

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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6 UNOFFICIAL TRANSCRIPT OF ROUNDTABLE DISCUSSION ON

7

MUTUAL RECOGNITION

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9

(Amended 7/25/07)

10

11

Tuesday, June 12, 2007

12

9:13 a.m.

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SEC Headquarters

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100 F Street, N.E.

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Washington, D.C.

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P R O C E E D I N G S

(9:07 a.m.)

OPENING REMARKS

MR. TAFARA: Good morning. I am Ethiopis Tafara of the SEC's Office of International Affairs. Welcome to the SEC's roundtable on selective mutual recognition. Chairman Cox was scheduled to deliver welcoming remarks today, but has been called away and will join us during course of the morning. It has fallen to me to introduce this roundtable and welcome our panelists.

The purpose of today's roundtable is to discuss increasing globalization of the capital markets, increasing U.S. investor demand for foreign investment opportunities, and what the commission can do to address the issues raised by these realities. In particular today's roundtable will focus on the potential benefits and risks of adopting a selective mutual recognition approach.

Over the past several years the U.S. capital market has undergone a series of significant structural and regulatory changes. Stock exchanges around the world have demutualized, going from non profit organizations responsible primarily to the members that trade on them to for-profit organizations responsible first to their shareholders.

Electronic trading platforms have led to new forms of competition which, combined with the forces of

1 globalization have led stock exchanges and trading platforms  
2 to seek new markets and partners overseas. Large  
3 broker-dealers increasingly view themselves as international  
4 financial service providers rather than just national  
5 securities firms with overseas office.

6           And financial firms of all types, broker-dealers,  
7 stock exchanges and investment advisors regularly seek merger  
8 partners abroad. But perhaps most significantly investors  
9 too increasingly look abroad for investment opportunities.  
10 Part of this I like to believe is the result of the SEC's own  
11 success.

12           For decades now the United States has offered  
13 investors some of the strongest protections in the world,  
14 leading the way in policing our markets against fraud and  
15 market manipulation. Over the past two decades a number of  
16 like-minded regulators have strengthened their own investor  
17 protection laws and as a result, many American investors no  
18 longer look to foreign markets as alien places to invest.

19           Between just 2001 and 2005, U.S. investor holdings  
20 of foreign securities of all types nearly doubled from \$2.3  
21 trillion to \$4.6 trillion. U.S. investor ownership of  
22 foreign equity securities during the same period increased  
23 from \$1.6 trillion to \$3.3 trillion. These changes pose very  
24 real issues for the regulation of U.S. securities markets.

25           As a result of technology, globalization and

1 reduced trade barriers, most market participants today,  
2 exchanges, broker-dealers, issuers and investors alike,  
3 operate across borders. Those who commit securities fraud  
4 also operate internationally. I believe that how the  
5 Securities and Exchange Commission responds to this changing  
6 environment is among the great challenges the agency faces  
7 today.

8           There are, of course, different possible approaches  
9 to addressing these global issues, selective bilateral mutual  
10 recognition is being suggested as a ready solution over the  
11 short and medium term. Selective mutual recognition, if  
12 paired with extensive cooperation arrangements among the  
13 securities regulators involved might reduce the regulatory  
14 burden foreign and U.S. firms face when operating across  
15 borders. At the same time, U.S. investors might be provided  
16 with greater information and choices about foreign investment  
17 opportunities, and the SEC would be able to enhance its  
18 ability to protect investors by limiting regulatory arbitrage  
19 and building types of cross-border enforcement and regulatory  
20 alliances that selective mutual recognition would entail.

21           Today's roundtable will discuss these issues and  
22 debate the value of such an approach and the assumptions that  
23 underlie it. Each panel includes some of the best minds from  
24 industry, the investing community, academia and that most  
25 distinguished breed of thinkers, the community of former

1 securities regulators.

2           With that bit of framework I would like to welcome  
3 our distinguished panel of guests today. We are honored to  
4 have with us representatives of the retail and institutional  
5 investor community, broker-dealers and exchanges as well as  
6 professors, former commissioners and chairmen and former  
7 division directors.

8           Our roundtable has three panels. The first panel  
9 will address selective mutual recognition in the context of  
10 exchanges. The second panel will focus on the benefits and  
11 risks associated with foreign broker-dealers being able to  
12 access U.S. investors more easily and the varying impact that  
13 such direct access might have on individual investors,  
14 institutional investors and the U.S. markets as a whole.

15           The third panel will address how the SEC should  
16 define and measure regulatory comparability. Our goal is to  
17 develop a regulatory approach that strikes a balance between  
18 securing the potential benefits of greater cross-border  
19 access to investment opportunities while vigorously upholding  
20 the commission's mandate to protect investors and preserve  
21 the integrity of our markets.

22           Today's roundtable should help inform our work. I  
23 would again like to thank our distinguished panelists for  
24 their participation. The insight that you provide today will  
25 be extremely valuable to the commission as it goes forward in

1 developing this new approach.

2 With that, I'd like to turn it over to our  
3 moderators for the first panel, Erik Sirri and John White.

4 PANEL ONE

5 MR. WHITE: Thank you, Ethiopis and good morning.  
6 I'm John White, the director of the Division of Corporation  
7 Finance, and I'm very pleased to welcome all of you here  
8 today.

9 As Ethiopis described, this first panel is going to  
10 focus on how the U.S. market participants will be impacted by  
11 increased foreign market access. I have joining me as my  
12 co-moderator, Erik Sirri, the director of the Division of  
13 Market Regulation.

14 Before actually we move to the panel, since  
15 Chairman Cox is not here, I wanted, Ethiopis, on behalf of  
16 the commission and on behalf of the staff to thank you not  
17 just for organizing today's roundtable, which was not a minor  
18 matter, but more than that, for really making it possible by,  
19 I guess I would say, providing the article that was written  
20 last winter that got us all thinking about this topic and  
21 brought it to focus so that we could have today's program.  
22 So thank you very much on behalf of the commission and on  
23 behalf of the staff for making, I guess I would say, all of  
24 this possible today.

25 So let's move now to the first panel. I will begin

1 introductions from the right. We have Stephen Bepler, the  
2 senior vice president and director of Capital Research  
3 Management Company; next to him, Duane Kelly, a principal in  
4 Vanguard Group's Quantitative Equity Group; Cathy Kinney,  
5 President and co-chief operating officer of NYSE Euronext.  
6 Cathy keeps joining us at all these roundtables. Thank you  
7 very much for coming yet again -- Christopher Concannon,  
8 executive vice president, transaction services for the NASDAQ  
9 stock market; Sandy Frucher, chairman and CEO of the  
10 Philadelphia Stock Exchange; Jonathan Howell, director of  
11 finance at the London Stock Exchange -- special thanks,  
12 Jonathan for traveling so far; I think you may get the award  
13 today -- and then Roberta Karmel, co-director of the Center  
14 for the Study of International Business Law at Brooklyn Law  
15 School. Professor Karmel was also a former SEC commissioner  
16 and has been on I think almost every roundtable I've  
17 participated in. She just keeps coming back. We're very  
18 pleased to have you here, Professor Karmel.

19           A quick word about mechanics: Erik and I will be  
20 asking a number of questions of the panelists. We anticipate  
21 that the commissioners will have some questions as well. We  
22 have asked the panelists not to actually make any formal  
23 opening statements, but we do plan to provide, at the end of  
24 this panel -- to give you a couple of minutes to either sum  
25 up or offer whatever thoughts you would find useful to the



1 commission and the staff that you think we should go forward  
2 with after today. So you can anticipate that each of you  
3 will have two minutes or thereabouts at the end.

4 Also, let me introduce the two commissioners who  
5 are here with us now, Commissioner Campos and Commissioner  
6 Nazareth are both here to join us. I assume that we will have  
7 Commissioner Kathy Casey join us later, and I know Chairman  
8 Chris Cox will be here later.

9 With that, Erik, I will turn it over to you for the  
10 first question.

11 MR. SIRRI: All right. Thank you, John, and welcome  
12 to the commissioners and panelists. Let me add my welcome  
13 and your thanks for making the trip over here.

14 Let me start off, if I could, with our folks from  
15 the buy side and ask you a question about the way  
16 institutional investors actually access the foreign markets.  
17 The setting for the question is that if we're thinking of  
18 changing the mechanism by which foreign trading screens can  
19 be located in the United States, then I think it pays to pay  
20 some consideration to how investors today, sophisticated  
21 institutional investors access these markets.

22 So Duane or Steve, Steve would you like to lead off  
23 with that?

24 MR. BEPLER: Is this on? Yes, thank you. I'm not  
25 too technology sophisticated. I think if we had been able to

1 do this perhaps 30 years ago or 35 when Capital Research  
2 first got into non-U.S. investing in a large way we might not  
3 have trading rooms all over the world, we might have had them  
4 in the United States. However at that time there was no  
5 methodology for delivering the information to the U.S., so I  
6 think there are advantages to having people on the scene in  
7 these various markets who have had prior experience working  
8 in those markets.

9 I think it would be a good thing not so much for  
10 large investors like ourselves who already have a lot of  
11 infrastructure on the ground, but it would be a good thing  
12 for smaller institutions and perhaps individuals who would be  
13 able to access the information they need on a more timely  
14 basis. And actually you get it with a slightly delayed feed  
15 anyway, so it wouldn't really be providing information that  
16 wasn't available.

17 I think the more you have a convergence of markets  
18 all around the world the more you have competition for best  
19 execution, the more access you have to sellers or buyers,  
20 depending on what you want to do. So I think it would be  
21 beneficial.

22 MR. SIRRI: Let me push you a bit further. Suppose  
23 you had a large order, a million shares of some name that  
24 trades in London. How do you actually go about executing  
25 that trade today if you're located in Los Angeles? If the

1 trader was in Los Angeles who received the order how would  
2 you buy those U.K. listed stocks?

3 MR. BEPLER: Well, in this particular case a trader  
4 in Los Angeles wouldn't get it. We have some standard  
5 procedure we go through, which I'll skip. But when it got to  
6 the trading desk in London they wouldn't just look at the  
7 London market, they'd look at all the markets around Europe,  
8 see who's making a market.

9 These stocks trade in many, many markets. There  
10 are many U.S. brokers who provide an over-the-counter service  
11 to trade it in the U.S. Actually, because of the stamp tax  
12 in London it's one of the less attractive places to execute  
13 this trade, so if you could find it somewhere else you'd  
14 rather do it there.

15 There is a little spread when you get into currency  
16 differences where you're trading in one currency and then you  
17 have to convert it to Sterling. So that adds a little cost.  
18 And they would look at the market, and there's a lot of  
19 instantaneous information. Depending on the name, they might  
20 be aware of who'd been active in it recently, and we'd go for  
21 best execution. I would say most of the time that would be  
22 in London, certainly two-thirds, but not always.

23 MR. KELLY: We've been accessing the developed  
24 markets directly with brokers execution management systems on  
25 our desktops. We've been doing that probably for six or

1 seven years that we've -- not only we can access those  
2 markets electronically in Malvern, Pennsylvania, but we can  
3 also do that in Brussels and in Melbourne, Australia where we  
4 also have traders on the ground there.

5 Vanguard has relied on electronic access to the  
6 markets domestically and internationally. That's kind of  
7 been our model. We've been doing that domestically for years  
8 and years and have kind of transferred that internationally,  
9 like I said, six or seven years ago.

10 It's been working well. The technology, the  
11 quality of the technology, the quality of the access has been  
12 improving steadily, particularly over the last couple years,  
13 and we just choose to do it that way to have a Vanguard  
14 person actually execute the trade.

15 From a competitive point of view I'll just make one  
16 point. I think we would look to see an improvement, more  
17 competition and therefore an improvement in access and the  
18 technology of getting that access to the markets directly.

19 MR. SIRRI: I should say if any of the other  
20 panelists or any of the commissioners want to add anything at  
21 any time, just sort of catch one of our eyes or put your name  
22 tag on end and we'll recognize you.

23 MR. HOWELL: Yes, I just thought I'd add to that. I  
24 mean a broad estimate at the moment is that of the FTSE 100,  
25 the 100 major stocks in London, U.S. ownership is in excess

1 of 20 percent. And so we have a structure and regime now  
2 that is working with a degree of efficiency to enable to U.S.  
3 institutional buy-side to gain access.

4           There are two very broad models that we see. One  
5 is where the U.S. buy-side in particular and also all the  
6 continent European buy-side have effectively established  
7 their own mutual funds, their own operations in London under  
8 U.K. registration. But the more common route is for QIBs to  
9 effectively route orders directly to a London broker,  
10 typically a U.S. broker where they have domestic U.S.  
11 arrangements already in place. But the additional regulatory  
12 friction, albeit slight, is that much of that has to be done  
13 under a chaperoning arrangement. And that is a requirement  
14 for a U.S.-registered intermediary to effectually provide  
15 client confirmations, full account details and all regulatory  
16 requests required by whatever regulator within the U.S.

17           So there is a relatively effective regime already,  
18 and certainly the institutional investor has pretty good  
19 access into the London market, not so much so for the private  
20 client investor where we are seeing two levels of  
21 intermediation, a U.S. broker-dealer having to pass that to  
22 an affiliate in London, which in turn is then executing it.

23           MR. SIRRI: Roberta.

24           MS. KARMEEL: If I could just add to that from the  
25 vantage point of the individual investor, the individual

1 investor can buy particular foreign securities as just  
2 described, by going through two intermediaries, or can buy  
3 those foreign securities through a mutual fund or some kind  
4 of a derivative. All of these involve transaction costs for  
5 the individual investor, which maybe can be justified in  
6 terms of investor protection, but which are perhaps a  
7 discouragement to individual investors from broadly investing  
8 in foreign securities.

9 MR. SIRRI: Well, I think within the context of  
10 the -- and we'll return to the individual question because I  
11 think that's an interesting and perhaps a separate  
12 one -- within the context of institutional investors, what I  
13 heard you say in a sense is that you have ready access to  
14 foreign markets through the technology and the linkages you  
15 have. Then let me ask the question, should we do anything?  
16 If you have such good access, why are we here?

17 MR. BEPLER: Well, I think for people of our size,  
18 perhaps we built an infrastructure because that was the only  
19 way to do it. And so those costs are there, and  
20 they're -- we don't bear much higher transaction costs as an  
21 individual investor would who might have to go through a  
22 couple of different intermediaries to buy a foreign stock.

23 I think market forces have kind of pushed things in  
24 a direction where for the very large institutional investor  
25 it is not a problem. If you take smaller investment advisors

1 where the economics of having foreign offices and foreign  
2 trading rooms do not make sense given the size of the assets  
3 they manage, it would be a great advantage because there is  
4 definitely a spread in the cost of an ADR, and there are  
5 costs of maintaining the ADR too. Some are sponsored by the  
6 companies, but many are not. And therefore you would  
7 achieve -- would allow lower costs for investment managers  
8 and for those few individuals who wanted to do it themselves  
9 if there was direct access in the U.S.

10 I don't think it would affect us all that much.

11 MR. KELLY: I agree with that. I think in general  
12 it just -- opening it up to more competition. I think from  
13 an institutional perspective that's what I would look mainly  
14 for this to do.

15 MR. FRUCHER: Erik, this isn't really a question of  
16 whether or not there is existing access. The answer is there  
17 is existing access. The question is whether or not the  
18 regulation will catch up to the reality of the marketplace  
19 and whether or not -- the status quo question is whether or  
20 not you always want to have the regulation following the  
21 practice as opposed to having the regulation lead the  
22 practice. So I think that really is the question.

23 In terms of transparency, clearly if you shift from  
24 the sophisticated investor to the individual or small  
25 investor I think the smaller investor clearly -- the American

1 investor clearly has a disadvantage because they don't have  
2 access to the information about the products that are  
3 available on the other side of the pond.

4           So I think this really is a question of regulation  
5 catching up to reality. Now there really are international  
6 competitive issues for us as a country, as a nation, to be  
7 aware of, which is that clearly once you have dropped the bar  
8 or dropped the regulatory standard you are, in fact, going to  
9 put us at a competitive disadvantage in terms of registration  
10 because this is a way to get around U.S. registration  
11 requirements. And how we deal with that, how we make our  
12 registration requirements such that they can be competitive  
13 is a separate but important question that this has impact on.

14           MR. CONCANNON: Just one point. When it comes to  
15 recognizing the institution, I think we do have to carve it  
16 up as the institutional investor and the retail investor  
17 because they do have a very different -- we do have different  
18 protections for both here in the U.S., and that's recognized.  
19 But when we look at an international trade and the costs of  
20 that international trade I think we need to carve up those  
21 costs because there are some costs that can't be eliminated.

22           One of the largest costs of an international trade  
23 is custodial costs and settlement, and it's not having an  
24 extra broker-dealer in the hop in that trading. Can the  
25 competition of changes to the regulation where foreign



1 broker-dealers are recognized in the U.S. reduce the cost of  
2 settlement and affect settlement and custodial costs?

3 Potentially. I think that competition can impact those  
4 costs, but those costs will come down over time very slowly.

5 That's the biggest challenge I think for an  
6 institutional trade is custodial costs and settlement.

7 MS. KINNEY: I think Erik, we jump into the issue of  
8 trading as the first discussion, and I think that if the SEC  
9 is really going to take a leadership position and lead the  
10 way to opening the global capital markets from a registration  
11 perspective as well as from a trading perspective, and I  
12 think you've gone a very long way on the registration side.  
13 I think if IFRS goes forward, that will be one of the biggest  
14 hurdles in terms of mutual recognition of the registration  
15 statements.

16 The SEC should take a leadership position, should  
17 keep going, finish that piece up and then globalize the  
18 trading, which will follow I think very naturally to the  
19 broadest set of investors.

20 You're right, institutions already have this  
21 access. It's well worn. The path is very effective for  
22 them. But that's not global trading. If you look at, today,  
23 the issuance by foreign issuers, since 1986, 84 percent of  
24 those deals have had a 144A component. So the non-U.S.  
25 issuers are already accessing U.S. shareholders at the QIB

1 level or the most sophisticated investors, the institution is  
2 already trading, and that really isn't a framework for  
3 globalizing the markets with the SEC in a leadership  
4 position.

5           And so I think you need to start at the top, finish  
6 up the work you started on the registration statements.  
7 Hopefully that will encourage companies to list or even  
8 require a listing, and then open up all the trading markets,  
9 both in London and in -- we would argue, start with the  
10 College of Regulators, but open it up, and let everybody  
11 participate, and that will provide for much more competition  
12 and really globalize the markets with the SEC at the center  
13 of it.

