, nine principles, which deal with the conduct of licensed intermediaries.

But I believe one of the central features of that

set of principles is the requirement of good citizenship on the part of each intermediary. In other words, that person, whether he be a natural person or corporate person, has the responsibility to do its or his or her utmost to ensure the integrity of the markets in the ordinary course of their business.

Now it does not mean, therefore -- integrity of the markets, therefore, does not just mean the integrity of the market in which that person operates in. So there is, in fact, no sort of jurisdiction to that. The integrity of the markets must be universal because it goes to integrity of the person as well as rules of fair play, honesty and so on.

Now the second proposition, which leads from that, is that it must, therefore, be considered a breach off this principle of good citizenship. If a licensed person in one jurisdiction knowingly assists in the commission of acts, which are prejudicial to good market regulation of another jurisdiction even if, in fact, there is no immediate effect or damage to the form jurisdiction, so if you are in one place and if you assist, in fact, in the commission of an act which is detrimental to another, even though there is no detriment to your place, it is still a breach of that basic rule of good citizenship.

The third proposition I would put forward is that regulatory authorities, therefore, should use their

regulatory and disciplinary powers to prevent or penalize these breaches of rules of good citizenship even though, in fact, there is no direct damage to your jurisdiction.

And the fourth proposition really is one of cooperation and that regulatory authorities affected by cross jurisdictional illicit activities should cooperate by exchanging information and coordinating disciplinary action and even work together in putting forward preventative measures for the future, particularly if those illicit activities involves various parts of an international, financial conglomerate.

Now let me illustrate these four propositions by an actual case, which happened in 1997, in late 1997. It is an interesting little case, which could involve any international firm. In this case, it happened to be Numora International. Now somebody in the headquarters, London headquarters of Numora International, cooked up a very interesting scheme. And they had, in fact, a very nice, short position in the Sydney futures exchange of future indexes of index futures in the Australian futures exchange.

And the scheme, a very easy one, was in fact to sell off, in fact, a basket of stocks in the Australian stock exchange during the last few minutes of trading when the market was thin and it was easy to push the market down. The intent was not to really profit by way of the stock sale, but

really the intent was to push the market down in order to derive maximum value in the short positions.

So this is classic market manipulation. Now the transactions were done that way. They clearly had to be executed in Australia and they were done by the Numora Australian arm, but it had to be done through dealing this in Hong Kong, in fact. So you actually have a scheme conceptualized in London, executed through Hong Kong, and then the effects of which were felt in Australia.

Now the Australian Securities Commission got to know of this and clearly they immediately characterized that as a market manipulation scheme. But in order to investigate all of that, they had to go to London and go through Hong Kong. They had these memorandum of cooperation with the London Hong Kong authorities.

But then the Hong Kong authority and the London authorities acted on the propositions that I put forward to you, which is their own intermediaries, in fact, have been involved in schemes, which resulted in market manipulation in another jurisdiction. And that was contrary to the basic principle of good citizenship, which was a basic assumption, as well as, in fact, an explicit provisioning of the Hong Kong Code of Conduct.

Now interestingly enough, in that case, then, the Australian authorities then started court proceedings in

Australia. And these proceedings were regulatory in nature, very clearly, but they had to seek remedies, which were generally private action remedies, such as injunctions and so on, which one would seek in a normal civil action.

Now the London authorities began to take disciplinary action and the Hong Kong authorities also took disciplinary action against the people who perpetrated this market manipulation, as well as Nomura International. Now what happened next is very interesting because Nomura, who was faced with the Australian court action, then went to the London authorities and said to them, "Well, please, you know, we really have our hands full fighting the Australians. Please can you stop your disciplinary proceedings until we finish our court proceedings in Australia."

The London authorities said, "Yes, we will do that." But the Hong Kong authorities, and I was the chair of the Hong Kong authorities at the time, said, "Well, this is not -- I can't do that, mainly because I have a statutory duty to ensure that these infractions of discipline have to be dealt with speedily and therefore, I can't do that."

So the -- Nomura went to court, in fact, to try to stop me and the court of first instance, in fact, gave an order of prohibition against my commission and we had to stop our actions. So we appealed. The court of appeal sided with me saying that really it is my statutory duty to bring these

actions speedily and therefore, I must act according to my statutory duty and therefore, there should be no stay of the proceedings even though there might be double proceedings or, in this case, multiple proceedings.

Now what this all brings up, in fact, is the need for the Hong Kong, the Australian, and the London authorities to work together. Now in the end, in fact, the London authorities also stopped the stay and Nomura got disciplined as a result.

Finally, recommendations. Now based on these, the propositions that I put forward and the actual case, which went to court and where, in fact, resulted in a great deal of discussion and cooperation between the three regulatory authorities, certain recommendations came through now, the first of which was this. That in addition to the need for cooperation and the need to ensure that we have these good citizenship provisions in our codes of conduct, that regulators might in future develop more specific preventative rules.

Now one of which in fact was developed in -- after this particular case was the elaboration of the know your client rule. Now those of us who have grown up with this know your client rule, tends to regard that as a rule, which assists an intermediary in understanding the financial position of the client. Know your client tends to be that.

But really in this day and age of international transactions where in fact you could actually have instructions from somebody who is not the ultimate client, instructions perhaps from a New York brokerage firm for somebody, then you don't really know who your ultimate client is.

So the know your client rule, in fact, needs to be elaborated on by spelling out, in fact, the need to ensure that every intermediary who gives an order for a transaction must be in the position to provide to the next person and to the regulatory authority the identity of the ultimate beneficial party. And these rules, in fact, were changed in Hong Kong. And in Asia, there is now a discussion as to how these rules of ultimate beneficial ownership of transactions need to be policed and spelled out in rules of conduct.

That, I believe, would help in ensuring that enforcement authorities do get that information firstly from the intermediaries and then secondly, of course, if you need further investigation, through agreements with your counterpart regulator. But you have a lot of self-help, in fact, in the very beginning if you have these rules. And the onus, then, is placed on the intermediary who, after all, in fact, should be, in fact, the first line of defense for any jurisdiction.

Secondly, in addition to these what I would call

prophylactic rules, you might also have schemes whereby you can jointly inspect international conglomerates. That is something which the SEC and the Hong Kong authorities have done, in fact, in the past to create effect. In other words, through the platform of intermediary supervision, one gets to know how an international conglomerate works. And it also, in fact, is in the interest of the international conglomerate to allow, in fact, a joint inspection so that they don't get bothered by different inspections all at a time.

But through that, in fact, you gain a good understanding of how that conglomerate works. And also, through that inspection, what is able to make recommendations to the international conglomerate as to how information -- timely information in relation to transactions could be given to regulators in the course of enforcement actions. I think that particularly helps, and I certainly, in my position in Hong Kong, have found that to be a very, very useful channel for getting information, not only in preventative situations, but also in fact where you have an enforcement action going.

Thirdly, I think coordination is of great importance in disciplinary situations. The Nomura case made us feel that coordination is essential. That is something which I also took from Felice Friedman's comments just now that she involves that as important, really even more so in this day and age. That is something that I would

particularly second.

So I would just leave you with the propositions that I put forward and the recommendations that I just set out, in particularly the elaboration of the know your client rule and the need, perhaps, to consider joint inspections of international conglomerates. Thank you.

MR. BECKER: Thank you, Tony.

Let me just raise, for everyone's considerations, a couple of questions about this matter that you discussed. Here was something where we had three different proceedings. One -- in three different enforcement proceedings in three different countries.

One of them, I understand, had the additional feature of providing some sort of restitution to investors. Would it be better in these situations to have one proceeding, particularly where one has a single conglomerate, where one regulatory authority gets some sort of judgment against the entity and that judgment is either enforced in the courts or is given recognition has regulatory consequences in other countries so that you don't have to prove a set of facts three times. You don't have to subject the entity to three different proceedings and three different procedural regimes, but you get it done faster and you have the same ultimate impact.

Felice?

MR. SCHIEREN: Why is anybody else answering that besides me? That has got to be my question.

MR. BECKER: Well, go ahead, George.

MR. SCHIEREN: I would rather have 42 proceedings around the world and fight them all at the same time forever. Of course we want to have one proceeding. It is nuts. That is the biggest problem we have right now. The multiple proceedings that you just described, I have lived through those many times already and it is a battle of attrition, it makes no sense, and it is a waste of resources on every plane. So the simple answer is yes, we have to do something like that.