14           MR. SIRRI: I'm sorry. Could you flesh out a little  
15 bit what you mean when you say 'finish up the work we started  
16 with the registration statements,' for those who don't --

17           MS. KINNEY: Yes. I think that the SEC has made  
18 enormous strides and as John said, have been on a couple  
19 panels here recently. One is you've announced your changes  
20 to the regulatory environment. That includes two parts. One  
21 is changing the costs associated with Sarbanes-Oxley and 404.  
22 And it appears that you have a lot of interest in recognizing  
23 or mutual recognition of accounting standards.

24           If the registration statements are predicated on  
25 two things, disclosure and accounting standards, you've gone

1 so far if that's where you're headed in allowing some mutual  
2 recognition of registration statements. If you can get  
3 there, then companies can hopefully list here as well as  
4 trade here. And so if you do that and then open up the  
5 screens to all investors and do that on a global basis, then  
6 U.S. investors will be able to trade on their time zone.

7           You'll have to obviously qualify certain  
8 broker-dealers to do that, that you're comfortable with. But  
9 I think the selectivity that you're after should be focused  
10 on the countries and the regulatory regimes, perhaps on the  
11 size or scope of the issuers that you want to attract to this  
12 mutually recognized environment and in terms of the  
13 broker-dealers you allow to participate.

14           But I don't think it should be exclude certain  
15 investors. I don't think it should not be open to allowing  
16 as many issuers to participate in this environment as  
17 possible. And you can see, as I said, 144A is clearly the de  
18 facto standard for accessing U.S. investors and the changes  
19 you made for de-registration as moving companies outside of  
20 the U.S. to a less regulated environment. So I want to be  
21 more inclusive as opposed to less inclusive.

22           MR. SIRRI: Well, 144A, Capital Research, Vanguard,  
23 all very -- marks of QIBs or higher, so to speak, very  
24 sophisticated folks. I want to return to Roberta's point  
25 about the retail investors. Should we lump them together in

1 terms of the costs and benefits that we're citing for  
2 increased access? Should we just say, well, what's good for  
3 the institutional investor is good for the retail as well or  
4 should there be special considerations paid when it comes to  
5 foreign exchanges doing business in this country with regard  
6 to retail investors?

7 MS. KARMELE: I think that retail investors should be  
8 allowed to participate in this new, globalized trading  
9 environment, particularly when what you're talking about is  
10 foreign exchanges having their screens in the U.S. because  
11 those retail investors are still going to have to go through  
12 a U.S. intermediary to purchase stocks. It's a little  
13 different issue than the issue that's going to be discussed  
14 on the next panel about foreign broker-dealers coming into  
15 the U.S. and soliciting U.S. customers.

16 I think that if the SEC wants to proceed  
17 incrementally, which I would suppose is what the SEC is going  
18 to do, I would prefer to have the cut be between large  
19 overseas companies and smaller, less known companies than  
20 between institutions and retail investors. There was a  
21 proposal a number of years ago by a Canadian regulator to  
22 have the indices, the stocks in the indices of various  
23 foreign markets traded on a mutual recognition basis.

24 It seems to me something like that would be a  
25 better incremental step than trying to differentiate between

1 institutional and retail investors. I think the real  
2 benefits here may be for the smaller institutions and the  
3 retail investors of the SEC goes forward with this proposal.

4 MR. HOWELL: Yes, I mean I concur with that  
5 entirely. There are some benefits. There is some real  
6 clarity that can be achieved for the institutional investor  
7 and just to sort of codify and put in place the structures  
8 that are required around the regime that's almost developed  
9 over the recent years.

10 But I think over the medium term there is a bigger  
11 prize here for the smaller institutional investor and  
12 certainly for the retail clients. The retail clients are  
13 suffering this additional friction of cost by having to go  
14 through two intermediaries just to get access. I think the  
15 lack of clarity and lack of a well-trodden path for the  
16 retail investor in the U.S. to gain access to U.S markets  
17 (sic) means that there are not many broker-dealers offering  
18 the services that those retail investors require, and I think  
19 that would broaden that competitive landscape.

20 That will in turn reduce costs, improve products  
21 and improve client service. And I think very importantly  
22 that as a degree of momentum builds up with -- and I know  
23 it's a matter for subsequent debate in a later panel, perhaps  
24 increasing the element of solicitation, the element of  
25 research that is available for private client investors, and

1 in turn that will lead to education and much better risk  
2 management for those private clients.

3 I think the one thing that I would stress about the  
4 whole set of proposals is that we're talking about mutual  
5 recognition. And that mutual recognition means that the SEC  
6 needs to be able to satisfy itself that the regulatory regime  
7 of the recognized investment exchange within Europe meets the  
8 standards that are comparable, that are broadly similar, that  
9 are broadly appropriate to satisfy the SEC and U.S.  
10 investors.

11 And that's very important. And I don't think  
12 therefore you are leading to an environment where you are  
13 going to materially increase risk or disproportionately  
14 increase risk without there being proper oversight and  
15 monitoring. And I think that's very important.

16 MR. SIRRI: Commissioner Campos.

17 MR. CAMPOS: I find the remarks very interesting  
18 about retail investors versus institutional and I wonder  
19 whether anybody on the panel worries that if we go right in  
20 and don't make a distinction between QIBs and retail  
21 investors whether there aren't some inherent issues of  
22 protection, dangers to retail investors, the fact they're not  
23 sophisticated. And if things go badly -- we have our garden  
24 variety frauds and nothing to do with any particular  
25 jurisdiction, it's just what occurs in life -- is there more

1 of a problem for us in that we've opened it up to retail  
2 investors who then could go -- I'm giving you a couple  
3 hypotheticals here, who then could possibly seek some type of  
4 U.S. protection leading to perhaps a U.S. exertion of  
5 jurisdiction, which we can't necessarily control?

6 I mean, there's other scenarios. Anything like  
7 that worry you or is it just worth it to throw it open and  
8 let's figure out as many rules as we can, and hopefully  
9 federal preemption will rule the day?

10 MR. CONCANNON: My thought on retail is our entire  
11 U.S. regulatory framework is built around protecting retail  
12 investors. When you move to the buy side, the institutional  
13 investor, we take more of a buyer beware approach, not a  
14 perfect buyer beware approach, but more of a buyer beware  
15 approach.

16 So when we talk about similar regulator regimes  
17 abroad, I think when it comes to retail they actually have to  
18 be identical, not just similar; similar may not be enough.  
19 So when it comes to disclosure requirements, issuer  
20 registration, accounting standards, they need to be  
21 identical. You need to have the same transparency that has  
22 protected the retail investor here in the U.S. abroad in  
23 order to have retail access quotes --

24 MR. CAMPOS: That makes it more difficult to have  
25 the mutually recognized regime, doesn't it? You know,

1 because our comparability then, you're reducing the zone  
2 essentially of what is converged.

3 MR. CONCANNON: We're protecting a regime that we've  
4 built in the U.S. over all these years, so do we -- the  
5 regulatory arbitrage is really -- what I fear is that the  
6 capital formation process will -- if I can access retail in  
7 the U.S. through abroad requirements that are just slightly  
8 less than the requirements here in the U.S., why wouldn't I  
9 move abroad?

10 The regulatory arbitrage is really the most  
11 dangerous aspect of this topic. We can avoid it by having  
12 closely regulated, close requirements on both regimes, but I  
13 think when it comes to retail that's where you have the most  
14 risk.

15 MS. KINNEY: I guess I would disagree with Chris on  
16 a couple points. One, I don't think you have to have exact  
17 comparability on the registration statements. I think you  
18 have to focus on disclosure and accounting standards. I  
19 think the SEC has gone a long way to addressing that. And so  
20 I think you have to get comfortable with the regime as Mr.  
21 Howell pointed out, but I don't think they have to be exact.

22 Number two, I think that if retail investors today  
23 are going to those markets, Commissioner, I think that the  
24 notion that they will be able to trade in markets where you  
25 have a regulatory framework where you, the SEC have satisfied



1 yourself there's some comparability, I think that allowing  
2 those investors to trade in reasonably liquid markets in  
3 their home country would be a plus to the competitive  
4 environment, and I think they would actually be perhaps more  
5 protected than they are today where they're going without the  
6 recognition protection that the SEC might be able to provide  
7 in a comparability framework.

8           So I would keep moving forward and inviting those  
9 investors in within standards that you're comfortable with.  
10 But I guess we have an expectation that the third panel will  
11 set a framework that everyone can agree to.

12           MR. FRUCHER: I think I'm more on Cathy's side on  
13 this than I am on Chris's side. I think that -- again, I  
14 think regulation really has to catch up to the marketplace.  
15 But I think in so doing, I don't think you give up the baby.  
16 I mean I think that what mutual recognition allows for is an  
17 interactive process with foreign regulators, which I think  
18 effectively will bring them closer together just because of  
19 that dialogue, and I think that that's important.

20           It also adds to the ability to regulate and to  
21 enforce and to investigate fraud once you start having this  
22 interactive dialogue as opposed to these fortresses that  
23 literally don't interact with each other. So I think it's a  
24 process that really needs to work closer and closer together.

25           The reality of the world is that the markets are

1 moving to become global. And that is going to happen, that  
2 is happening. The two of them, clear examples. So I think  
3 that regulation just has to sort of find its way through this  
4 and get ahead of the game as opposed to following it.

5 MR. WHITE: Roberta.

6 MS. KARMEEL: If you say that you have to have a  
7 regime where the regulation abroad is identical to the  
8 regulation in the U.S. then you will never have mutual  
9 recognition.

10 I think we all recognize that that kind of  
11 harmonization is just not likely to happen. And maybe it  
12 shouldn't happen because other countries have somewhat  
13 different corporate finance systems and traditions than we  
14 do. And I think what's important is for the SEC to get  
15 comfortable with the regulation by foreign regulator and the  
16 disclosure regime of a foreign jurisdiction, and that maybe  
17 right now these retail investors are being protected in a way  
18 that's not in their best interest.

19 I mean investors who invested in foreign securities  
20 over the past five years probably did much better than  
21 investors that invested only in U.S. securities. And who  
22 knows what the next five years will be or the next ten years,  
23 but it seems to me that the SEC should be encouraging  
24 diversification by retail investors instead of discouraging  
25 it.

1           At the same time, yes, the SEC is in the investor  
2 protection business. That's very important. The SEC could  
3 be criticized if this mutual recognition regime leads to a  
4 debacle. But our standards that we think are better than  
5 standards elsewhere really did not lead to a system where  
6 investors were all protected in the late 1990s here with our  
7 own U.S. companies, so I think we have to be more tolerant of  
8 other regimes.

9           MR. WHITE: I guess that gets me to put my Corp Fin  
10 hat on, which I often wear. We do really have, I guess,  
11 three missions here at the SEC, capital formation and  
12 providing investor access to investment opportunities, which  
13 obviously we've talked about today, and fair, orderly and  
14 efficient markets, which are certainly -- both of those, of  
15 our missions are certainly consistent with what we're talking  
16 about here.

17           But the third mission, which is really disclosure  
18 and transparency for investors, where are we on that one? I  
19 guess I'd like to start with you, Chris. Are investors going  
20 to get the kind and level of information that they are  
21 getting today?

22           MR. CONCANNON: Well, just to clarify my position on  
23 mutual recognition, I actually support what the commission  
24 has been doing. In terms of retail investors I don't think  
25 we can treat them like institutional investors in anything we

1 do in this area. We've never treated retail as institutional  
2 investors throughout the framework of our securities law. So  
3 I agree with Cathy actually, even though she doesn't agree  
4 with me.

5 But when it comes to transparency of the issuers  
6 and their financials and the health of their business, that's  
7 the critical element of U.S. securities law. And to  
8 eliminate that because we want to diversify retail investors'  
9 investment capabilities, I question that.

10 I agree with diversification. I agree with  
11 appropriate diversification through a variety of investment  
12 tools that we have established here in the U.S., whether it's  
13 mutual funds that invest abroad -- so there is indirect  
14 investment for retail investors into foreign markets, and I  
15 think the statistics that we heard earlier reflect that.

16 But in terms of U.S. registration requirements and  
17 the transparency of our accounting requirements, do they need  
18 to be identical abroad? No. But do they need to be  
19 substantially similar? Absolutely, it's a transparency that  
20 has served us well when it comes to retail investors. So I  
21 think establishing that as the first step to mutual  
22 recognition, getting harmonization of accounting standards  
23 internationally, is a critical step to all of this.

24 And that was Cathy's point earlier. Continue with  
25 that progress, the private sector will follow.

1           I think the nirvana of international trading for me  
2 is what I call the global registration and the global share  
3 where you have an issuer register in multi-jurisdictions and  
4 their shares are available in the depositories of  
5 multi-jurisdiction. So I can open a position in London at  
6 the beginning of the London trading day and close that  
7 position in the U.S. at the end of the U.S. trading day.

8           How you get there is through issuer registration  
9 and clearing. So that's -- I think you have to protect  
10 retail investors through transparency.

11           MR. WHITE: Roberta.

12           MS. KARMELE: Transparency is a word that covers a  
13 lot of different kinds of values, and it seems to me that one  
14 of the types of transparency that is going to be important  
15 for retail investors in this brave new world of globalized  
16 trading is not just some kind of comparability of financial  
17 information and disclosure information, but finding out what  
18 the disclosure of foreign companies is. It's one reason why  
19 I think that world class companies, if I can use this term,  
20 are more appropriate for this kind of mutual recognition than  
21 smaller companies.

22           I also think that as the SEC goes forward with this  
23 concept that it should look at how information by foreign  
24 issuers gets out into the marketplace. I think that one of  
25 the developments that the SEC embarked upon that has great

1 benefits for the retail investor is the Edgar system. I mean  
2 anybody on a home computer can get information that has been  
3 put into the SEC disclosure system.

4 I don't think that kind of transparency exists in  
5 many other markets. So if the SEC is going to negotiate  
6 standards with foreign jurisdictions in order to decide which  
7 jurisdictions to recognize it seems to me that that kind of  
8 transparency is also important, not just disclosure standards  
9 and accounting standards.

10 I would also hope that if more foreign issuers are  
11 traded in the U.S. there will be more research on these  
12 issuers that will be available to retail as well as  
13 institutional investors.

14 MS. KINNEY: I agree with Roberta's comments. I  
15 think that if you can assume that the work the SEC has  
16 embarked on with respect to transparency from a disclosure  
17 perspective and from an accounting perspective, that the  
18 trading piece coupled with that change or mutual recognition  
19 would provide for more trading in all markets. Therefore  
20 investors would have more trading information about those  
21 companies and that would lead to more general information  
22 about the companies for research and other capabilities.

23 So I think that once you -- I mean the markets have  
24 proven, once you broaden, and even we can see it with issuers  
25 that are listed in both markets, are dually listed, I think

1 that there is clearly a research component that goes along  
2 with it that would provide more information, more access to  
3 retail investors. So I think they will get what they need.

4 I think the marketplace will ensure that and the  
5 investors will be able to follow the information more  
6 closely.

7 MR. WHITE: Sandy.

8 MR. FRUCHER: You know, while we talk about trading  
9 in companies, it's clear though that the fastest growing  
10 segment of the markets are indexes, exchange-traded funds and  
11 a variety of different new kinds of products that are getting  
12 listed on both sides of the pond, which really interests both  
13 the institutional as a sophisticated individual investor.

14 And I think that we're going to have to come to  
15 recognize that when we want to start talking about selective  
16 mutual recognition that we, in this room, only represent half  
17 of the U.S. regulatory schema and that this is a major  
18 competitive disadvantage to us as we move forward. I mean  
19 not to recognize and not to deal with that issue I think is  
20 really being less than transparent about what the real issue  
21 is.

22 They have single regulation. We have bifurcated  
23 regulation. Not only do we have bifurcated regulation, we  
24 have totally different philosophical bases to our regulation.  
25 We, in this building, you follow the '34 Act, which means

1 that the ability to introduce new products go through a very  
2 sophisticated and cumbersome process that puts us at really  
3 competitive disadvantages in a lot of ways.

4           And so if we're going to talk about these things, I  
5 think we really should talk about it in the broadest possible  
6 way and let our voices from this building go out, across the  
7 street and down the road a little bit, to recognize that it  
8 is now time to look at our regulatory structure, not just in  
9 terms of how we relate to a foreign regulator, but how we  
10 regulate ourselves.

11           Yesterday's decision by the Justice Department I  
12 think really emphasizes that in a lot of ways. On this side  
13 of the street we have a clearing system that in fact  
14 encourages fungibility. On the other side of the street here  
15 in the United States we have a clearing system that  
16 discourages fungibility and competition. So I think we  
17 really have a lot to do on our side of the pond here to get  
18 global.

19           MR. WHITE: Jonathan.

20           MR. HOWELL: Yes, if I could just endorse everything  
21 that everyone has said, I think. Accounting and auditing  
22 standards, there is convergence. There's oversight of  
23 auditors coming in place. All of the major European regimes  
24 have full disclosure requirements and process of information,  
25 various results reporting regimes which are very similar in



1 style and content and form that one sees in the U.S.

2 Analyst brokerage press coverage again is very  
3 similar, and there's complete access on a realtime basis to  
4 all of the results, announcements. So I think everybody  
5 sitting around the table will agree that there is so much  
6 more that is similar between the major regimes around the  
7 world and what is dissimilar. And I think this is a  
8 wonderful opportunity to actually get the various national  
9 regulators around the table, just identifying those areas of  
10 slight refinement that are required in order to be able to  
11 make a truly international sort of global marketplace.

12 In the U.K. for instance we've got the combined  
13 code on governance, which again, I think most observers from  
14 around the world would say that that is a regime that they  
15 can understand and buy into. Class tests and disclosure  
16 requirements for all major transactions and very, very strict  
17 preemption rights as well, and that's not uncommon across  
18 many regimes in the world.

19 I think the real challenge for the commission and  
20 others is to be able to embrace these types of aspects but be  
21 able to draw the line between those regimes and those aspects  
22 that they feel are able to meet mutual recognition and those  
23 that perhaps may fall outside of that line which the  
24 commission will have to draw. And I think that's going to be  
25 interesting and a challenging element.

1           MR. SIRRI: Jonathan, you raised an interesting  
2 point. Last year the staff of the SEC got together and we  
3 compared two rule books. We took the rule book of one well  
4 known U.S. exchange and we compared it to the rule book of  
5 one well known non-U.S. exchange. And when we did that, I  
6 think we were somewhat struck by the differences when you  
7 really get down to the kind of comparisons there were.

8           So understand that the sort of things we're talking  
9 about here are the process by which rules are filed, for  
10 listing standards, for trade through restrictions, for market  
11 makers, for listing standards, broadly for all sorts of both  
12 disclosure and trading process standards. As we think about  
13 a process of mutual recognition do the panelists have any  
14 view on things are important, what things are less important  
15 or how we should even think about at just a 30,000 foot  
16 level, these issues which I think we've seen can show  
17 substantial difference?