MS. FRIEDMAN: The question, I think, is better for whom? I mean, clearly for George it is better to have one proceeding. Is it better for investors? Well, one of the questions you have to ask is, I think in what you said, David, you assumed that one authority could take the proceeding, get a comprehensive result and enforce its judgment in these other jurisdictions. But that is a big assumption. The powers, as Tony had mentioned and Georg as well, the powers of the authorities are very, very different and in the Numora cases, what actually happened in each of those different jurisdictions was different because the actual legal powers that the different regulators had were different.

So the only way to, in fact, achieve a comprehensive result for investors, if not for Numora, was to have the multiple proceedings. Is it ideal? No. It is not ideal for regulators and it is not ideal, obviously, for industry. But until we have an -- you know, until we have a uniform law -- and I would argue not just harmonization of laws because interpretations, as well, can differ, but until we have a worldwide cop and a worldwide law, this kind of multiple proceedings and coordination of them, I think, does produce a more comprehensive result.

MR. BECKER: Well, my question certainly didn't mean to secondguess the outcome in that proceeding, but I -- but in looking towards the future, it does seem to me that it is better for investors, you get a faster result, which gets restitution back to investors, and it does not, from the standpoint of business, you don't have unnecessary procedural burdens and multiplicity of proceedings.

There is a mechanism whereby a regulatory outcome in one country automatically has consequences in another. I understand that that is not how things now are, but one question to ask is whether in trying to arrive at international principles of enforcement that one thing that happened is is that assuming that there is a basic procedural fairness, one regulatory authority will recognize the action of another as a basis for regulatory consequences,

particularly related to licensure, in another authority. Sure.

MR. NEOH: Could I just respond to that because I do agree with David. I mean, I have been in litigation for too long, a litigation lawyer really for too long to really think that one really wins in any piece of litigation. In the end, nobody really wins except the lawyers.

MR. BECKER: Which is not so bad.

MR. NEOH: Not bad for me, certainly, but sometimes I feel that, you know, it gets to be too much. And I agree, there really should not be a multiplicity of proceedings. But I think at the end of the day, regulatory agencies, and particularly international firms, can work together on this.

In that particular case, and I don't mean any criticism to the firm at all, but certainly the people who were in charge of that were very adamant in trying to exonerate themselves. You know, they felt that they had strong feelings and therefore they did not want, in fact, to compromise any of those proceedings.

Now if, for example, they were willing to compromise some of those proceedings, then something could really be worked out. I mean, for example, in the Australian court proceedings, I mean, they could compromise that by way of an order that says, "I don't admit what we did, but I

would submit to an injunction, in any event.

And therefore, then they are able, then, to deal with the disciplinary proceedings or perhaps to make restitution on no admission of liability, and that would have dealt with the court proceedings, and then secondly, then they would then be able to deal with the regulators and say yes, you know, these were the people who did wrong. Maybe, you know, we don't think that they did that wrong, but nonetheless, if you wish to reprimand us or we would say that, you know, we are very sorry we did that and we would want to be reprimanded. Let the staff who are involved be disciplined.

And then a package could be worked out, which does not do untold damage to the firm and at the same time, is able, in fact, to show the world that justice has been done. Now the whole purpose of disciplinary action and at the same time the working financial markets really presumes, in fact, a lot of good, common sense among the actors. And I think -- I mean, George probably would agree with me that working for an international firm, one would try to, in fact, get to a point which on the one hand ensures that justice is seen to be done, and on the other hand, does not do damage to the long-term development of the firm.

MR. BECKER: Georg, let me ask you this. What are the consequences within the EU if, for licensure of a

financial intermediary, if the intermediary is found to have violated the laws either within one country in the EU or outside. Does this have an impact on its license? Can it be the basis for proceedings?

MR. WITTICH: Well, I am quite sure because in Europe, we rely very much on home country responsibility of the regulator, this is really the basis for the European passport, the authorization to provide cross border services. Therefore if, for instance, a licensed firm violates the rules of another European jurisdiction, of course this would have consequences and it must have consequences.

But of course, the facts have to be established really in a manner that the authority, who has licensed the firm in the home country of that firm, must be able to prove in court if this is necessary, this illegal behavior has taken place. And so this means a high degree of mutual support, I think, to establish the facts.