18           MS. KINNEY: Well, I would argue you have to have a  
19 consistent framework of listing standards that, again, the  
20 SEC and the regulators with whom they're working are  
21 compatible. They don't have to be exact but they have to be  
22 compatible. I would say within the trading environment the  
23 one thing I suggest to the SEC is that I think as we go into  
24 this environment where there are differences that as the  
25 exchanges need to compete in that environment we would need

1 cooperation from the SEC to facilitate and move more quickly  
2 on rule filings that will keep the U.S. markets competitive  
3 from a trading perspective.

4 We've already had some issues with respect to our  
5 competitive position relative to issuance by foreign issuers.  
6 I would not want to see us being in a disadvantageous  
7 position from a trading perspective were we to align or move  
8 into this world of global trading. Today we trade the ADR.  
9 The foreign screens presumably will be trading ordinaries.  
10 We will have to have the capability to trade the ordinary  
11 here. And to Chris's point we will have to have, as  
12 competitive matter, streamlined post-trade clearance and  
13 settlement and global netting for broker-dealers.

14 It will have to open up in a very fast and in a  
15 very broad way the global trade issuance and trading of  
16 securities. So the SEC is going to have to be cooperative  
17 and helpful in terms of moving things more quickly through  
18 the system so the U.S. can compete.

19 MR. HOWELL: I think just following on from that  
20 point, I mean obviously what is imperative for the regulators  
21 of the major jurisdictions including the commission is to  
22 approach this in an incremental way to ensure that there is  
23 not an environment of regulatory arbitrage being generated.  
24 I think that's very important.

25 The real challenge will be for the regulators to

1 establish a process and mechanism and relationship which  
2 enables a mutual recognition, a mutual supervision, a mutual  
3 review of each other's not only principal standards but also  
4 the rules.

5 I think you're absolutely right. At the very  
6 granular level there will be very differences in rules, and  
7 that may be dependent upon market practices or market  
8 structures. But if you just look at the key elements  
9 that -- you know, if you're looking at a regulated market,  
10 proper and fair markets, fully transparent with full trade  
11 reporting where appropriate and where possible for pre- and  
12 post-trade transparency, for insider dealing a market abuse  
13 legislation with either civil or criminal remedies, a real  
14 commitment in terms of surveillance and enforcement and a  
15 track record of applying those types of disciplines to the  
16 markets, and then lastly the fitness and proprietary and  
17 capital adequacy of those exchanges, all of the key tenants,  
18 the key elements that are necessary.

19 Yes, I agree there's going to be some detailed  
20 work, looking at how those are translated into detailed rules  
21 and to what extent that meets the requirements of the  
22 commission and of the regulators to achieve mutual  
23 recognition.

24 MR. SIRRI: But that could be a difficult exercise,  
25 so let me give you a specific example, Reg NMS. So here's a

1 rule that came in, without getting into the details of it,  
2 provides for protection of orders when they exist in multiple  
3 exchanges. A different country's regulatory system with  
4 regard to trading could very well have a system where a  
5 central market maker perhaps may have parity with customer  
6 orders or priority conceivably, depending on how things work.

7 A retail investor wouldn't really have a basis for  
8 knowing that. I suspect sophisticated institutional would,  
9 but a lot of retail investors wouldn't know that, and that  
10 may be a custom that's in that particular country, a custom,  
11 and it may work very well there.

12 Should we be concerned with that difference and the  
13 degree to which people understand that difference when we  
14 approach this mutual recognition question?

15 MR. HOWELL: I mean it's obviously a very  
16 interesting question in terms of to what extent should you be  
17 concerned. Well, clearly the first element is to establish  
18 whether there is a material difference in the risk profile or  
19 the treatment of that client between one regime and the  
20 other, and you know, that that's got to be the principal  
21 tenant of these investors and users of the markets being  
22 treated in a materially different way.

23 If the answer to that is yes, then there needs to  
24 be further examination of what those differences are and to  
25 what extent they can be bridged. If the answer is no, it's

1 not a fundamental material difference in the way that the  
2 investor or user of the market is being treated, well, then  
3 it's just a matter of making sure that there is complete  
4 transparency and understanding about how that market works  
5 and what the responsibilities are for the broker dealer or  
6 the intermediary to ensure that the customers or the clients  
7 who are using that particular market understand the terms,  
8 understand the processes and understand what their  
9 protections are.

10 MS. KINNEY: Erik, I find that an unusual question  
11 because best execution is the responsibility in both regimes,  
12 whether it's in the context of method or it's in the context  
13 of NMS. And today I'm not really sure whether individual  
14 investors understand the differences of market structure,  
15 number one. But also the SEC has provided for a framework  
16 for internalization and so it really falls to the best  
17 execution responsibility of the broker dealer in that context  
18 to ensure that the investor is protected.

19 The exchanges would love to regain that role, but I  
20 think the SEC has made a determination in a different  
21 direction. And so I think today best execution rules in both  
22 places and the regulators will oversight that in the context  
23 of broker-dealers.

24 MR. CONCANNON: I think that -- I agree, best  
25 execution has to be reviewed whenever you're looking at that.

1 I think the exercise is actually important. You do have to  
2 look at the details. But again, do they have to be  
3 identical? If you come across a market that provides trading  
4 ahead, for example, as an acceptable practice, I don't think  
5 that's appropriate for retail investor orders because they'll  
6 never -- it will never be disclosed clearly enough that that  
7 practice is permitted.

8           So there is a need to look at the details, but  
9 probably when you're in the details do they need to be  
10 identical? I think the standards can get a little bit  
11 broader in terms of best execution but there are long-term  
12 collateral effects where there are regulatory differences.  
13 And that goes back to the theme of regulatory arbitrage. A  
14 slight difference in margin, for example, between investment  
15 opportunities can have an impact of where orders are steered  
16 and where the returns can be made. So those slight  
17 differences over the long term can have material impact.

18           MR. FRUCHER: I mean, Erik, with all due respect, we  
19 haven't fully implemented Reg NMS yet, and so I know it's a  
20 new religion but the fact is that our system has long  
21 functioned in other ways.

22           I mean Cathy and her colleagues at the New York  
23 Stock Exchange have now finally embraced competition and now  
24 we're making it global, and I congratulate them for doing  
25 that. But foreign markets still function the way the old New

1     York Stock Exchange used to function. Most foreign markets  
2     are monopolies. There isn't much competition in those market  
3     places in terms of inter-market competition with linkage  
4     systems because there's nothing to link to. But in fact I  
5     think that by exposing the American investor in a broader way  
6     to foreign markets to start to export some of our dollars I  
7     think will lead to competition and possibly the creation of  
8     alternative markets, which I think is a good thing from a  
9     global perspective.

10             There will be, as there was in the United States as  
11     a consequence of the actions of the SEC with Reg ATS, which  
12     is really what changed the game -- I think that will happen  
13     abroad as well. So I think this is an important step in that  
14     regard.

15             MR. SIRRI: You know, a lot of this work entails  
16     peering into the future to try and tell what the world is  
17     going to be like and how institutions are going to adjust.  
18     We have three representatives from exchanges here, so maybe I  
19     can ask you to do a little of that work with regard to your  
20     work with us.

21             You know, it's not hard to imagine a world where,  
22     if this comes to pass and these foreign screens, which have  
23     very different rules, land here in one form or another in the  
24     United States, that your interaction as SROs with us changes.  
25     And in fact I can imagine a world where what you ask of us is



1 contingent on what those other screens are doing because  
2 you'll be competing with them on a business basis.

3 That's going to pose some difficulty as I see it  
4 because we have principles in our acts and our statutes and  
5 our rules, and those principles may be missing from some of  
6 those other screens that arrive here. You will have business  
7 concerns, and you will ask to further your business concerns.  
8 We'll have our concerns.

9 And so I can see a world where your questions are  
10 predicated with a sentence that says, "but the other guy can  
11 do it." How shall we proceed in that world?

12 MR. FRUCHER: God, I asked that question about how  
13 some of my other -- the other markets in the United States,  
14 how can they do it and I can't do it. I think -- has heard  
15 that question a hundred times.

16 You know, the folks in this building are true  
17 stewards. I mean you folks have honored and had protected  
18 the American investor, but I think it's time to start to  
19 relook at the '34 Act and to start to look at how, again, as  
20 I said before, how we start to integrate our regulation in  
21 the United States.

22 I mean the issue isn't between us and Europe. In  
23 some cases it's between us and Chicago. I mean you know how  
24 long it has taken us on the cash side of the market to try to  
25 get currency products because of definitional issues between

1 whether or not it's a security or whether or not it's a  
2 future.

3           So I think your point is right. I think we will be  
4 asking those questions, and I think that those questions need  
5 not only to be answered in this building but to be answered  
6 in the Congress. We really need to rationalize our  
7 regulatory system so that it is competitive domestically and  
8 competitive internationally. You can't have all new products  
9 coming up on the other side of the pond because we're  
10 hampered here by, frankly, antiquated legislation that  
11 hampers you in your ability to allow us to introduce new  
12 products. This is going to be a game not of how you trade  
13 existing enterprises but how you trade future products, which  
14 is where the world is moving rapidly.

15           And you're also going to have to -- and we're going  
16 to be knocking at your door to allow us to actually list  
17 foreign products here that have different registration  
18 standards but nonetheless are important to have direct  
19 exposure in the United States markets.

20           MR. CONCANNON: Well, I agree that we all complained  
21 to you today. I think you'll hear from us all saying, "how  
22 did you let them do that. And that will increase  
23 substantially as a result of this, so it does put you  
24 in -- it does put the SEC staff in a political quagmire in  
25 the details of how they allow these exchanges to access U.S.

1 investors.

2           It doesn't -- I don't have great fear in terms of  
3 allowing the LSE, for example, to have terminals in the U.S.  
4 to access institutional investors. I think their access to  
5 the LSE is fairly seamless today, but there are going to be  
6 differences that we're going to come to you and say we want  
7 to do that too, please allow us to do that. And that creates  
8 a real competitive environment that you're just going to have  
9 to deal with. And so there are huge challenges that this  
10 creates.

11           MR. SIRRI: Not to put too fine a point on it, then  
12 what we have to be cognizant of -- what you're saying is that  
13 as we recognize various regimes that come into this country  
14 we're not only allowing those regimes to come in but we're  
15 setting a frame whereby our regime will evolve because of  
16 your requests.

17           MR. CONCANNON: Absolutely. We're going to ask to  
18 live by those same standards that you set for them.

19           MR. WHITE: I guess maybe to ask the question more  
20 directly, what are you going to ask us to change? I mean,  
21 Cathy, you and I had this conversation before we started this  
22 panel, and so I kind of know what you're going to say, but  
23 what is it you want from us when this all happens?

24           MS. KINNEY: I think that my short list would  
25 be -- I think we should go forward with mutual recognition of

1 registration statements so that if a non-U.S. issuer would  
2 like to sell its securities to U.S. investors they should be  
3 permitted to do so with a listing in our markets as opposed  
4 to a 144A private placement. That would be number one.

5           Number two, I would say you should allow the  
6 screens for all investors in the U.S. You will have to let  
7 the U.S. markets trade, as I said earlier, the ordinaries.  
8 You'll have to push us to get the post-trade process and  
9 framework globalized very quickly.

10           I think we will be asking you to work with the  
11 broker dealers, and we'd like to be part of that to  
12 understand how they are going to handle their interaction  
13 both from an issuance of securities, selling securities and  
14 actually allowing investors to trade the securities under  
15 their jurisdiction.

16           And I guess what we'll be asking you to do is, and  
17 this really falls more to Erik, is that when we put a rule  
18 filing down to be able to compete with London when they have  
19 their screens in the U.S. and they're trading U.K. securities  
20 that we'd also like to have listed here and will list here I  
21 hope, that it doesn't take a year or longer to get that  
22 approved and that we have -- that you have in your mind some  
23 understanding of the international global trading framework  
24 that you're prepared to operate under for people coming in  
25 your direction. And then I would say to the other side that

1 you extract from the other regimes reciprocity in terms of  
2 our taking our screens to their environment so that we can  
3 compete for our issuers in the U.S. with investors in their  
4 markets on their hours and their currencies.

5           So you have to help us go there, but you also have  
6 to help us compete here, and you have to really come to grips  
7 with, you know, are you ready for this. And I think you have  
8 to be ready, but it can't be, we wring our hands over every  
9 filing that we put down. You know, fee filings, market  
10 structure filings, any number of things I can think about,  
11 and that probably worries me as much as anything, that we can  
12 stay competitive with the guys who are doing a great job.

13           MR. WHITE: I mean you've got a lot of large foreign  
14 issuers on the New York exchange.

15           MS. KINNEY: We do. WE do.

16           MR. WHITE: Are they going to have an incentive to  
17 leave? We've obviously made it easier to leave -- and come  
18 in through the LSE or however they want to come?

19           MS. KINNEY: I think you've already made it easy for  
20 them not to come here in three ways. One, our regulatory  
21 regime is not robust, particularly in litigation, but we're  
22 not going to change that I don't think in the short run.  
23 Two, you let every foreign issuer do private placements, and  
24 84 percent of the deals that's what's happening. And I would  
25 say in the third context, you know, the trading by QIBs is

1 happening and has made those markets very liquid.

2           So this regulatory environment has allowed that to  
3 happen already. And I think somebody made the point earlier  
4 that it's now time to embrace the global transaction  
5 framework from issuance all the way through post-trade and  
6 for you to be at the leading edge of that as opposed to just  
7 allowing this other market to evolve.

8           MR. WHITE: But will that cause individuals  
9 companies to leave the NYSE?

10           MS. KINNEY: I think they -- the registration or  
11 deregistration issues have allowed that already to happen for  
12 people who have less than five percent of the trading. We've  
13 seen 20 announcements since April 1. That's unfortunate; we  
14 would like companies not to leave. But I think that having  
15 the SEC be viewed as ready, willing and able to embrace the  
16 global markets in a way that encourages the issuance listing  
17 and trading of their securities, I actually think -- I hope  
18 would help as opposed to having people just wanting to leave  
19 this regime for fear that it's just tightening the noose as  
20 opposed to being more proactive in that environment.

21           MR. WHITE: Chris, do you have any reaction there?

22           MR. CONCANNON: I think there are a number of  
23 factors that are allowing capital formation away from the  
24 U.S. among global issuers. The markets are getting better  
25 internationally. There are more shareholder protections

1 being developed in what we used to refer to as developing  
2 nations and our institutional investors are more comfortable  
3 investing abroad in local markets than they were  
4 historically.

5           So it is easier to create capital formation abroad,  
6 and there are a number of reasons that you'll hear from  
7 issuers to avoid the U.S. I think the SEC is working on  
8 those issues when it comes to the risk of registration in the  
9 U.S. and litigation and Sarbanes-Oxley. All those issues are  
10 there.

11           I think we're happy to have this process move  
12 forward, but when those competitive forces are unleashed on  
13 us we need to be able to compete and respond quickly. And I  
14 think we've competed quite aggressively here in the U.S. and  
15 the SEC has made major steps in allowing that competition to  
16 form. We just need to make sure that we're able to be  
17 flexible when a foreign exchange comes in with new products  
18 and new product offerings.

19           But there area variety of reasons why issuers are  
20 going abroad, not just -- these things aren't going to solve  
21 those issues. There are major reasons why issuers are going  
22 abroad. And more importantly there are intermediaries that  
23 prefer operating abroad than here in the U.S. given the  
24 regulatory costs.

25           When I look at my customer's margin, they study

1 their margin internationally and they find that their margin  
2 is much more attractive in London than here in the U.S. And  
3 when they're influencing offerings they do consider their  
4 margin when they're consulting issuers on where they should  
5 register and where they should issue shares.

6 MR. WHITE: Jonathan.

7 MR. HOWELL: Yes, just in terms of the decision of  
8 corporates on where to register or list, I mean there are a  
9 whole set of fundamental considerations that those corporates  
10 have in making that decision, which ranges from the  
11 regulatory regime, the efficiency of the regime, the quality  
12 of the regime, the depth of capital and diversity of capital  
13 that is willing to pursue those investment opportunities, the  
14 tax and legal regime, the governance regime, the strength and  
15 liquidity in the secondary markets. All of those form the  
16 backbone of the decision of where a corporate will list.

17 I think the types of proposals we're looking at  
18 here I think are only at the very margins in terms of the  
19 decision on where a major corporate is going to list in the  
20 world. This mutual recognition means that any European or  
21 U.K. or London order flow that wishes to go directly into the  
22 U.S. to bolster the liquidity going into a U.S. listing is  
23 completely reciprocal with it being the other way around,  
24 that the U.S. liquidity coming into a European listing.

25 So I think at the margins what we're looking at



1 here is not something that will fundamentally change the  
2 decision to list. I think on the broader point about  
3 development of overseas markets outside of the U.S., I mean  
4 the U.S. capital markets are operating very strongly in  
5 London now.

6           You know, all of the major broker-dealers all of  
7 the sell side, major components of the sell side, the hedge  
8 fund community and the private equity as well have very, very  
9 established long-term strong operations in London and the  
10 rest of Europe. And I think, yes, that's something that the  
11 commission and everybody here needs to focus on, but gosh,  
12 you know, we need to just look in Asia as well. Those are  
13 where the major pools of capital are going to be going  
14 forward and where major exchanges are emerging. So don't  
15 just focus on Europe. I think there's a much, much bigger  
16 set of issues and development of capital markets that are  
17 going to take place further east.

18           MR. FRUCHER: Erik, I'm always amazed at the  
19 stoicism of the people here in this building. I mean we come  
20 here and we go to various conferences and we're always  
21 lamenting, even whining about the difficulty in getting rules  
22 through, et cetera. I mean this isn't because --

23           MR. CONCANNON: I've never whined, just for the  
24 record.

25           MR. FRUCHER: Well, I will concede.

1 MR. WHITE: I'm glad you directed this to Erik.

2 MR. FRUCHER: In a moment of candor I will concede  
3 that from time to time I have whined. I've actually begged.

4 But the point is the people in this building are  
5 limited by statute. I mean you can be only so creative. We  
6 can't ask you to break the law. You know better than any of  
7 us what it would take to reform this process. And what I  
8 urge you, and commissioners, I urge you, I think you have to  
9 take the lead to go up to Capitol hill and say what you need  
10 to make your ability to regulate the markets, to introduce  
11 new products, more competitive.

12 I don't think that anybody here enjoys taking a  
13 year of having phone calls of people yelling, whining,  
14 cajoling and begging you on the phone to get my rule through  
15 or my new product through, which is effectively a rule. It  
16 is not -- I cannot believe it's because you enjoy the process  
17 that way, unless, you know, you're into something really  
18 kinky here.

19 But the thing is it has to be that there are  
20 constraints that you face. What are they and what can we do  
21 to help you to overcome those legislative constraints?

22 MR. SIRRI: You know, you put your finger on some of  
23 the constraints. There's legislation. There's principles in  
24 that legislation. So one example might be something that  
25 said that a market maker would only trade when

1 it's -- necessary to do so. That may not be the case in  
2 foreign markets. It may be otherwise. And I think you all  
3 know that as exchanges -- as the trading landscape has been  
4 evolving today because of electronic communications systems,  
5 because of ATSSs, because of dark pools, because of ECNs, you  
6 all have been coming to us and asking for various kinds of  
7 relief as your competitive landscape changes.

8           And even today as you deal with this you see us  
9 bumping up against those principles. I think the guiding  
10 principle we have that we try to use to see us through is  
11 that we care about the quality of markets and we deal  
12 ultimately with the outcome. That's how we try to find our  
13 way through, and I think that's something we would still try  
14 to do there.

15           But you raised the point, and it may in fact be  
16 necessary at some point. Perhaps there will need to be  
17 legislation. I think that's something -- we'll have to see  
18 where that leads us, but we'll look to the limit of our rule  
19 making, I think.

20           MS. NAZARETH: Sandy, you raised a lot of  
21 interesting points obviously, and you and I have talked about  
22 some of these things before. You know, it seems to me that  
23 this would have to be a collaborative effort because you're  
24 the folks who are running up against all the problems in  
25 product development and produce formation because of issues

1 over, you know, what law applies, what jurisdiction does each  
2 of the agencies have; is it a security; is it a future, you  
3 know.

4 I think Chris talked about margining issues.  
5 Obviously a lot of the margining issues now are again bumping  
6 up against, you know, can we do portfolio margining, can  
7 futures be in the securities account. All of these issues  
8 are affecting your ability to compete internationally. It's  
9 sort of the flip side of what we've been talking about here,  
10 can foreign screens be put in the U.S. Your concern is,  
11 okay, they come here and we are still not able to compete as  
12 seamlessly as they are because of historical anomalies in our  
13 own regime, and I think that's as critical an issue as any  
14 that's been raised today.

15 And I do think that certainly we have opinions on  
16 what the challenges have been but I think that the market  
17 participants are sort of uniquely positioned to also add to  
18 that dialogue and that debate so that we can figure out at  
19 least what the issues are and what the questions are so we  
20 can then ask for some relief or some clarity from Congress,  
21 because I do think when you talk about the competitive issues  
22 that these markets are facing, those are very significant  
23 ones.

24 I don't think they're as widely understood as they  
25 are perhaps with the people on this panel, but they're going

1 to have a very big impact on your ability to compete,  
2 particularly as we engage in more cross-border trading.

3 MR. CAMPOS: Roberta, if I could -- you've been  
4 looking a little quizzical down there. But let me expand on  
5 this question a little bit.

6 I guess the real kind of more overall question is  
7 do you see any risk to our basic '34 Act reporting system and  
8 disclosure system that flows out of the mutual recognition  
9 system?

10 MS. KARMELE: I think -- let me start with a remark  
11 about the dialogue that's gone on the last ten minutes or so.  
12 I think that the individual investors are more concerned  
13 about listing standards, disclosure, accounting than about  
14 these market structure issues. And I think they're -- yes,  
15 if the SEC goes and allows foreign screens into the U.S. so  
16 that there are more foreign issuer ordinary shares accessible  
17 to U.S. investors, and if part of that process is a selective  
18 mutual recognition regime, that's likely to change U.S.  
19 standards and requirements just as much as it's likely to  
20 change standards and requirements in other jurisdictions.

21 I think there will inevitably be more of a  
22 convergence in terms of registration standards, annual  
23 reporting standards, just as it appears there's going to be a  
24 convergence in accounting standards.

25 The SEC does have a more robust annual reporting

1 regime than exists in many other jurisdictions. Many  
2 jurisdictions have copied our registration requirements, have  
3 prospectuses for IPOs. I think that one of the challenges  
4 for the SEC will be encourage annual and periodic reporting  
5 standards abroad that are comparable to the kind of standards  
6 that we have here. And hopefully this will be a byproduct of  
7 this new process. I think that's something that's important  
8 to achieve globally.

9 I don't know if that really answered your question  
10 or not.

11 MR. CAMPOS: Roberta, what should we do about  
12 quarterly reporting?

13 MS. KARMELE: Quarterly reporting has always been one  
14 of these controversial issues. People who do a lot of  
15 trading thing quarterly reporting is really important.  
16 People who favor a long-term investment strategy think  
17 quarterly reporting maybe gets in the way of companies  
18 thinking of the long term. And I think this is one of these  
19 sort of Wall Street-Main Street tensions that you have here  
20 and around the world.

21 We have a quarterly reporting system. I think  
22 maybe too much emphasis is put on quarterly reporting. On  
23 the other hand, maybe some jurisdictions don't have frequent  
24 enough disclosure of what's going on with issuers.

25 And that's kind of not answering your question very

1 well, but I think it's a more complicated issue than just  
2 saying everybody should have quarterly reporting. There are  
3 some good arguments against quarterly reporting too.

4 MS. NAZARETH: Could I ask, is this -- it does sort  
5 of beg the question though when you're comparing regulatory  
6 regimes and you're looking to implement some sort of  
7 selective recognition, whatever that is, it does cause you to  
8 analyze what is it that you hold most dear about the domestic  
9 regime, what is it that you would not be willing to  
10 compromise in letting others come in and trade in this  
11 market?

12 Have you really thought about answering that  
13 question? I mean you've talked broadly about transparency  
14 and accounting standards, but again, the devil is in the  
15 details. Is it annual report? Is it semi-annual reporting?  
16 Is it quarterly reporting? Is it best execution broadly? Is  
17 it a trade -- rule? I think that everybody has made it quite  
18 clear that it probably wouldn't get to that level of  
19 granularity, but what is it that is essential to the U.S.  
20 regime that we should not be compromising, or the flip side,  
21 what is it that basically is something that we have that's  
22 nice to have and we've gotten sort of used to it but it  
23 wouldn't be fundamental to America's investors?

24 Have you thought about it from that perspective?

25 MR. CONCANNON: I'll take a stab and start.

1 Certainly from the issuer perspective, giving access to  
2 foreign issuers, giving them access to our retail investors  
3 here in the U.S., you certainly need -- it's the  
4 registration, it's the transparency associated with that  
5 registration of what that issuer does as a business and the  
6 disclosures requirements, the AK process are critical to the  
7 transparency of that issuer's business and to the retail  
8 investor.

9           Periodic reporting, certainly quarterly is  
10 challenging but certainly an annual report is not enough for  
11 U.S. investors and transparency. And so I stress it's really  
12 the retail investor and the protections that we've put on  
13 issuers here in the U.S.

14           Institutions can certainly operate in the 144A  
15 market. They can operate abroad. They have the  
16 sophistication to deal with differences in regulation, but  
17 what I think we hold dearly is the transparency we deliver to  
18 the retail investor here in the U.S. and that -- if you were  
19 to go to a CEO of a U.S. issuer and tell them that they can  
20 avoid criminal liability, they can avoid Sarbanes-Oxley and  
21 they can still access their U.S. retail investor, we're not  
22 going to see too many issuers in the U.S.

23           MR. SIRRI: Duane and Steve, you are in essence the  
24 customers of the four folks on your right. Is there anything  
25 that you've heard since we started off over the last hour or



1 so that has -- have you had any thoughts, anything to change  
2 your views, because I think the way I would characterize your  
3 initial views was that we have terrific access as  
4 institutional investors. It can be better. It could perhaps  
5 be even better, maybe even more important for the mid-size or  
6 small advisors. Their access is pretty good so far. Is  
7 there anything -- do you have any thoughts given what you've  
8 heard your exchange folks say?

9 MR. BEPLER: Well, much of this is more technical  
10 than the things I look at, so I don't know. I certainly  
11 think the registration standards should be maintained. And  
12 in fact, as American investors spread out throughout the  
13 world in the last 30 odd years, many of these things they  
14 came to be used to were incorporated in the offering customs  
15 of many countries.

16 So I think I've seen a great deal of progress in  
17 the 35 years I've been doing this. I may come at it from the  
18 wrong point of view, but I think underlying much of what has  
19 been said about access and protection for the individual  
20 investor is the presumption that the individual investor, in  
21 dealing in the U.S. with a U.S. intermediary gets exactly the  
22 same treatment as a larger institutional investor, and of  
23 course, that is not the case because if you're only buying  
24 100 shares of stock your commission rate is going to be a lot  
25 higher than if you're buying a million, and if you're trading

1 100 times a day you're going to get a lot better treatment  
2 than if you trade two or three times a year.

3           So I think in a way attempting to structure our  
4 laws so that those who go to the market the least actively  
5 are guaranteed the same protection as those who are in there  
6 every day is a very difficult thing to accomplish. Also, in  
7 terms of granting access for foreign exchanges and so on, I  
8 mean the trend has certainly been more and more for  
9 individual investors to act through financial intermediaries  
10 because fewer and fewer people are interested in servicing  
11 them, because the cost of doing it is very high.

12           So on a practical basis I guess I would think that  
13 if every regulator body all over the world wanted to insist  
14 on particular issues that were historically of importance to  
15 them we would never arrive at what we've been talking about,  
16 but it would take place. It would just take place somewhere  
17 without much regulation by players who are presumed to be big  
18 enough and sophisticated enough to take care of themselves.

19           So I don't know if that's helpful, but it's the way  
20 I feel about it.

21           MR. WHITE: Roberta.

22           MS. KARMELE: I'd like to go back to Annette's  
23 question, because I think it's really a very good question.  
24 I've been sitting here thinking, all right, what is it  
25 important in our system that we need to preserve, and I think

1 what's critical is protection against fraud, and we really  
2 haven't been talking about that today. We've been talking  
3 about particular disclosure kinds of items, accounting  
4 systems, market structure issues.

5           And the SEC always says in its releases -- and the  
6 article that was written by Ethiopis that started off this  
7 roundtable says, "of course, we wouldn't exempt fraud," you  
8 know, that would be something that investors would have to  
9 have recourse -- but I think protection against fraud isn't  
10 just can investors sue in the U.S. courts, can the SEC bring  
11 a case. It's -- in comparing various foreign regimes,  
12 foreign exchanges the SEC will have to make a very difficult,  
13 politically freighted decision about which foreign exchanges  
14 are operating in a way that basically does protect investors  
15 against fraud in those jurisdictions and which regimes do not  
16 have adequate protections against fraud.

17           So I think that we're going to have to look at some  
18 bigger picture ideas here and not necessarily a kind of line  
19 by line comparison of what the specific disclosure items are  
20 in particular registration statement or prospectus.

21           MS. KINNEY: I've also been thinking about Annette's  
22 question because it is a really important one. And I think  
23 that you're challenging us to think about two sides of this.  
24 One is the exchange's own rules because we clearly I think do  
25 a good job on setting listing standards for the companies

1 with independence and lots of disclosures about the company's  
2 operation and a variety of things.

3           So on some level it's the exchange's own rules, how  
4 it operates its market, how it surveys its market. But then  
5 the other side is the SEC itself and the rules that govern  
6 your oversight. And I have to say Rick Ketchum will be the  
7 much better responder to your question, but I think it is  
8 really important.

9           And I guess the first thing that came to mind  
10 beyond the fraud question, which was immediate, is the  
11 enforcement issue and how are you going to work together with  
12 the other regulatory regimes to ensure that risk management  
13 is adequately managed but then you have enforcement  
14 opportunity on both sides that's adequate to ensure that you  
15 have the comfort that that's a regime that you can trust  
16 going forward.

17           So that's the kind of question that I think we all  
18 need to go in and think about and come back and give you a  
19 really thorough answer. But it falls both to the exchange  
20 side, I'll just take our own, but to the SEC too and what is  
21 it that we really think is vital. But I would also say I  
22 agree with Roberta's comments that I know we wouldn't be  
23 doing a line by line but more in the broad context of what  
24 are the things we really care a lot about in terms of the  
25 kinds of markets we run as well as the kind of issuers that

1 we allow to sell securities in this country.

2 MR. CAMPOS: As soon as Roberta said "protection  
3 against fraud" the obvious thought was what does it mean  
4 about enforcement, and Kathy picked up on that. And indeed  
5 that's one of the things that we're constantly being -- my  
6 speeches overseas and all the commissioners were constantly  
7 being asked to compare our system of enforcement versus  
8 others. And of course, you know, there's lots of reasons  
9 we -- much of our enforcement is for the retail market and to  
10 keep the retail investors in the game, as it were.

11 That's not necessarily the situation in many other  
12 markets where you have more larger institutional investors,  
13 so you have a different world and necessity for enforcement.  
14 But how do we square the circle? You know, we have  
15 fundamentally different views, given the '34 Act, which of  
16 course Sandy thinks should be abolished or revised  
17 substantially. And essentially the view that we support  
18 deterrents, we support sanctions that are meaningful, that  
19 will keep others from doing it, and that the investors will  
20 view that as significant enough where they are not fearful of  
21 fraud.

22 Is there a shortcut here in terms of making these  
23 things jive?

24 MR. FRUCHER: First of all, let me defend myself. I  
25 am not for the abolition of the '34 Act. What I am for is

1 the modernization of the '34 Act.

2 MR. CAMPOS: The abolition.

3 MR. FRUCHER: Even the Constitution has amendments.  
4 So the point is the world has changed. You don't have open  
5 outcry. You have machines that go cross border now.

6 You know, when we were looking at Reg NMS at the  
7 Philadelphia Stock Exchange and figured out what it takes to  
8 compete in the NMS environment in terms of speed, we were  
9 looking at a standard of five milliseconds. By the time we  
10 had to implement we're looking at a standard of less than one  
11 millisecond. Any faster than that is trading ahead.

12 But I mean the point is, we measure the world in  
13 milliseconds. So I mean I'm saying that we have to  
14 modernize. We talk about the regulatory regime of an  
15 exchange. Many of the exchanges around the world are single  
16 exchanges in a country, and so it's really not the exchange  
17 that you need to look at. It's their SEC, it's their  
18 regulatory framework because they're the ones who dictate the  
19 standards by which the exchanges regulate.

20 MR. CAMPOS: So what do we do about enforcement?

21 MR. FRUCHER: Well, first of all, I think  
22 enforcement is a function -- first and foremost it's a  
23 function of dialogue and negotiation. I mean you have to get  
24 on some common playing field and reach common understandings  
25 of how you are going to enforce, and that's not a unitary or

1 a solitary matter. We can't do this in this room or in this  
2 building or in this city by ourselves.

3 MR. CAMPOS: How do we deal with insider trading?

4 MR. FRUCHER: I'm sorry?

5 MR. CAMPOS: How do we deal with insider trading and  
6 the different responses, just as an example?

7 MR. FRUCHER: Well, just as an example I can't give  
8 you a specific but I can give you something that you've done  
9 that I think is first rate. In the options industry you've  
10 gotten the exchanges to coordinate really the investigation  
11 and the enforcement of insider trading.

12 That came out of this building. It's a recognition  
13 that multiple exchanges have different capacities to do that,  
14 that this is a transcendent issue that goes above one  
15 exchange, and I think that same thing applies on a worldwide  
16 basis. I think you really need to develop cooperative  
17 arrangements and perhaps even integrated institutions to look  
18 at this. And the only way you're going to do it is by  
19 engaging in a dialogue, in a negotiation and an integration  
20 of a lot of these investigatory functions.

21 Look, our markets are being hit by scam artists who  
22 are sitting in coffee shops in Bulgaria, who are entering our  
23 markets. We're not going to stop that by talking ourselves.

24 MR. CAMPOS: Should we negotiate the sanctions,  
25 Sandy, in terms of this, how we sanction somebody in Europe

1 and how we sanction somebody in the U.S.?

2 MR. FRUCHER: I don't know a good negotiation that  
3 starts by pulling things off the table. I think you have to  
4 sit down and start really having serious dialogue and to  
5 reach these common -- I think regulators around the world  
6 want to ensure the integrity of all markets. I think we  
7 start off with a common -- or at least I hope we start off  
8 with a common objective. And if we find there are regulators  
9 who don't, then I think they get on our list.

10 MR. WHITE: Looking at my watch, I think it probably  
11 makes sense to move to our wrap-up stage here. I see there  
12 were a couple lights on but maybe we could just include those  
13 in our closing comments if you don't mind because I want to  
14 give everyone their two minutes.

15 So I guess, Roberta, we'll probably start at your  
16 end. And I guess what we'd like are your closing thoughts  
17 for the commission and what we should take away from all of  
18 this from your perspective.

19 MS. KARMELE: These are very difficult problems. I  
20 think it's going to be a real challenge for the SEC to move  
21 ahead to a selective mutual recognition regime, but it should  
22 be done because I don't think it's healthy for our markets or  
23 actually fair to retail investors to have -- people are  
24 saying 84 percent of the IPO deals in private placements that  
25 retail investors can't access.



1                   And I think too often when the SEC has confronted  
2 difficult issues like this it simply exempted various  
3 segments of the market for the benefit of institutional  
4 investors. And I don't think that's what should be done  
5 here. I think the SEC should confront these problems head on  
6 and come up with a regime that includes the ability of  
7 individual investors as well as institutional investors to  
8 more easily access foreign securities for investment.

9                   MR. HOWELL: Yes, I mean I think what the debate, in  
10 my sort of understanding of the issues, has demonstrated for  
11 me is that there is either a perceived or an actual set of  
12 inefficiencies or frictions between North America and between  
13 U.S. markets and other regimes. And therefore if this whole  
14 process just at the very least provides certain clarity, some  
15 certainty, some structure, well then that's going to be a  
16 very much more informed place and in fact a much more  
17 user-friendly place where risk can be understood and  
18 measured.

19                   I think, as we've all said, I think the  
20 differentiation between institutional and private client  
21 access is very important. But perhaps over the medium to  
22 longer term there is more to be gained ultimately for private  
23 funds, given that the institutions are already effectively  
24 doing this. So therefore I'd advocate that there's a staged,  
25 graduated, carefully measured approach to this, which gives

1 opportunities to make sure all the right checks and balances  
2 are in place.