But I would think also if the violation of this illegal behavior has taken place outside the European Union by a European firm licensed, well, let s say, in Germany and we see that that firm targets continuously foreign investors outside the European Union and does it in a way that is illegal; for instance, doing court calling, for instance, in other jurisdictions, we -- I think we couldn't tolerate that without consequences because behaving in such a manner such a

firm proves not to be reliable, I think, in terms of proper behavior or what Tony said about sound citizenship.

I think this ought to be a clear case for us. If such a firm wouldn't target German investors at all, but only foreign investors, I think in such a case, we would have to examine such a license has got to be withdrawn or the management has to be replaced by new chief executives.

MR. BECKER: Thank you.

George, you have been sitting here for two-and-a-half hours and hearing two governmental representatives talk about international enforcement and except for one intemperate outburst, you haven't said anything about what this has to do with your business and what your practical difficulties are in wanting to be a good global citizen. And given the size and complexity of your organization, occasionally things do happen. What is the international enforcement system or how things work, how does that affect you in trying to run a multinational basis?

MR. SCHIEREN: Thank you, David. I thought it was only moderately intemperate, but --

MR. BECKER: Well, we will try to provoke more.

MR. SCHIEREN: We will get there.

MR. BECKER: Okay.

MR. SCHIEREN: I will answer that question. First, I would like to thank those of the Historical Society and the

Northwestern School of Law for hosting this forum today. I think this forum and others like it are the predicate to develop the kinds of dialogue and ultimately cooperation and regulation that we really need as we move forward in a current -- in an evolving environment, which is what this is. I mean, this is -- we are taking a snapshot of the world today and how it looks today. And hopefully, we will eliminate many of the flaws, which we have discussed today, in the global system and make a lot of progress. But it is going to take a lot of time.

I would also like to thank Steve Cutler for his very generous comments about my views of the necessity of a strong enforcement of the securities laws. I would also like to thank him for his promise of permanent irrevocable immunity for Merrill Lynch in the future. So thank you very much, Steve, I appreciate that.

(Laughter.)

MR. CUTLER: Thankfully, I have 200 witnesses.

MR. SCHIEREN: And of course, I would be remiss if I didn't thank David for calling on me last, and actually I have to tear up all of my remarks because anything of importance was already said. But I recognize that my role here is to provide balance to the panel. And if you like what I say, I appreciate it. If you don't like what I say, my name is Gary Lynch and I am at CS First Boston.

(Laughter.)

MR. SCHIEREN: Where is Gary? Anyway, actually my role is to give a corporate perspective. Let me thank one other group, all of you here, because I was a little concerned that after the break, the only people who would be here would be the lawyers who want to be retained by Merrill Lynch. So I really thank you all for coming back.

MR. BECKER: I hope this isn't all the lawyers retained by Merrill Lynch.

MR. SCHIEREN: It is a global firm.

I am here to really give a corporate perspective on these issues. And the starting point is that yes, our business is a business of integrity and without a strong enforcement vehicle, the bad guys win. So we have to make sure that that doesn't happen, but there are many rules that we have within my organization, where I have been for 20 years working in a global financial institution environment, which I think are applicable to the world that we are talking about today.

And the first one is the concept of a standard of conduct. And the one thing I learned years ago in my organization is that regardless of where the people were, regardless of what country we were operating in, there had to be one standard of conduct and it had to be at the highest level. It couldn't be at the lowest level.

And just developing that a little bit, the other thing we have learned is that regardless of the activity, no country will ever acknowledge that their standard of morality is lower than someone else's. And I think the best example of that has to be the inside information cases and laws that have developed over the last 25 to 30 years because I can specifically remember bringing some of those cases in the seventies at the SEC and hitting steel walls when we tried to leave this country and get information.

I can remember coming into this organization at Merrill Lynch and learning the standard of -- one standard of conduct regardless of where it is. I can remember learning that in certain countries, there were no laws prohibiting inside information and yet, what did we see during the seventies, eighties, and nineties? We saw governments fall, we saw people prosecuted in countries where there were no laws initially, and we saw, I think, perhaps the greatest impact of the inside information era -- a global cooperation among regulators that heretofore was not available.