3           Now the real challenge here, and I think  
4 Commissioner Campos, Commissioner Nazareth both touched on  
5 it. There are real practical issues here. First of all,  
6 where there is regulation and legislation, both of a civil  
7 type and both of a criminal type, most of the regimes that  
8 the commission will be looking at will have this type of  
9 regulation in place. But it would be very difficult to  
10 identify where the overlaps are, where the underlaps are, and  
11 how that cooperation between the two regimes and law  
12 enforcement agencies would effectively work.

13           And there's going to be an awful lot of effort in  
14 process protocols and relationships between the SEC and, for  
15 instance in London, the FSA to establish how this oversight  
16 over those regulatory regimes is going to be done in  
17 practice. And then lastly in terms of the challenges there  
18 will be ultimately, one would imagine, the requirement to be  
19 selective, and that could be very difficult.

20           That jurisdiction is in, that jurisdiction is out.  
21 And I think that's going to make it very, very difficult to  
22 progress this at a sensible pace whilst achieving all of the  
23 objectives. So therefore a lot of perseverance and intent  
24 will be required and there will be lots of reasons why it's  
25 too difficult, I'm sure.

1                   But I think there is quite a good prize here to be  
2 achieved, and I think ultimately it will lead to convergence  
3 around the world. And I think importantly that will mean  
4 that those jurisdictions, those exchanges, those issuance  
5 regimes that are willing and able to meet the challenge that  
6 the commission sets out, those participants in the U.S.  
7 markets and those participants in those regimes that are  
8 willing to assist and go along with this process, they'll be  
9 a prize for those who operate in those markets.

10                   MR. WHITE: Sandy.

11                   MR. FRUCHER: First of all, I'd like to thank the  
12 SEC for having this forum. I think it's very, very useful.  
13 I'd also like to thank Commissioner Nazareth and Director  
14 Sirri for the speeches that they've given earlier this year  
15 that started to lay out the framework for this, which I think  
16 is very, very constructive.

17                   We are living in a world that's galloping towards  
18 globalization. I as an American am proud of the fact that  
19 our markets are leading the way in that globalization and  
20 that couldn't be possible without the fact that the  
21 commission, in record-breaking time, has changed and modified  
22 how we have done business to allow for that kind of serious  
23 paradigm change, for it to be accomplished. And I think the  
24 commission should be quite proud, and we are proud of the  
25 commission.

1           I just -- this is one of a serious, of a number of  
2 questions that have to be looked at and they have to be  
3 looked at expeditiously. The world is moving too fast for  
4 business as usual, and I'm confident that the commission  
5 will, in fact, be a leader as opposed to an anchor in this  
6 transformation.

7           MR. WHITE: Chris.

8           MR. CONCANNON: The harmonization of any regulatory  
9 standards is good for investors. In that harmonization I  
10 think we have to look at a regime and challenge ourselves  
11 that we don't have a perfect regime. There are things that  
12 we can, in this harmonization process, improve and learn from  
13 other regulators.

14           We've certainly learned lessons with harmonization  
15 of state regulation, harmonization with Canada, that there  
16 are things that can be done that benefit investors without  
17 huge risks. In terms of incrementally doing harmonization, I  
18 would just say we should move with caution because when it's  
19 incremental there are few opportunities. Even if the windows  
20 are for a year, regulatory arbitrage will be taken advantage  
21 of. So when we talk in terms of harmonization we can't do it  
22 in a step function. We have to look at everything and  
23 harmonize with everything.

24           But I applaud what the commission is doing. I  
25 think we benefit as U.S. investors, we benefit as issuers.

1 So I applaud and really think we should move first with  
2 registration harmonization of issuer -- issuer obligation is  
3 the area of focus, and everything flows from that.

4 MR. WHITE: Cathy.

5 MS. KINNEY: Well, I think it's clear the SEC wants  
6 to take a leadership position. I think Erik and Commissioner  
7 Nazareth have made that very clear. And so in the spirit of  
8 selective mutual recognition I'd start by saying you should  
9 select the regimes that you're prepared to work with. And I  
10 would recommend starting with the college of regulators  
11 because I think they represent a broad group of countries and  
12 would get us reasonably far along.

13 I think you should select the issuers that you are  
14 comfortable working with in the context and construct of  
15 mutual recognition of registration statements.

16 Two, I would say, open the screens and don't  
17 restrict or don't limit the investors who can participate in  
18 them simply because you'll have the most liquid markets and  
19 the most opportunity for those issuers to be successful.

20 Third, I would say select your broker-dealers or  
21 select the requirements for the broker-dealers who can  
22 represent the investors. I think that would be important in  
23 the construct of the SEC's oversight.

24 Fourth, I'd say that we have to facilitate the rule  
25 approvals, as Erik pointed out, in a global competitive

1 environment.

2           And fifth, I think we have to answer Commissioner  
3 Nazareth's question in a much more thoughtful way, because I  
4 think it is the answer or the answer is really around what we  
5 have to agree to in the context of mutual recognition.

6           So I think this is really important work. I think  
7 the SEC has made -- I actually think you've made the decision  
8 that you want to go in this direction given some of the  
9 recent approvals and directions you've sent, and so I say,  
10 keep going, knowing it's hard work, but we're all here, and  
11 we'll work really hard to help find resolutions to the  
12 questions that Commissioner Nazareth asked.

13           MR. WHITE: Duane.

14           MR. KELLY: I guess I'll make my last comment.  
15 Along the lines of the individual or retail investor,  
16 Vanguard ultimately has millions and millions of individual  
17 shareholders that are investing with us. It sounds like,  
18 based on the discussion, that the individual or retail  
19 investor is going to come along right away. I think things  
20 need to be opened up. It needs to be more competitive to  
21 bring down the expense to the retail investor to access  
22 international companies.

23           Because Vanguard has some experience with  
24 individual shareholders and I've been around long enough to  
25 kind of be exposed to some of that, I think it's vital

1 to -- as things are opened up and the individual investor is  
2 brought in, that it goes smoothly, it's successful. And I  
3 think, along those lines, it's understanding what their  
4 expectations are, and that along the lines of what we  
5 discussed, disclosure, financial statements, all those types  
6 of things, and then as you open it up and decide who comes  
7 in, that the standards be very high and they make sense and  
8 are fair, and that, over time, the exchanges or countries  
9 that are left out will have a desire to improve their  
10 capabilities in this area and come in, reach those standards  
11 and come in.

12 MR. WHITE: Steve, you're going to get the last word  
13 here, which usually doesn't happen with your place in the  
14 alphabet.

15 MR. BEPLER: Well, I'm not sure I can add much to  
16 what has been said because I would be echoing some of that.  
17 I think if we're looking at how we proceed we might want to  
18 look at what the largest and therefore presumably the most  
19 sophisticated investors outside the U.S. have done and what's  
20 important to them and what isn't important to them.

21 Certainly, harmonizing financial statements I think  
22 is one of the most important things, and I would consider  
23 that that has been accomplished in a practical sense.

24 Disclosure, there was absolutely no disclosure when  
25 I started doing this 35 years ago. And now we don't

1 necessarily have the same level of disclosure outside the  
2 U.S. that we do in the U.S., in some cases it's actually more  
3 full, but we have enough. And so I don't think there's much  
4 point in arguing about relatively minor issues that may have  
5 been very important at a point in history but aren't really  
6 important to full time investors now. And I would put  
7 quarterly reports in that thing.

8 I think a quadrennial report would be too  
9 infrequent. A monthly would be way too much. Quarterly  
10 drives me crazy. Most of the world does it semiannually and  
11 that sounds like a reasonable compromise. And I think, if we  
12 want to go down the road of achieving agreement on all of the  
13 differences, whether they're specific line by line or more  
14 general things, then we'll never get started.

15 The fact that so many new issues are taking -- and  
16 after all, that's not the way most individual investors  
17 invest, by a portfolio of new issues, but the fact that so  
18 many new issues are taking place outside the U.S. is really  
19 saying that the capital markets are accessing U.S. investors.  
20 They're just doing it in a way that doesn't flow through our  
21 economy, although it may well flow through the economy of  
22 Goldman Sachs or a lot of other people because those are the  
23 people who are doing it in another jurisdiction.

24 So I mean look at what has worked and recognize  
25 that everyone will have to compromise on this. And not all



1 of these rules we've gotten used to are really crucial to  
2 fairness for the individual investor.

3 MR. WHITE: Okay. Well, this has been a really  
4 great panel. On behalf of the commission and the staff and  
5 Erik and myself we would like to thank each of you for being  
6 here today and participating. We will take a short break and  
7 resume at 11:15 with the broker-dealer panel.

8 Thank you.

9 (Break.)

10 PANEL TWO

11 MR. SIRRI: All right. Welcome back to the second  
12 panel, the panel on increased foreign broker-dealer access to  
13 U.S. investors. With me co-moderating the panel is Ethiopis  
14 Tafara, the director of the Office of International Affairs.

15 For this panel we're pleased to welcome again a  
16 group of distinguished panelists. We have, starting on the  
17 right, Harold Evensky, who is the president of Evensky &  
18 Katz. Next to him is Ed Greene for Citigroup. Next to him  
19 is David Grayson, the managing director of Auerbach Grayson &  
20 Company. Next to him is Chris Amato, the director of  
21 international marketing at E\*Trade. Next to him is James  
22 Allen, the chairman and CEO of Hilliard Lyons, and at the far  
23 end of the panel is David Aufhauser, the managing director of  
24 the UBS and the general counsel of the investment bank and a  
25 member of the group managing board.

1           All right. This panel is scheduled to run from now  
2 until 1 p.m., at which point we'll begin our final panel on  
3 defining and measuring the comparability of regulatory  
4 regimes. But for the next hour and 45 minutes we'll focus on  
5 broker-dealer access. We anticipate that they'll be  
6 questions from commissioners. They'll be jumping in; we may  
7 be jumping in, and I want to encourage you as panelists to  
8 feel free to signal to us that you want to enter the  
9 discussion at any time. So we'd like to keep it, as with the  
10 first panel, as a dialogue.

11           Let me start off with the following question.  
12 Could someone describe for me -- and David, you might want to  
13 start off -- how is it that today U.S. institutional  
14 investors access foreign markets, and how do they interact  
15 with foreign broker-dealers when they do this? That is, what  
16 is the role of the U.S. broker-dealer for an institutional  
17 investor in that process?

18           MR. AUFHAUSER: Well, it's kind of a clunky process  
19 if it's done out of the U.S. And I think those that fall  
20 within the functional definition of an institutional  
21 investor, which is basically above \$100 million, frequently  
22 do it also through their foreign offices. A lot of my  
23 competitors -- our competitors also have sort of dual-hatted  
24 broker-dealer licensed people in places like London and the  
25 like.

1                   We chose not to do that. That has some tax and  
2 some SRO, supervisory and regulatory implications that are  
3 think are too complex for us to deal with. But basically  
4 though the foreign offices directly or through following and  
5 going through the many hurdles to talk to somebody here in  
6 the U.S., which -- I know the previous panel, the two  
7 institutional purchasers said that on balance they thought  
8 that the proposal here for substitute compliance or mutual  
9 recognition probably offered them modest gains that they've  
10 already adjusted to the regulatory regime.

11                   That's correct, but I think it still can be even  
12 more fine tuned and more efficient and more seamless without  
13 the need for double booking and confirmations and the  
14 operational risk that's occasioned by that kind of access I  
15 think. So that's -- in summary.

16                   MR. SIRRI: Jim, you're a slightly smaller  
17 broker-dealer. Any changes to how you think about that  
18 process?

19                   MR. ALLEN: Well, in our case we are almost  
20 exclusively a private client firm, a very limited amount of  
21 institutional business, and the bulk of our activity is done  
22 in the mutual fund area, and that's how we reach foreign  
23 markets.

24                   Somewhere between eight and nine percent of our  
25 client assets now are in foreign investments of some form,

1 about two-thirds mutual fund and ADRs and then direct  
2 investments, with ADRs being the dominant portion of that  
3 balance.

4 MR. GRAYSON: Well, I think your question, Erik, was  
5 how do U.S. investors deal with foreign brokers. There are  
6 probably three or four primary ways. The first one, which  
7 has not been mentioned is those foreign brokers which choose  
8 to set up an office in the United States, register with the  
9 NASD and the SEC and solicit business from New York.

10 Second, you have foreign brokers who deal through a  
11 firm like ours that offers -- we operate under rule 15(a)(6).  
12 We deal in 104 markets. So sitting behind me today are 104  
13 brokers from around the world operating in the U.S. under  
14 15(a)(6) on a very transparent basis. And then you have  
15 another group of foreign brokers who run around the U.S.  
16 unregulated knocking on institutions' doors.

17 So the fourth and probably the least part of that  
18 is clients or institutions who contact foreign brokers  
19 directly, who go out in the field and do their own due  
20 diligence on foreign brokers on their own.

21 MR. SIRRI: David, what's your firm's role with  
22 respect to Rule 15(a)(6)? How do you fit into that  
23 landscape?

24 MR. GRAYSON: First of all, our only business, I  
25 guess, unlike the other panelists, Erik, our only business is

1 the sale of foreign stocks to major U.S. institutions. We  
2 don't deal in U.S. securities. It's a very tiny part of our  
3 business.

4           And we go around the world and seek out a single  
5 leading institutional broker in each country in which we  
6 deal, preferably one that produces institutional quality  
7 bottom-up research, and we couple that with a very high level  
8 of service and offer that to our clients.

9           Because we only deal with one broker in each  
10 country, our relationship between our client and the local  
11 broker is completely transparent. So if the client wants  
12 research in Denmark he's actually dealing with Dansk bank.  
13 If he wants research in Egypt, he's dealing with EFG Hermes.

14           The research they receive is actually the research  
15 that's produced by on-the-ground analysts, very different  
16 from -- what the other global brokers do is they may go into  
17 a market and deal with four or five local brokers but the  
18 client never actually sees who the local broker is.

19           And all of our local brokers operate under  
20 15(a)(6), operate under our regulatory umbrella. We do  
21 tremendous due diligence on the local brokers. Either myself  
22 or my partner visits every one of the brokers. We check on  
23 their financials. We visit the local SEC, the local  
24 exchanges. We check with their peers. So we do a lot of  
25 diligence on the local broker.

1                   MR. SIRRI: You know, one of the things that we're  
2 discussing is changing, making it easier for foreign  
3 broker-dealers to deal directly with U.S. institutional  
4 investors, and your firm sits right in the middle of that.  
5 For anyone in the panel, in a world where that contact  
6 becomes easier, where the U.S. broker dealer is not such a  
7 key part of that process perhaps may be removed directly.

8                   How should we think about that issue? Is that  
9 something that we should -- are there any concerns that are  
10 raised, sticking with the institutional investors, just for  
11 the moment?

12                   MR. GREENE: At least in my view I think you can  
13 have some flexibility here. I would step back and look at  
14 the issue as follows: ownership is global, but increasingly  
15 trading is regional.

16                   What we've really discovered is that liquidity is  
17 where people want to go to trade. And so with respect to  
18 foreign securities it's not realistic to think that I think  
19 that they're going to trade actively or extensively in the  
20 United States.

21                   So what is the best way to allow people to go  
22 forward? I think with respect to institutional investors,  
23 they are particularly sophisticated. I would have two  
24 requirements I think if we were to go forward. One is that  
25 there be an effective MOU in place between you and the

1 jurisdiction which the broker-dealers were acting from.  
2 Secondly, probably have some level of experience with respect  
3 to the institutional investor.

4 But I think the trouble I had with the conversation  
5 this morning is that we talk about institutional and retail  
6 as if there were this really bright line. You have to look  
7 at a spectrum of investors, and they go from individuals who  
8 are not sophisticated to sophisticated wealthy individuals  
9 from the private bank, to institutions small and large.

10 And I think there are two things to be challenged.  
11 One is review what the criteria should be. And perhaps  
12 'qualified investor' as defined under the '34 Act would be a  
13 way to start forward. Secondly, go to jurisdictions in which  
14 there is cooperation. That would also be a way of assuring  
15 that you had the kinds of powers to call on the regulator if  
16 there was a particular problem, and third, sort of probably  
17 do it with, as I said, companies with institutions and  
18 individual investors of a certain sophistication as a pilot  
19 program.

20 And I don't think that's going to be particularly  
21 controversial with respect to the kind of access you want.  
22 Another way you might also think about it is limit it to the  
23 types of securities you would have. For example, I view that  
24 well known seasoned issuers, as you defined it under the '33  
25 Act, those companies are pretty well disciplined by the

1 market, have comparable disclosure to U.S. companies, and so  
2 you might have that as a criteria as well. Because the  
3 market will discipline, that disclosure is going to be  
4 adequate.

5 MR. SIRRI: If we follow a path like you suggest  
6 then you lose the process of having the U.S. broker-dealer in  
7 part of that chain. From the point of view of -- again,  
8 sticking with institutional investors for a moment, what's  
9 lost when you lose that? What is it, when that U.S. broker  
10 dealer is not there do we lose anything?

11 MR. GREENE: I suspect we should ask the  
12 institutional investors that because I'm not sure that -- at  
13 least for we as a global institution, I'm not sure we would  
14 see what institutional investors -- because the reality is  
15 they, in fact, deal, more likely than not in the market where  
16 they want to trade in the securities, so they'll be dealing  
17 with our affiliate in Frankfurt, in Tokyo, in London or with  
18 another institution. They're depending on liquidity in  
19 trading strategy. And the research, is more likely than not  
20 to be generated from those local markets as opposed to our  
21 market, so I'm not sure what they would lose.

22 MR. AUFHAUSER: I was just going to say the only  
23 thing that's really forfeited is the added cost of having an  
24 intermediary. I think otherwise they will have the same  
25 level of immediate access, the universe of products, direct



1 talk and, if you will, perfect market information to the  
2 extent it's available directly from the source without the  
3 need for any kind of choreography of chaperoning or anything  
4 like that.

5           By the way, I'm not sure this doesn't also attach  
6 to the question of retail. It's not exclusively -- I know  
7 your question is phrased in terms of institutional investors,  
8 but all of this pertains to the retail investor too. I mean  
9 if this mutual recognition regime is put into place they are  
10 obviously going to profit from direct access to information,  
11 reduced costs of transactions and a larger panoply of  
12 products that's made available to them to diversify their  
13 risk portfolio. So I don't think it's really binary between  
14 the institutional or the retail clients.

15           MS. NAZARETH: Could I interject for a second? I  
16 mean going back to what we talked about on the last panel,  
17 which is sort of what do we hold dear, certainly investor  
18 protection is probably very much at the high end, and it  
19 seems to me that there is a difference here when you're  
20 talking about accessing, directly accessing institutional  
21 investors versus retail investors.

22           If you look at our broker-dealer regulatory regime  
23 it is obviously overwhelmingly tipped towards investor  
24 protections, sales practice rules and the like. So I guess  
25 it would be helpful for me if you would address how we would

1 go about satisfying ourselves that those same standards were  
2 going to be applied universally if we let foreign brokers  
3 with whom we have basically no oversight role -- how we are  
4 going to make ourselves comfortable that we're going to  
5 satisfy what is probably our primary obligation, which is  
6 investor protection.

7 MR. AMATO: I'd like to concur with Commissioner  
8 Nazareth in that we have two different levels we're dealing  
9 with here, the institutional and the retail. And as has been  
10 stated previously, the institutional side has full and  
11 complete access to trade anywhere in the world they really  
12 want to, and we've always treated them with -- and they can  
13 execute through any one of the number of broker-dealers  
14 sitting here at this time anywhere in the world.

15 And they have always been treated with -- buyer  
16 beware. They can reach around the world. They like to  
17 participate in a certain country. They have their teams of  
18 analysts and people and staff and lawyers who are assessing  
19 whatever those economic risks are due to them, whether it's a  
20 political risk involved in investing in certain countries  
21 whereas the retail client does not have this behind them,  
22 they don't have teams of staff and members and whatnot, and  
23 to reach around the world and expect them to be protected,  
24 that is part of why going through a U.S. broker-dealer is  
25 advantageous to them for that protection purpose.

1                   There is nothing that stops U.S. retail from  
2 reaching around the world right now. My firm happens to  
3 allow them direct access into six different markets around  
4 the world. You'd like to wake up at 2:00 in the morning and  
5 place a trade into the U.K., we will help facilitate that.

6                   MR. SIRRI: Chris, could I ask you to explain that.  
7 Let's suppose, just for the sake of argument, I was an  
8 E\*Trade customer and I wanted to buy a stock in the FTSE or  
9 the DAX or an index. Could I do that through E\*Trade, and if  
10 so, how would you get that done?

11                   MR. AMATO: You would simply have a -- and we do  
12 have different levels of accounts at E\*Trade, but currently  
13 in our beta program, which is open to thousands of clients at  
14 the moment because we are refining the system, it is a  
15 revolutionary type of piece, we allow the client to directly  
16 place an order into the foreign securities market at any one  
17 of the six regions and changes we allow.

18                   Currently it goes through our counter-E\*Trade  
19 broker-dealer in the U.K. It goes directly then through that  
20 hop electronically to the local exchange. We do that in the  
21 multi-markets we have. We happen to have BDs around the  
22 world. I'm sure you're well aware of that. And it is that  
23 there is a dual hop there.

24                   But at the same time the customer benefits from  
25 being under the protection of civil and different regulatory

1 rules that are here so that if they were able to actually  
2 just hand their assets over overseas, what do we do then?  
3 You know, who's going to stand up and fight for them if that  
4 broker-dealer goes under, there's fraud involved?

5 The FSA this morning turned around and stated they  
6 did not have the regulatory tools that you do to chase down  
7 trading ahead. They've had, they believe a quarter, 25  
8 percent of all buyouts have experienced trading ahead. And  
9 they stated that in an article this morning, an insider did,  
10 and they don't even have the tools that you do.

11 MR. TAFARA: As Erik indicated, the thought is to  
12 provide more direct access from foreign brokers to U.S.  
13 investors on the basis of looking at the regime that applies  
14 to that foreign broker to determine whether or not its  
15 comparable.

16 The question I would have is should we be doing  
17 that at all and in terms of comparability, what should we be  
18 focusing on? To restate the question I think Commissioner  
19 Nazareth asked in the earlier panel, what is it about our  
20 regulatory regime we care about enough such that there would  
21 have to be comparability in that area? And the next question  
22 would be, is it different whether you're talking about  
23 institutional investors or retail investors.

24 MR. GREENE: Going back to Commissioner Nazareth's  
25 comment about retail investors and trying to answer your

1 question at the same time, I think that the SEC -- you're  
2 talking about having oversight into foreign brokers, but your  
3 MOU is with foreign stock exchanges. So just like there are  
4 unscrupulous members of the New York Stock Exchange there are  
5 unscrupulous members of the Borsa Italiano or any other stock  
6 exchange in the world.

7           So one might argue that by permitting retail  
8 clients to have direct access to an Italian broker for  
9 example now the retail client has a problem with the Italian  
10 broker and he wants to go after them. And retail clients in  
11 our country are used to a process, whether it's through  
12 arbitration or civil courts; how are they going to chase  
13 after that foreign broker? And they're going to be pointing  
14 their finger at the SEC saying, "oh, but you have an MOU with  
15 the exchange."

16           Well, as a practical matter, what's that going to  
17 do for them?

18           The other point I want to make is that most global  
19 firms offer their clients direct execution or execution in  
20 foreign markets. When you get into it you find that the  
21 global brokers, the U.S.-based global brokers are actually  
22 limiting execution to a handful of European markets and maybe  
23 some major Asian ones. And the reason they don't go beyond  
24 that is because the cost of execution and the cost of  
25 settlement and the cost of custody for a retail-sized

1 transaction makes no sense.

2 And that's why most retail investors who want to  
3 access foreign markets do so through mutual funds. And  
4 that's why we go back to the institutional part of the  
5 discussion.

6 MR. SIRRI: David.

7 MR. AUFHAUSER: When I was suggesting theoretically  
8 the elimination of the intermediary, the U.S. broker-dealer  
9 and permitting direct foreign access I wasn't giving up the  
10 ghost. This whole dialogue, this whole day of roundtable  
11 presumes that the SEC is going to make a subjective judgment  
12 that there are alternative regimes abroad which are  
13 acceptable to you. Hence that leads us to the question you  
14 asked, what's dear to us and what needs to be preserved.

15 And on that score, surely the first order of  
16 business is the adequacy of the disclosure regime for the  
17 issuers, but the second one is the adequacy of resources to  
18 enforce -- this is Professor Jackson's idea, of course, not  
19 mine, but endorse it, to enforce that the regime that you've  
20 just given your good housekeeping stamp of approval on  
21 whether it's Italy or whether it's the FSA or otherwise, but  
22 permitting direct access by foreign brokers is not giving up  
23 the ghost.

24 I mean one of the predicates already is they have  
25 to subject themselves to service of process and to the

1 jurisdiction of the U.S. courts. So certainly for private  
2 litigation and presumably for sovereign litigation by the SEC  
3 they're perfectly subject to the long arm of the law and the  
4 long arm of recovery.

5 But again, you're not going to get to that under  
6 your proposed model, Ethiopis, without having reviewed the  
7 adequacy of the broker-dealer and the adequacy of the regime.  
8 But the two principal criteria for that, and there's a long  
9 litany of course of the subcriteria, but the two principal  
10 criteria is the adequacy of disclosure from issuers and the  
11 resources to enforce the very regime that the four of you are  
12 approving in your proposed process.

13 MR. GREENE: Let me -- I'd like, if I could, pick up  
14 on that, Ethiopis, because I am concerned that mutual  
15 recognition is a very difficult process to put in place  
16 because of political judgments that have to be made. And at  
17 the same time, there's a recognition that there is global  
18 trading and people have access to securities around the world  
19 and diversification is a key policy behind your article.

20 I think what I would suggest that one do is to  
21 focus on what David suggested. Why don't we identify two or  
22 three key markets where there's active trading? I would  
23 suggest Tokyo, London -- and basically there review what  
24 types of enforcement powers are in place in terms of  
25 cooperation between regulators.

1                   Third, we have the consent to service a  
2 jurisdiction, and fourth, let's start with broker-dealers of  
3 a certain size that we are satisfied have adequate capital,  
4 adequate internal policies with respect to managing  
5 conflicts, and we would basically hold them responsible with  
6 respect to how they execute trades, with respect to U.S.  
7 investors.

8                   I don't think we have to open it up to every  
9 country. I don't think we have to open it up to every  
10 broker-dealer. If we're going to see if this works, we have  
11 to start, and it strikes me we ought to get those who are the  
12 most sophisticated as the ones to start as an experiment and  
13 then we can see what lessons we can draw from that.

14                  MR. SIRRI: I want to just return there for a  
15 moment, to make sure we've fleshed out the difference with  
16 retail and institutional. Harold, could you explain your  
17 business and maybe comment on the thoughts we've had to date  
18 about sophistication of retail investors and their desire to  
19 trade and their ability to trade foreign securities?

20                  MR. EVENSKY: Yes, I deal in "the retail world." I  
21 mean that's what I live in every day with individual  
22 investors. I would agree that, as a generic cutoff, \$100  
23 million and below is probably retail. That can be subdivided  
24 into a lot of other subcategories, but very broadly I'd  
25 suggest that general retail may be under a million dollar



1 investable net worth; what I would call the wealthy, between  
2 one and twenty, fifty; and then over that would be the  
3 private family office.

4           In the world I deal in, which I'd call the wealthy  
5 and the general, these are not investors who are clamoring to  
6 invest individually in foreign stock. There was a comment  
7 made in the earlier panel that 84 percent of the IPOs and  
8 private placements internationally aren't available to the  
9 retail. They never will be. That's just the reality.

10           When I look at the discussion of the advantages to  
11 potentially -- and understand, I'm very much focused  
12 specifically on direct availability to these first two tiers  
13 of the retail market, what I call the general and the  
14 wealthy. Reduction in transaction cost, it's not at all  
15 clear to me that that transaction cost reduction will pass  
16 through to the retail world. I've done as much research as I  
17 could and found no studies suggesting that's likely to be the  
18 case.

19           There are certainly other instances in which  
20 reduction in cost does not get passed on to the retail world.  
21 It was suggested that the transaction cost maybe was  
22 discouraging retail investors from international investing.  
23 I'm aware of no research that indicates that. There is a  
24 concept in behavioral economics, home country bias, and I  
25 believe that absolutely is what drives the lack of

1 investment, the relative lack in international investments.

2           The fact of the matter is it is substantial, just  
3 under 15 percent of the mutual fund equity market today is in  
4 international. About 30 percent of ETFs are, and in new  
5 issues last year about 40 percent. So there is a growing  
6 interest. There is absolutely access to the international  
7 markets for the general retail audience.

8           And Professor Jackson -- was a great paper, but he  
9 makes the statement that it seems plausible to assume that it  
10 seems plausible to assume that liberalization of foreign  
11 exchange and broker-dealer access to U.S. retailers would  
12 materially increase diversification. It's a nice statement,  
13 but I would suggest before the SEC just opens the floodgates  
14 to direct investment that someone do some research to see if  
15 that's the case.

16           I believe, again, as I said, it's a home country  
17 bias, not the fact that it's simply not available today.

18           MR. SIRRI: Could you explain mechanically for one  
19 of your clients, suppose you were to put them in a Swiss name  
20 or an Italian name, how would you accomplish that as an  
21 advisor?

22           MR. EVENSKY: If we were to use that specific of an  
23 investment, which is not something we're likely to do, we  
24 would probably look today through specialized funds or ETFs.  
25 Certainly we are aware of the availability through our

1 custodians, whether it's an E\*Trade or Fidelity or Schwab.  
2 And we do have on rare occasion a client that may ask it and  
3 we will set that up, but that is by far the exception to the  
4 rule.

5 MR. GREENE: Let me ask you, you made a point  
6 that -- in your investors, assume that they could invest in a  
7 public offering by a foreign company. They would not be  
8 likely to be interested because they have a bias to U.S.  
9 companies?

10 MR. EVENSKY: Oh, no. If they were offered they  
11 would probably be real interested, just like they're real  
12 interested in IPOs. The fact that most IPOs aren't  
13 successful -- they would be interested not because it's a  
14 great diversification technique, but they think they'll get  
15 rich quick.

16 MR. GREENE: But then the question is right now,  
17 with the privatization movement many of those offerings were  
18 registered in the U.S. and it was a small retail component.  
19 Today, for a variety of reasons, it's only the 144A market,  
20 and that, per se, means it can't be offered to individuals.  
21 And it also means that even if you wanted to go offshore to  
22 buy ETFs you couldn't participate in a primary offering  
23 because there's no section five exemption.

24 So the question is, do you think that your  
25 investors are denied access to participate in a variety of

1 offerings that are going forth globally because they are  
2 forced to buy that in the secondary market?

3 MR. EVENSKY: It answers the question. The answer  
4 is of course. The question, I think, in front of the SEC is  
5 balancing not just what is not there now and what the  
6 opportunities are but what are the consequences of the risk.

7 Right now, if the floodgates were opened,  
8 potentially more competition, maybe they would see some  
9 diminution of expenses and there may, for a small percentage  
10 of the market be opened some opportunities. That's probably  
11 all true. The flip side is what are the consequences if it  
12 doesn't work, when it doesn't work. And that's really my  
13 primary concern.

14 It's not just a question of fraud. I mean I do  
15 expert witness work on both sides. The issues that go into  
16 the courts and arbitration are typically suitability kinds of  
17 issues. What is the recourse of a retail investor in the  
18 United States if they don't have access to the recourse here?  
19 Even if they had recourse here, what is the cost of the  
20 reality of them being able to pursue it?

21 So my concern is not the concept of globalization.  
22 It's the application in the retail world to most retail  
23 investors and what are the potential downside consequences at  
24 this stage.

25 MR. SIRRI: Chris.

1                   MR. AMATO: As far as the U.S. investor goes with  
2 being denied to the IPOs, that I believe is strictly a  
3 function of the marketplace on the allocation. It's going  
4 strictly -- I mean it's the same here. It goes to the  
5 largest institution so the largest diversification individual  
6 investor applying for his 700 shares, he's not going to be  
7 allocated whether it's in the states or it's overseas.  
8 They're simply going into the marketplace a few times for  
9 three transactions every two months.

10                   It's not going to buy him the way to be on the IPO  
11 ticket whether it's here in the states or overseas, simple  
12 plain fact of the way the markets operate. To level that  
13 playing field here would be something that maybe we should  
14 do, which -- different various ways we've tried to, with  
15 internet auction of IPOs, that type of a thing. But to  
16 assume that bringing these foreign companies access to here  
17 will get it -- U.S. retail faster participation I believe is  
18 erroneous.

19                   I think the fastest way though if you want to look  
20 at cost reduction, it's not having competition. My  
21 competition versus us versus the rest of the international  
22 players here, we face a very expensive custodial  
23 relationships and clearing relationships around the world.

24                   There is no central clearing agency for most of  
25 these places, so that cost has to be assumed somewhere,

1 either by ourselves or by the retail investor or spread,  
2 diversified across many investors. And that is done when the  
3 ETFs, the U.S. retail accesses those able to participate from  
4 the institutions in their mutual fund, their no-load funds,  
5 their ETFs, whatever. They get to ride the coattails of the  
6 institutional clearinghouse, so they actually get cheaper  
7 access to the foreign markets.

8 MR. TAFARA: I have a question for you. Harold has  
9 described the different categories of retail investors,  
10 broken it down, \$100 million and down and then there's some  
11 subcategories. For your product, could you give us a sense  
12 of the type of investor that's actually availing themselves  
13 of it, what category they might fall in and with what  
14 frequency they're actually using it?

15 MR. AMATO: For our products we actually have a Main  
16 Street investor, what we call, and a high net worth investor.  
17 Obviously that is where our types of brokerage house goes  
18 after. It's UBS, someone like that would actually pursue the  
19 \$100 million client.

20 Obviously we would like that as well, but that's  
21 not the investor advisor asset services behind them has made  
22 them the world's largest in that kind of category. But  
23 anybody can get online with E\*Trade, and as long as your  
24 account is funded for the amount of purchase it's vetted,  
25 because we accommodate for the stamps and taxes of the local

1 market and everything to that effect.

2           You can reach across the borders and buy in  
3 multi-markets. Now we make available 42 market centers  
4 around the world. We don't allow that direct access at this  
5 time; it's only six. But we make it a fairly seamless  
6 process and we don't discriminate on the client base and  
7 their net worth.

8           As you all are aware, they'll have multiple  
9 accounts in multiple locations, and knowing someone's true  
10 asset, as much as you do to investigate the client and  
11 say -- they tell you they've got a million dollars over at  
12 another firm and yet they only have \$100,000 with you. But  
13 it's hard to ascertain. It's not as if we could say, "okay,  
14 well, give me a statement," but we do allow the U.S. retail  
15 investor to reach anyone.

16           We try to make that as seamless as possible and  
17 cost efficient as possible, but it's strictly a function of  
18 the back end clearing situations Mr. Concannon had brought up  
19 earlier that is really the primary pusher here. If it costs  
20 \$100 to clear a trade in a country and a client comes in for  
21 300 shares, that has to go somewhere.

22           MR. GREENE: And I don't know that mutual  
23 recognition -- unfortunately -- I think that is the key issue  
24 in terms of cross border training. I'm not sure what mutual  
25 recognition gets you, but it seems to me that we're going to

1 have to hope that market forces who consolidate exchanges  
2 will lead to less costly clearing and settling.

3 But that is clearly the case, especially in Europe  
4 where it's much more expensive than the U.S. And even if we  
5 basically kept the mutual recognition of foreign access,  
6 we're not going to address the problem that he highlighted  
7 and we need to see if there's some alternatives that we can  
8 think about.

9 MR. SIRRI: Chris, you said that you tried to make  
10 the experience as seamless as possible. Relative to, say, my  
11 experience if I was buying a listed name on the New York  
12 Stock Exchange, what are the steps for people who haven't  
13 done it? Does it look any different when I buy a name in  
14 Germany, Switzerland or France?

15 MR. AMATO: What we've done and we're still refining  
16 is not a finished, completely finished product, but we are  
17 trying -- the experience is one that -- unfortunately all the  
18 different places around the world use different symbology for  
19 their things. If you're reaching into Japan it's a numeric  
20 code that represents the stock you'd like to buy versus here  
21 in the states we actually have a five-letter symbol that  
22 represents that stock for the over counter trade, and then  
23 you could have -- so if you reached out, instead of to place  
24 that New York trade. You're very used to saying "I want to  
25 buy IBM," but if you wanted to go overseas and buy a large



1 corporation over there in Japan, you're going to dial 6009, I  
2 want to buy 6009 in Japan. And that experience is a little  
3 different. And then you've got pricing differentiations.

4 For the retail client, it's an education for them.  
5 They really don't understand that quotes in British  
6 pounds -- they don't represent the decimal in the quote. So  
7 they see 1745 and they're thinking, what does that represent;  
8 1,745 British pounds per share? No, it's 17.45 British  
9 pounds per share. But it's an assumed thing.

10 So when the retail were to see these screens  
11 there's an education process that needs to go into effect  
12 here to say "this is what this means; this is what -- you  
13 know, that experience." We try to make it as real as  
14 possible to them, but at the same time it's a completely  
15 different experience.