And if you contrast that with all the development of the FCPA, Foreign Corporate Practices Act, and how the U.S. was essentially laughed at for years and years around the world, "Those crazy Americans with those crazy rules," inside

information wasn't treated the same way. Inside information was treated differently and people learned to cooperate and work together. All the MOUs, all the treaties, all the dialogue that we have today, I think emanated from efforts to track down the violators of the insider trading rules.

So I think there is a lesson there to see if you think back where we were not so many years ago and where we are today, and just to extrapolate that a little bit further and see where we are going. In that light, if you look at global financial institutions and our business environment, it is a very fluid business environment. What do I mean by that?

In general, activity will flow to the jurisdiction that provides the fewest obstacles. We need to avoid the race to a jurisdiction of the lowest regulatory standards. Examples of that happening are legion around the world, and we don't have to look any further than our own backyard in the Untied States to see how that could happen within the state regulatory system.

So clearly, we have to move towards a common platform. When I talk about our business, let me try to put that in some context, at this late point in the afternoon, to talk about the kinds of things that confront a global financial institution that could result in land mines at every step of the way.

Let's take a transaction involving a hypothetical Irish company which is being privatized. It seeks to have its equity securities listed in Dublin, London, and New York. In the first instance, the U.S. investment bank may have its U.K. affiliate based in London pitch the business and win. That is great.

Then a prospectus has to be drafted, due diligence has to be conducted to properly distribute the stock in certain jurisdictions like Ireland. There may be different market rules that are not applicable in other places. For example, stabilization, a concept basic to underwriting in the U.S., is foreign to some other jurisdictions.

Prospectuses have to be filed with regulators in the U.K., in Ireland, and in the U.S., all with different requirements. Comments from the regulators in all

three countries have to be reconciled and then a prospectus has to be finalized. The U.S. broker-dealer, its U.K. dealer affiliate, and its affiliates in Hong Kong and Japan may then take orders in their respective regions. And by the way, each of the salespeople globally have to be licensed and registered in their respective jurisdictions. It doesn't take much to think about how one can slip and fall at any step of the way and create a multi-jurisdictional problem.

Another type of situation can be an investment advisor managing public and private funds for investors in many jurisdictions, the U.S., U.K., and Japan, the global investment advisor. An error can be made in the management of those funds, which could result in financial adjustment to several of the various accounts, both public funds and private. Disclosure has to be made to clients and to regulators in multiple jurisdictions. Possible civil and disciplinary actions in each of the jurisdictions are there and they can be inconsistent, based upon different standards.

And before, we talked about in the U.S. the notion of the private remedies that are available and that that is part of the whole enforcement mechanism. Let me say to you that those private remedies differ greatly around the world. If you look at two very mature litigation systems and compare them, the U.K. versus the U.S., just in civil litigation, there are many significant differences. For example, in the U.K., there are no punitive damages, no class actions, no contingency fees, and the loser pays.

Litigation is a much different vehicle outside of the U.S. than it is in the U.S. That, by the way, also has enforcement repercussions, but it has business ramifications in terms of the cost of doing business and the concept of ultimately how you reconcile and harmonize this around the world.

From the perspective of a global financial institution, as I alluded to before, clearly we would like to see consistency of regulation throughout jurisdictions. We recognize that this is going to take a long time. But I do believe, frankly, that it is eminently doable. And I would like to just contrast

this to the U.S. federal system that most of us have grown up with in this country over the last 30 years. The U.S. tends to be somewhat paternalistic about regulation. We tend to think we do it better than most. Sometimes we do, sometimes we don't.

But if we look at how well we have managed to harmonize our own system, we realize that A, we can do it, B, there is still a lot to be done, and C, we are just in the infancy, the nascent stages of this on a global basis.

Look at the cooperation of the state regulators in this country, the SROs, and the SEC, for example. If you go back 25 or 30 years ago, I daresay there were efforts to cooperate, but you were more likely than not to have multiple proceedings and multiple investigations against the same U.S. based firm by several different layers of regulatory bodies.

What has happened over the last several decades? Many things. The starting point is there has been much -- a much greater level of sensitivity to the various regulated entities and a much greater effort to coordinate and cooperate among the various regulatory bodies.

That developed, I think, a level of respect and trust among the various regulatory groups and ultimately, that same effort was supported by a variety of different legislative initiatives. All of these things together have made our U.S. system come together in a much better way than it was many years before. Perfect? No. Better? Yes.

Examples are our central registration depository system, NSMIA, federal preemption of registration statements and offerings and regulation of investment advisors with more than $25 million in assets under management, and the changes in the regulation of securities litigation. A few years ago those things weren't there and firms, such as Merrill Lynch, were fighting on many different fronts over a variety of these issues, which logically should have been brought together.

So I think when you compare our own system here, our federal system here to the global system, you see we are in the early stage of development. We are at

the cooperation stage. We are at the stage of starting to see some common rules. The EU is doing various things. We are seeing more efforts to at least understand these issues and figure out how to address them.

The financial services business today is truly global. Global financial institutions do not manage their businesses and risks, frankly, on a legal entity or purely geographic basis. Why? Because it doesn't make any sense. It is like trying to put a square peg in a round hole.

Instead, the global financial institutions manage essentially by product or services and/or client segments. Most often, these categories have no relationship to the particular legal entity involved. And the organization has to construct artificial structures in order, if you will forgive me to use the term, manipulate the business to fit into the legal entity.

In a perfect world, if we were dealing with a clean page, I would like to see one regulator with one set of standards regardless of where the institution does business. That, of course, assumes due process and clear consistent standards across the board. Right now our regulatory bodies, for the most part, are regulating legal entities rather than businesses, rather than functions. We have got to look at the end users and bring these things together.

The worst case for a global firm would be dealing in a jurisdiction where rules are determined by the local provincial governor or an unwritten code subject to the whim and caprice of a bureaucrat in power. That happens, as you know. I often find myself giving advice to our business partners, when we are dealing in certain emerging market countries, that you must assume your investment is lost when you are making an investment there. Why? Because there is no pure standard of justice in that country. And therefore, whether you will ever recover, if there is a dispute, is up in the air.

Ultimately, I believe the concept of functional regulation will have its day. We will look at the products and services offered and the end users and find a way to blend the competing regulatory principles of safety and soundness and

adversarial relationships in a rational way. It is feasible for regulators in other countries to defer to, for example, the SEC with respect to the conduct of a U.S. based securities firm.

It is feasible for regulators to work together and say okay, this is yours, this is mine. You can do that on a cooperative basis. That is going to have to happen as the global businesses expand and resources are constantly being constrained in the regulatory environment.

I think we will see this happen over time more and more. The concept of the supervisory regulator is alive and being developed. Sovereignty will ultimately have to give way to economic logic as long as the basic principles of standards of conduct are agreed to and maintained.

So just to bring it to closure, I think there is a roadmap for where we have to go in the future. We are in, what I call, the first phase, which is the cooperation phase. During this cooperation phase, we will learn, from among the regulatory participants, mutual understanding, respect, and trust. Then the next stage will be the memorialization of all the informal things that we are doing in the context of treaties and legislation, developing and formalizing the common rules of standards. Ultimately, this will result in the predictability of enforcement remedies through delegated authority to the appropriate regulator in that particular jurisdiction. So I thank you very much for your patience.

MR. BECKER: George, thank you very much for that forward-looking set of comments. I also, just as an aside, and George the way you said the word bureaucrat, I took that very complimentary.

There are multiple ways to do these things. I mean, you seem to be talking about, and I am curious to the reaction of other folks on the panel, in essence, single authorities that have certain functions in certain functional areas and that can be as a result of delegation from the international community or sets of sovereign nations or it can also be, I suppose, by virtue of the creation of new

institutions that have international or supernational enforcement authority or adjudicative authority.

Does anybody have a preference? I mean, does it make sense, for example, to talk about let's have a multinational regulator whose job it is to take these single standards and enforce them?

MR. CUTLER: Well, having just gotten my job, I would like to keep it for a couple more days.

(Laughter.)

MR. CUTLER: While I like your dedication to the public interest in the absence of self-interest, but I -- you know, I -- and, boy, this is going to sound terrible, but --

MR. BECKER: Go right ahead.

MR. CUTLER: Yes. I am skeptical that we could form a single international body that could do appropriate justice, and I guess my sense is that it would invariably be way too wieldy. I sort of am intrigued by the idea of single regulator oversight and particularly on the regulator.