16 The can get online. We can locate the stock. We  
17 give them tear sheets about the securities as well at  
18 E\*Trade. We give them the descriptor. Here it is. Here's  
19 the balance sheet, and here's what we have for information  
20 regarding them, their sector, their business, their recent  
21 revenues and financials. But at the same time, we're not out  
22 there soliciting the trade though.

23 MR. GRAYSON: Chris, could I just ask, are you  
24 confirming to the client in dollars or in local currency?

25 MR. AMATO: Local currency. We do have both

1 available to the client. If they'd like to trade in dollars  
2 we have a system for that. If they'd like to trade in local  
3 currency, be it yen, Hong Kong dollars, British pounds, we  
4 allow that as well. We allow the trade to go through and  
5 settle, and it represents to the client in the local currency  
6 currently.

7 MR. SIRRI: outside of the pure trading side of the  
8 business there's also a solicitation aspect to the current  
9 regulatory regime. That is that if you have -- a foreign  
10 broker-dealer cannot directly solicit a sale from a U.S.  
11 investor unless it's an institutional investor and the trade  
12 is booked through a registered USBD.

13 For anyone in the panel, as you think about the  
14 solicitation restriction, how are we coping with that today?  
15 Is there -- again, on the institutional side are there  
16 any -- should we change that? Are there any important  
17 protections provided or are we just talking about frictions  
18 in the process here?

19 MR. AUFHAUSER: No one else is pushing their button.  
20 I'm going to define solicitation broadly. I'm going to  
21 define it not in a pejorative sense but in the sense of  
22 sharing information upon which someone may make a decision.

23 Right now we have, as I described earlier, this  
24 clunky system which basically bars, without a chaperone or  
25 otherwise, a direct conversation with a broker-dealer abroad

1 who may have been following the stock in question that  
2 investor may want.

3           But the way, I have a presumption that there is a  
4 retail appetite for the investor. I have to confess, I don't  
5 have the empirical data for it, but given the conversation at  
6 the table, maybe I should go back and reconsider it.

7           I think, by the way, on that issue about whether  
8 there's a retail appetite, it might be better informed with  
9 more open access to foreign brokers and research produced  
10 abroad. So it's a little bit of a chicken and the egg.

11           In a slightly analogous situation, Erik, we can't  
12 even bring a foreign senior banker into the U.S. to speak to  
13 the U.S. domestic major multi-billion dollar company without  
14 him being chaperoned if it involves the sale of a security,  
15 whether it's Aston Martin being sold to Ford -- so this has  
16 the extra burden of a need to play sometimes telephone and  
17 the opportunity or the risk that there's going to be a missed  
18 message on a significant point.

19           That's a long-winded way of saying we ought to  
20 permit solicitation and direct access to information flows so  
21 the investor can make an informed decision. As for whether  
22 or not that's sufficiently policed and subject to  
23 enforcement, again that goes back to the premise of this  
24 entire day, which is that you, the SEC are going to make  
25 subjective judgments not only about regulatory regimes but

1 broker-dealers who apply for that access.

2           And presumably you make the right judgments. And  
3 then if something goes awry on the nature of a solicitation  
4 you'll have the power to enforce any proceedings.

5           MR. GREENE: I'd like to reinforce that also  
6 broker-dealers provide a variety of services but the rules  
7 are the same with respect to whether one has to be registered  
8 or not. We have on the one hand M&A advice, on the other  
9 hand research, the other hand solicitation of trades with  
10 respect to primary, secondary participation and other  
11 services.

12           And it strikes me that, at least on the  
13 institutional side, if the 15(a)(6) is awkward, doesn't  
14 provide much benefits, then we should provide direct access.

15           And the question is, with these various services we  
16 might be a bit more liberal in terms of people coming into  
17 the country presenting ideas, depending upon if it's an M&A  
18 transaction or just an overview with respect to investing in  
19 a foreign country as opposed to soliciting an actual trade.  
20 But I think we need to modify dramatically 15(a)(6) and open  
21 it up to a wider group of investors beyond the limited ones  
22 that are eligible today.

23           MR. GRAYSON: I agree with David's characterization  
24 that the rule can be clunky. I think it's clunky if you are  
25 a global broker like UBS or Citibank or Goldman Sachs or

1 Merrill Lynch and you have affiliates overseas and they want  
2 to come in and they're subject to the chaperoning rule or any  
3 of the other parts of 15(a)(6).

4           If UBS is bringing in management or their own  
5 affiliates from London, they're doing it under UBS's umbrella  
6 anyway. Whether it's implied or contractual it doesn't  
7 really matter to the end investor. But there's an analogy  
8 here, going back to my point about the retail investor, if  
9 you're going to open it up to have sort of a free for all of  
10 foreign brokers, broker-dealers without any kind of  
11 affiliation or any supervision in the United States  
12 permitting them to come into the U.S. and you signed an MOU  
13 with their local exchange, what then happens when a U.S.  
14 institutional client has a problem with that foreign broker?  
15 Who are they going to turn to?

16           The other concern that I had also was if you sign  
17 an MOU, for example, with Euronext. Well, I'm a Romanian  
18 broker. I'm part of Euroland, right, and I can easily become  
19 part of Euronext. Does that then permit some  
20 unscrupulous -- no bias towards Romania -- but some  
21 unscrupulous Romanian broker to come into the United States  
22 freely and solicit, "solicit business"?

23           So on one hand I think that the rule has to be  
24 opened up and there has to be flexibility. On the other hand  
25 I think that there has to be greater supervision with regard

1 to independent or local broker-dealers.

2 MR. EVENSKY: Again, my focus is on the direct  
3 access to the retail client. A lot of the discussion really  
4 confuses me. I mean in talking about specific securities,  
5 the comments were to initially focus on large firms, well  
6 known, seasoned issues. It begs the questions, then where is  
7 the issue, where is the problem of registering. I mean I've  
8 heard that the reason for not is avoiding the tightening of  
9 the noose, the risk of litigation, Sarbanes-Oxley.

10 There's the risk to my clients that those rules are  
11 necessary, there's a reason. If they're not, then my request  
12 to the SEC, change the rules. But I'm having a lot of  
13 trouble understanding this whole concept. Once again, when  
14 it gets down to direct retail, mutual recognition -- why not  
15 a fast track approval, a grandfathering, some combination  
16 that if they're almost there then let them come quickly.

17 Large firms, I can't believe that the cost is the  
18 barrier. Someone had suggested that it was regulatory  
19 arbitrage. I thought of it as Liberian registry. I mean  
20 that -- I'm just having trouble understanding from the retail  
21 investor standpoint what are the advantages that would be  
22 gained by eliminating a requirement to meet the regulations  
23 if presumably there's a reason versus the benefits. And at  
24 least at this stage it's not clear that they're in imbalance.

25 MR. SIRRI: Jim.

1                   MR. ALLEN: Just to follow up on that, my earlier  
2 comments. We are very much in favor of the free flow of  
3 information and accessibility as a regional retail  
4 organization, but clearly want to do so on a level playing  
5 field with our competitors in this country. And as a  
6 regional firm, we feel that the cost of compliance and the  
7 cost of regulation is already a disproportionate burden given  
8 the size of the organization. And if we have to face that  
9 from a global standpoint without the same level of standards,  
10 we feel that the competitive disadvantage is clearly a real  
11 one for an organization like ours.

12                   That being said, we do want to offer in support  
13 greater access to foreign markets, foreign securities, but  
14 just want to do so in the appropriate context that, again,  
15 keeps it fair and balanced, that in fact does protect  
16 investors to the extent that they need to be protected. And  
17 we concur with that view as well.

18                   MR. SIRRI: David Grayson offered a kind of taxonomy  
19 of the various ways to access foreign markets. For Hilliard  
20 Lyons, how is that you come to provide those services? Could  
21 you describe your clients? You said private clients, but how  
22 would you provide those services?

23                   MR. ALLEN: Well, we break down our client base in  
24 very much the way, I think it was Harold who described a  
25 customer base of the mass affluent being \$100,000 to \$1

1 million and then affluent being \$1 million to \$5 million and  
2 then high net worth beyond that. And the sweet spot for us  
3 is in the mass affluent area, so investors who fall below  
4 that million dollar threshold, although we have clients in  
5 all of those categories. And the mutual fund concept for  
6 that investor group makes tremendous sense because of course  
7 it gives you adequate diversification within a particular  
8 investment.

9           That being said, we do offer, as I said, access to  
10 ADRs and then through affiliate arrangements offer access to  
11 direct securities. But that's an area where we want to be  
12 particularly careful in terms of suitability and the  
13 appropriate level of diversification for customers as we  
14 advise them. So it's an area where I think going forward,  
15 regardless of the outcome, we'll continue to probably  
16 emphasize the use of mutual funds in the process just because  
17 of the diversification nature although liberalization of the  
18 rules and restrictions we see as a potential cost benefit to  
19 actually the mutual fund area as well in that we see mutual  
20 fund expense ratios for foreign funds being slightly higher  
21 at roughly 20 basis points across the board, more expensive  
22 to investors to reach foreign markets through mutual funds.

23           MR. TAFARA: Going back to the solicitation issue  
24 and staying in the institutional investor space, one of the  
25 ideas that was bandied about is allowing foreign



1 broker-dealers to access U.S. institutional investors but  
2 only with respect to foreign securities in the interest of  
3 trying to address some of the competitive issues.

4           In other words, it seemed that although we will be  
5 looking at the regimes in the United States and in foreign  
6 jurisdictions to determine whether they are comparable,  
7 they're not going to be identical, and in the interest of  
8 fairness thought we might want to limit the solicitation with  
9 respect to securities that are not available here in the  
10 United States through a registered U.S. broker.

11           Does that get at the issue? Is that the right way  
12 to look at it. Does that help in any way?

13           MR. GRAYSON: Well, I think -- first of all, it  
14 should be limited to a discussion for the most part on local  
15 or ordinary shares. Most institutional investors will, even  
16 if they want ADRs, will go into the local market to buy the  
17 ordinaries and then convert them to ADRs usually just to make  
18 it easier for them to take delivery.

19           Even the ADRs that trade on the New York Stock  
20 Exchange or NASDAQ, and I've lost track of the count, but  
21 there are, I don't know, 700 or 800 issues that trade on the  
22 New York Stock Exchange, I think and I believe 80 percent of  
23 the volume is done in the top five.

24           So to a retail investor in the United States, that  
25 makes it sort of easy to buy those. For foreign

1 broker-dealers, there's no problem with foreign  
2 broker-dealers coming into the United States so long as they  
3 are regulated somehow or some point.

4           There are already a number that are registered in  
5 the United States. There are four or five Indian brokers who  
6 have offices in New York and are registered with the SEC and  
7 there are probably another four or five Indian brokers who  
8 run around the United States without any regulation. So  
9 there is quite a bit of competition.

10           But it goes back to the same point I guess I was  
11 making before. I mean someone said on the first panel,  
12 globalization is coming. Well, globalization is here. And  
13 our firm, as I mentioned, we operate in 104 countries, 104  
14 markets. We're active in 45 different markets, 40 or 50  
15 different markets every day. So it's here.

16           In terms of access to research and information, you  
17 can go on the internet today and get pretty much all the  
18 research you want, whether it's a Mongolian stock -- and  
19 there is a Mongolian stock exchange; we do business  
20 there -- or whether it's a French stock. And you can get  
21 access to local newspapers written in English.

22           So it's really not an informational issue. It's  
23 more of a -- it is a regulatory issue, and it has to do with  
24 monitoring the local brokers or giving some oversight to  
25 protect institutional investors in the United States.

1 I'm not sure if I answered your question.

2 MR. GREENE: But I find it interesting that we allow  
3 these institutions to participate in de facto public  
4 offerings under rule 144A relying entirely on disclosure.  
5 And indeed, we allow them to buy securities and transactions  
6 that often aren't documented -- if we allow them to do that,  
7 we allow them to basically select the broker they want to do  
8 business with without registering.

9 The thought is, they're sophisticated, they can  
10 make these judgments, and at some point it would make the  
11 markets more efficient. So for me, that's fairly  
12 straightforward. The question is going to be whether that  
13 category of class is too narrow. It's \$100 million or more.  
14 And going back to your point, the reality today is that the  
15 only public offerings by foreign issuers in the United States  
16 with various sectors will be done in the institutional market  
17 in connection with local offerings in that market.

18 And if we let institutions participate, why don't  
19 we let them select their brokers to go forward and not worry  
20 about having a regime in place and then debate whether that  
21 class is sufficiently narrow or should be widened?

22 MR. EVENSKY: In terms of dropping it down, there  
23 were comments that if this were to happen that U.S. standards  
24 would evolve that would encourage foreign changes. And the  
25 example discussed was the reports, quarterly, semiannually,

1 annually. I would be concerned about my clients in the  
2 retail markets being guinea pigs during this evolutionary  
3 period.

4           If the SEC were to decide that semiannual is  
5 adequate then fine, change it to semiannual, but to have a  
6 portion of the universe which is regulated annual and another  
7 portion being whatever, you know, every ten years, I mean I  
8 have no idea. It's just not credible to me that the retail  
9 world should be the guinea pig for the evolutionary process.  
10 I think the institutional is a good place to start it.

11           MR. GRAYSON: I'm sorry. We're not necessarily here  
12 to talk about 144A, but 144A distributions in the U.S. are  
13 done really through three venues. One is the U.S.-based  
14 global broker who does 144A offering here. Two is the  
15 foreign broker who has again set up an office in the United  
16 States, registered with the SEC and the NASD and they're  
17 doing a 144A or three is firms such as ours who operate under  
18 15(a)(6) and we do 144As.

19           So if you do away with 15(a)(6) or parts of  
20 15(a)(6) and you permit local foreign brokers, foreign  
21 brokers to freely come to the United States without any kind  
22 of regulatory oversight, then I think 144A goes out the  
23 window too, because if they're not going to subject  
24 themselves to U.S. regulation, they're certainly not going to  
25 care about 144A.

1                   MR. GREENE: I find that odd because the issuer  
2 doesn't subject itself at all and the issuer is the one  
3 that's preparing the disclosure document. You want the  
4 broker to be held to a higher standard with respect to an  
5 issuer documentation? I think that market works very, very  
6 efficiently. And the point is there's more and more  
7 consensus that the wholesale market, which this is, ought to  
8 be much less regulated and we ought to move toward  
9 harmonization if we can.

10                   The retail market is where there's much more  
11 dispute. And the problem is, what is the boundary between  
12 the two. But honestly, with respect to how these  
13 institutional markets work today, I don't think the 15(a)(6)  
14 provides a benefit in the context going forward as we  
15 currently define who QIBs are, which are, again,  
16 sophisticated institutions.

17                   MR. AUFHAUSER: Ethiopis, I just want to go back to  
18 your specific question, which is, would direct access to  
19 currently defined institutional investors by foreign brokers  
20 with solicitations be an improvement. I think the answer is,  
21 and I hope this doesn't sound cynical, yes, but it's so  
22 modest as to be almost at the vanishing point.

23                   If we go back to the first principles, why are we  
24 here, is to discuss what opportunity is there for greater  
25 access for U.S. investor base to foreign securities and how

1 can we do that so that their decisions are made in an  
2 informed way without being fooled unfairly, and if fooled  
3 unfairly can we reach the guys who fool them?

4           And that question suggests that -- and the earlier  
5 testimony of this morning's panel suggests the -- in my own  
6 experience at UBS, the qualified institutional investors  
7 don't need better access. It's a different universe of  
8 people that we're talking about. It's people below the \$100  
9 million -- institutions below the \$100 million threshold.  
10 It's high net worth individuals that broker at James's shop,  
11 and its, generally speaking, a rarified group of the retail  
12 market.

13           And so your proposal -- why don't we just do this  
14 incrementally -- in your hypothetical is probably acceptable  
15 because there's no such thing as a small gesture when you  
16 regulate. But by the same token I don't think it's going to  
17 get us there.

18           MR. SIRRI: If we continue this solicitation  
19 question down and take it down to the retail level, I'm sort  
20 of curious how folks think about the question then. Ed  
21 brought up 144A, which is clearly not something in the retail  
22 setting, but it is true a 144A security is sold generally  
23 though a U.S. broker-dealer, and that U.S. broker-dealer is  
24 registered to provide certain protections.

25           So one thing, you have the juncture between an

1 investor and -- in your case an unregistered security is a  
2 registered U.S. broker-dealer. Now when you take  
3 solicitation down to retail you lose the registered U.S.  
4 broker-dealer. So, not to put too fine a point on it, you  
5 would have an unregistered broker-dealer coming in, absent,  
6 for example, our particular standards for suitability. And  
7 they would be contacting a U.S. citizen and trying to sell  
8 them securities. How should we think about that?

9 MR. GREENE: Well, that goes to the heart of what  
10 Annette raised. And the question is going to be how far are  
11 you willing to go to rely upon disclosure because if you did  
12 permit that you would certainly have to point out that you  
13 don't have the protections of a U.S. broker-dealer and  
14 describe the differences and so forth.

15 But our system has said, at some level, we don't  
16 rely upon caveat emptor. We don't rely upon disclosure.  
17 We -- substantive standards, and I think that's probably fair  
18 along the spectrum. But my only point is that I think there  
19 is a little bit more flexibility than \$100 million  
20 institutional investor to do that.

21 There are very sophisticated investors who can, I  
22 think -- would be prepared to go to markets today knowing  
23 what the risk would be. But that's going to be the trade  
24 off. And we can't take it all the way down I don't think,  
25 but I think we can move it a bit further.

1                   MR. SIRRI: Disclosure has its benefits, but I guess  
2 what I'm asking is will we be comfortable in a disclosure  
3 world. Disclosing away basically the protections that are  
4 typically in place when you deal with a U.S. broker-dealer,  
5 is that a direction we want to go?

6                   Jim, you were going to --

7                   MR. ALLEN: Oh, I think just disclosure along, while  
8 that would help, is not sufficient. So just disclosing away  
9 some of the pitfalls that might go along with this, while  
10 that would certainly help, if you're talking about an  
11 unregistered security and an unregistered entity and then  
12 supplement it by just added disclosure, I don't think that  
13 that would be adequate enough for the retail marketplace in  
14 terms of protection for those types of investors. And I  
15 think it could be a recipe for problems.

16                   MR. GREENE: Even for investors in, let's say, your  
17 \$5 to \$10 million category, your very wealthy investors, do  
18 you feel the same thing? Is it individual versus  
19 institutional? Is that where you draw the line?

20                   MR. ALLEN: I think you should move up the spectrum  
21 there. And you get into the \$5 to \$10 million space, your  
22 problem gets reduced to some extent and you mitigate some of  
23 those issues. But even there I think you're going to have  
24 some real problems. So I just -- unregistered securities,  
25 unregistered broker-dealers with added disclosure doesn't get



1 you what you need at just about any level for retail.