But I would actually be interested in, from George's perspective, as to whether, to the extent that firms had a choice as to who their single regulator was, whether he could imagine the regulated community choosing, just to be parochial, the SEC, which is known throughout the enforcement world or the world of international regulation, as an enforcement agency because it is an enforcement agency.

So on the one hand, I think it is hard to imagine a firm like Merrill saying, "Oh, yes, we choose the SEC." On the other hand, part of me thinks, "Well maybe Merrill could use this as a marketing tool." You know, "Come do business with us because we have the badge of the toughest regulation that keeps us in check."

MR. BECKER: Well, presumably, it wouldn't be an entity by entity choice, but George, would you --

MR. SCHIEREN: No, I would agree with that.

MR. BECKER: George?

MR. WITTICH: Thank you.

If this discussion would take place in Frankfurt with a panel of German bankers, I think the common conclusion would be let's go straight forward to a European securities regulator, to a European SEC, and even there, I think in Europe, we probably have a lot to offer, a common ground in terms of securities regulation. I think it is totally unrealistic for the moment. It is really not on the agenda because we have still national markets with their own traditions and securities supervision has to take place very near the markets, also in particular, to protect retail investors.

Therefore, even less I can imagine that on a global level with perhaps some sort of supernational institution taking also into consideration that the level -- that the quality of securities regulation is very different worldwide. Therefore, I think that to solve these problems, which are very evident, I am very impressed by the example which has been given by George.

I think the problems will have to be looked for in a better coordination between the regulators, I think, in such a case. And there, indeed, I would quite agree we have to find new ways; for instance, what -- similar to what has been discussed in the last years on the supervision of financial conglomerates to find a sort of lead regulator to cope with such a situation.

And this means, of course, that regulators concerned have to cooperate at a very early stage in such a -- for such a project that they have to come together to see who -- which regulator will take the main responsibility, and hopefully, that is -- that the national legislations would give the regulators also the freedom to do so, that we need, perhaps, more flexibility for these international transactions.

And I would think, also, if such a company is then listed across various jurisdictions, then also the exchanges, in my view, have to take into consideration

that for a company who is listed not only in one jurisdiction, but in several countries, it is very often very difficult to meet the somehow conflicting requirements of the exchange in terms of disclosure of information. So I think in that respect, we have also to do something in the future.

MR. BECKER: One last question for anyone here. At lunch, Michel Prada mentioned that he believes that there is a suspicion in the United States that enforcement and compliance with the law outside of the United States just isn't as good as it is in the United States. Let's assume, for the moment, that he has accurately stated the perception of United States regulators. Let's just assume that. I am not sure that that is the case. Is he correct as a matter of fact?

MR. NEOH: I think he probably is and the reason, perhaps, is this, is that looking across all the jurisdictions in the world, and I have tried very hard to look at all of them in my past existence, is that the U.S. has invested a tremendous amount of resources into surveillance of the market, which very few markets have actually done. And that is really an equation of history and the willingness of the political system to allow the authorities to do this market surveillance.

And therefore, the knowledge of the market is very high among U.S. regulators, be they banking regulators, insurance regulators, or securities regulators. Now there hasn't been, in fact, quite the amount of political support outside of the United States, with the possible exception of Europe. The European Community and various jurisdictions in Europe have really sort of rallied together to give political support to the regulators. I think that is a very, very good sign.

But beyond that, I really don't see that. You see that big now in Japan because of the problem that the Japanese have felt. Beyond that, I don't see it any other jurisdiction. The Australians have done reasonably well, but that is because, again, their culture is more geared towards the OECD countries. But so

again, you know, I would second that view. Again, you might call this an accident of history, but that is a reality that we have today.

MR. BECKER: Okay. Anybody else want to add anything to that extremely inappropriate question?

(No response.)

MR. BECKER: Okay.

CHAIR PHILLIPS: Let me again thank the panel, but this time let me include the audience, for your participation in this very thought-provoking and stimulating conference. I hope you have got a lot out of it. I know I did and so did a lot of other participants. Thank you again for coming.

(Applause.)

(Whereupon, at 5:30 p.m., the conference was concluded.)

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