2 MR. TAFARA: I'd like to ask the question slightly  
3 differently, getting back to the protections that are  
4 available through a U.S.-registered broker-dealer. I mean as  
5 David Aufhauser keeps reminding us, what we're saying is we'd  
6 like to see what similar protections are available by virtue  
7 of the regulation of a foreign broker-dealer. So the  
8 question I would ask is what protections do you think are  
9 important, we should be looking for in analyzing a foreign  
10 regime and determining that its comparable to what we have  
11 here.

12 I think the disclosure addresses the product issue.  
13 In other words, you can have disclosure with respect to the  
14 fact that what they're buying or selling in terms of an  
15 unregistered security doesn't get you the protections that  
16 are available in the United States for those sorts of  
17 products.

18 With respect to the broker itself, I think we'd be  
19 looking at what protections are available in the foreign  
20 regime that are similar to the protections that we have here  
21 when it comes to registered broker-dealers. What should we  
22 be focusing on? What's the most important protections we  
23 should be looking at, I guess is the question I'd like to  
24 ask.

25 MR. GRAYSON: I'd like to ask the question again.

1 So you have an MOU with a foreign stock exchange and you have  
2 a broker underneath there and they're soliciting retail  
3 transactions in the United States, the retail client has a  
4 problem with that foreign broker-dealer, what happens, what's  
5 his remedy?

6 MR. TAFARA: Just to correct the record, I think we  
7 have an MOU as a regulator of that foreign broker, so we'd  
8 have a relationship with the entity that actually is  
9 responsible for regulating the broker-dealer and then we  
10 would separately look at the regulatory regime in that  
11 jurisdiction to see how similar or dissimilar it is to what  
12 we have here. And then separately as David Aufhauser said,  
13 we'd also make sure that the individual foreign broker was  
14 subject to some sort of process vis-a-vis the SEC before they  
15 could actually do business in the U.S.

16 MR. AUFHAUSER: There might be an irony. You may  
17 add another arrow to your quiver. In any mutual recognition  
18 treaty you're adding the leverage of the home state  
19 regulator's enforcement powers and inspection powers and  
20 subpoena powers allied with yours. No broker-dealer is going  
21 to be permitted by the commission under any regime being  
22 considered, I suspect, to directly solicit business  
23 concerning foreign securities in the U.S. pursuant to one of  
24 these mutual recognition agreements and registration lights  
25 without subjecting themselves expressly to subpoena power by

1 this commission and to service the process through private  
2 litigants.

3           If you have the tripartite force of a domestic host  
4 government abroad, let's say it's England, allied with the  
5 U.S. private litigation force and allied with SEC reserved  
6 enforcement powers, which has never been suggested to be  
7 given up, as I read your Harvard Law article. That's a  
8 pretty strong force of supervision and oversight.

9           Now I'm begging a question about what is it that,  
10 in my hypothetical, we would require of the foreign  
11 regulator. I keep coming back to what I said earlier.  
12 Adequate resources to enforce a regime that you accept, which  
13 is based fundamentally on adequate disclosure principles,  
14 which is the predicate for any enforcement oversight.

15           MR. SIRRI: Let me build upon this question because  
16 it's related to -- it's a cousin to the question Commissioner  
17 Nazareth asked really in the first panel. Let me just run  
18 down a few of the things that you conceivably could put on  
19 that list to add some specificity, the registration  
20 qualifications of the broker-dealer. They are dealing in  
21 sales practice standards, training, financial responsibility,  
22 segregation of funds, extension of credit, clearance and  
23 payment systems, dispute resolution, compliance,  
24 surveillance, examination.

25           These are all things that I think would be on that

1 list and they're all things I think you at the table know we  
2 take seriously here. Even as you consider a list like that  
3 at the most high level of generality, how could you rank  
4 order those? Could you say anything about that?

5 Harold.

6 MR. EVENSKY: Yes, I'm back to being confused.  
7 Let's take as a given that all of that is met, which is  
8 basically the case in the United States, but disputes arise.  
9 I'm just trying to picture, even if it was subject to some  
10 type of arbitration or court in the United States, what are  
11 the standards -- we're going to be debating against standards  
12 that none of us are familiar with.

13 I mean I can't even picture what the environment  
14 would be like. I say I do expert witness work. I'm familiar  
15 with the SEC, the NASD. I know what our rules are, the  
16 courts. There's a long history. If we're standing in United  
17 States court trying to say that they didn't meet the  
18 suitability standards in the UK or in Japan, I can't envision  
19 it working even if all of those elements were in place.

20 MR. GRAYSON: I couldn't agree with you more. You  
21 can write whatever you want but you're never going to be able  
22 to put it together. For a retail investor to go after a  
23 broker in another country would be very difficult.

24 MR. GREENE: Well, but these investors are investing  
25 around the world today and they're investing through

1 mechanisms that don't -- the question is, if we want to have  
2 the process a bit more accessible, what should we do to give  
3 them more protections than they currently have today if they  
4 basically decide to invest on a global basis.

5           And then the question is going to be -- it seems to  
6 me the key thing is financial responsibility and how you deal  
7 with client assets if in dealing with brokers you leave the  
8 securities in the custody or the control of the  
9 broker-dealer.

10           I suspect suitability is a noble standard, but it's  
11 difficult for even us to apply in the United States. And we  
12 don't rely upon it as much as we should, but I do think it's  
13 an important principle.

14           I think if you had that -- plus, what David  
15 Aufhauser said was that you have a regulator with adequate  
16 powers, and that's going to be the challenge together with  
17 the fact that it's consented to be served and sued in the  
18 United States. Plus, with you, if you do have a fraud, both  
19 regulators coming together it seems to me can be much more  
20 effective than the case today when a cross-border investor  
21 faces a situation of a fraud, which comes up from time to  
22 time.

23           MR. AUFHAUSER: I readily concede that if you  
24 conclude that a foreign broker-dealer can act with impunity  
25 here then we shouldn't be having this discussion. And I

1 don't want to sound naive, but I don't think that's the case.  
2 I think what I've already outlined previously in terms of  
3 enforcement powers and subjecting themselves to jurisdiction  
4 allied with the review that the commission is going to make  
5 of the very broker-dealer who is asking to do this.

6           And for all I know you may put bells and whistles  
7 on there including posting of bond. I don't know. But there  
8 are different ways to get about this to assure my fellow  
9 panelists that this, if you will, the chosen action or the  
10 guarantee that someone is going to be able to get a  
11 meaningful enforcement against a foreign broker-dealer with  
12 direct access here, in fact, is not ephemeral and not a  
13 chimera but is, in fact, real.

14           And that gets back to, I think, your question,  
15 Erik, which is what is that would make it real? One modest  
16 remedy besides my idea of posting a bond, which probably is  
17 not -- would be contested quite seriously by my competitors,  
18 is make sure the contract of sale and the confirmations  
19 have -- try to address the obvious ambiguities that my fellow  
20 panelist -- I don't know who said it; forgive me -- is  
21 concerned about.

22           I mean we're going to have the fundamental  
23 anti-fraud provisions of American law. They're always going  
24 to apply. If someone has got a question about suitability  
25 and thinks that the suitability definition under MIFID if

1 continental Europe is unacceptably low then write a contract  
2 so it migrates to a defined standard.

3 I mean there are ways to address this. And it's  
4 not just paper; these things have force. I know this because  
5 I am a defendant in thousands of cases on behalf of UBS.

6 MR. SIRRI: All right. Well, as we're getting close  
7 toward lunch maybe it makes sense to sort of wrap up.

8 If you would, take a few minutes and sum up with  
9 what you think -- any new thoughts or any summary of your  
10 thoughts for what we've covered here today. David, can I ask  
11 you to start?

12 MR. AUFHAUSER: I think I've probably said enough.  
13 Look, harmonization and convergence is actually the best way  
14 to go about this, but it's quixotic to think it can be done  
15 in the short term. Hence you get up with some creative ideas  
16 about how to get there, and the idea of bilateral agreements  
17 to get coordination on the mutual enforcement of agreed to  
18 common rights and liberties, if you will, that improve access  
19 of U.S. citizens to foreign markets in an informed way and  
20 gives them a real sense of, if I'm defrauded, if you will, or  
21 fooled, I'll have a remedy, and the remedy is real, is a very  
22 productive thing for the commission to be attending to.

23 I wouldn't give up the ghost however on the global  
24 harmonization and convergence dynamic because that's the best  
25 way to have the entire world migrate to a standard which is

1 very high. And I think there was an underlying question in  
2 some of the papers that you sent out to the panel about  
3 whether there's a risk of arbitrage, regulatory arbitrage  
4 downward here. And I think the dynamic is just the opposite,  
5 particularly if the commission is the judge.

6           The commission is going to be the standard setter  
7 by being the initiator of this dynamic. And what's going to  
8 happen is people are going to -- jurisdictions are going to  
9 want to qualify for this list. In my Treasury days we used  
10 to have an analogy involving the FATF dynamic, the Financial  
11 Action Task Force. And if you weren't on the right list with  
12 regard to money laundering you were dead in the water today.  
13 And in fact, the Korean Bank incident is a good testimony to  
14 that. If you're not on the right list, the entire banking  
15 community won't bank with you anymore.

16           Well, there's an analogy to being on a good list  
17 with the SEC. You don't have to call it the good list.

18           And by the way, that's one other macro-guideline to  
19 a retail investor. The commission says these 32 countries  
20 are pretty good. We like their regulatory regimes. It's  
21 silent on these other 28 countries, so be wary about these  
22 other 28 countries. So you're actually giving some macro  
23 proxy guidance to the marketplace also by this exercise. So  
24 I applaud it.

25           MR. ALLEN: I agree as well. I think that it is a



1 worthy exercise and we would agree that greater access to  
2 foreign markets is something that serves everyone well,  
3 retail investors alike. And it's not a question of should we  
4 do it but really how we do it. And I think it gets back to  
5 Annette's quote from this morning, the devil is in the  
6 details in terms of how you go about creating a structure, a  
7 process that allows for the appropriate standards, the level  
8 of consistency, the information flow and the appropriate  
9 accountability that goes along with providing that  
10 information and access at a greater level.

11 But clearly the trend is in that direction, and one  
12 that we see great value in. And again, it gets back to how  
13 you do it not if. Thank you.

14 MR. SIRRI: Chris.

15 MR. AMATO: I'd like to thank you for inviting me  
16 today. I'd like to be clear that I believe institutional and  
17 retailers should be handled separately and clearly defined as  
18 such. Obviously the SEC sets the bar very high in protection  
19 of the client assets and their rights, and I think that, as  
20 pointed out, it could use -- by co-mingling with the other  
21 regulators around the world you could institute something  
22 that says, okay, you raise to these levels of protection and  
23 client asset, we'll give you the nod, and yes, we'll allow  
24 you to enter our marketplace.

25 But as pointed out in Ethiopis's paper, it could be

1 very political in saying, okay, well this is our friend,  
2 these are not our friends, and we have to be careful of that  
3 as well. But I think that the retail customer benefits from  
4 their current way of accessing the marketplaces, whether it's  
5 the mutual fund, ETFs or whatever, through their current  
6 USBDs. But obviously I'm a very big proponent of everyone  
7 being able to reach around the world, so I would just advise  
8 that you set your guidelines accordingly to one set of rules  
9 for the institutional client and one for the retail. Thank  
10 you.

11 MR. GRAYSON: Repeating again, I mean globalization  
12 is here. It's really a question of how you're going to  
13 regulate it.

14 I was at dinner last night with a friend from the  
15 Middle East and he owns one of the largest brokerage firms  
16 there. We don't do business with him, but we used to. And  
17 at the end of the dinner he leaned over the table and he said  
18 to me, "can I tell you a secret?" I said yes.

19 And he said, he whispered to me. He said, "we're  
20 going to open up our own broker-dealer in the United States  
21 and sell to U.S. institutions, institutions only." And that  
22 let me to tell him a little bit about this roundtable today.  
23 And he turned to me and he says, "well, if that's the case,  
24 forget it; I'm not going to open up an office in New York,  
25 I'll just solicit business directly from the Middle East

1 because, as he saw it, there was no oversight on him."

2           Maybe not the greatest analogy in the world, but I  
3 look at this rule a little bit like the immigration people  
4 when you come into the United States. There are those people  
5 who pass through easily but still have to show a passport,  
6 right, and there are those people that require a visa. And  
7 then depending on what country you're from it determines how  
8 easy or how hard it is to get a visa.

9           If you're from this group of countries it's  
10 basically a trip to the local U.S. embassy and a stamp, but  
11 if you're from this country it's a three-month wait to get an  
12 appointment at the local embassy, followed by a personal  
13 screening and followed by another month of screening.

14           So I do believe that -- and going back to the first  
15 question, foreign brokers do need to be regulated in the  
16 United States. I do believe that 15(a)(6) is a good rule,  
17 but I do believe that there has to be some flexibility within  
18 the rule, within the framework, to allow, for example, the  
19 global brokers more freedom to move about the United States.

20           Thank you.

21           MR. GREENE: I've been thinking, as you know,  
22 Ethiopis, about this issue. And I would suggest the  
23 following. And that is, I believe that to go forward you  
24 need to have a conceptual framework as to how you go forward  
25 for harmonization, how would you go forward from mutual

1 recognition, in which areas would you rely upon mutual  
2 recognition and would there be different levels of  
3 comparability.

4           What this issue does not deal with is the key  
5 issue, and that is U.S. participations in prime  
6 redistributions. If those are going to continue to be  
7 outside the U.S., U.S. people cannot participate unless  
8 there's an exemption. They won't be permitted.

9           So what we're talking about is protections in the  
10 secondary market, but that's only a small part of the market.  
11 So what we ought to do is look at how global markets operate,  
12 how securities are being distributed, what should the  
13 criteria be for investors coming in and do we make a  
14 difference between relying on disclosure in the offer  
15 documents versus the intermediates they deal with.

16           I think we will find that we can have protections.  
17 And most importantly, if we start with the right jurisdiction  
18 we will have, in my view, a race to optimality. We'll find  
19 that regulators want to be seen to be fair and effective  
20 here. And most importantly I think the commission can really  
21 define because it has the broadest powers probably of any  
22 regulator globally to help other regulators locally get the  
23 kind of authority and powers they need so that the  
24 cooperation under the MOU is most effective.

25           But don't look at this just as these two issues.

1 It's part of a broader problem in my view.

2 MR. EVENSKY: Intellectually, certainly the concept  
3 is attractive. My concern to the retail market is the  
4 consequences are unknown. I think it's important in making a  
5 decision to consider not just the potential benefits but the  
6 consequences if something goes wrong. If talking about  
7 mutual recognition and not, as I suggested, fast tracking or  
8 grandfathering, that presumes that there are fundamental  
9 differences.

10 I think there's a risk that the existing barriers  
11 are necessary. There's a reason they're there. If they're  
12 not, eliminate them. There's a risk that in those cases  
13 where non-domestic regulations are contradictory or  
14 different, that those differences are not necessarily in the  
15 best interests of retail U.S. investors, that, as I'd  
16 indicated that there may be no practical recourse.

17 Yes, perhaps we can go to U.S. courts or U.S.  
18 arbitration, but no one is going to know what standards to  
19 use in resolving those kinds of issues. There is the risk of  
20 what I call Liberian Registry. There's really, I think, the  
21 risk of large domestic funds establishing foreign branches  
22 and then coming back to the United States in order to avoid  
23 the regulations that they don't want to live under here.

24 Finally I think the reality is, and I believe  
25 Commissioner Campos had raised it, is what I'd call a PR

1 risk. If this happens down the road and there is a problem  
2 the retail market is going to turn around -- as one of my  
3 clients said, "I'm not sure of the current regulations, but  
4 if a foreign organization wants to move to the U.S. they  
5 should be subject to the same rules."

6 If something blows up, that's a question that's  
7 going to be asked, even if the commission -- and it's wisdom  
8 and for good reason to waive some of those rules.

9 CHAIRMAN COX: Let me just take this opportunity to  
10 thank our panel. Ed, to thank you for doing this twice in  
11 just the space of a few days. The first panel and this panel  
12 are going to be very, very useful to us as we proceed on  
13 trying to construct a regulatory approach that gives us all  
14 of the benefits of globalizations and none of the down sides,  
15 both of which have been explored amply in this panel. Thank  
16 you very much for your contribution, for your wisdom and for  
17 your preparation.

18 Let's have lunch.

19 MR. SIRRI: We're going to take a break and come  
20 back at 2:00. Thank you.

21 (Break.)

22 CHAIRMAN COX: Welcome back from lunch and to the  
23 seventh inning stretch of the SEC's roundtable on mutual  
24 recognition. You've already been enlightened by two panels  
25 focused on the potential impact on U.S. market participants

1 from greater access by foreign markets and from greater  
2 access for foreign broker-dealers.

3           Very shortly we're going to tackle the topic of the  
4 proper metrics for judging the comparability of different  
5 national regulatory regimes. These are vitally important  
6 issues given the increasing globalization of our capital  
7 markets.

8           At a time when United States' demand for foreign  
9 investment opportunities from retail and institutional  
10 investors alike is growing, carefully evaluating the  
11 potential benefits and the very real risks of adopting a  
12 selective mutual recognition approach is urgent business.  
13 I'd like to take this opportunity to thank each of our  
14 distinguished panelists, those who have already presented and  
15 those who are up next, for all of the preparation and wisdom  
16 that you are providing us.

17           We're honored to have with us representatives of  
18 the retail and institutional investor community,  
19 broker-dealers and exchanges as well as professors, former  
20 division directors and even former chairmen of the Securities  
21 and Exchange Commission. Each of you is helping us to build  
22 a better picture of cross-border capital flows and the most  
23 effective ways to harmonize our objectives of investor  
24 protection, orderly and efficient markets and healthy capital  
25 formation.

1           Innovations in technology have eliminated many  
2 physical barriers to market access. Time, distance and the  
3 ability to move capital between countries are no longer  
4 obstacles. That's meant more and more investors looking  
5 beyond their own countries' borders for investment  
6 opportunities. And today we can see an ever increasing share  
7 of investors' capital allocated outside of their home  
8 countries.

9           We're also seeing the markets themselves respond  
10 through alliances and mergers of securities exchanges,  
11 including the creation of NYSE Euronext, the recent agreement  
12 by Eurex to acquire the International Securities Exchange,  
13 the stake that NASDAQ has acquired in the LSE and NASDAQ's  
14 recent announcement of its combination with OMX.

15           The SEC for our part has been working as never  
16 before with our counterpart regulators around the world.  
17 Where we share common concerns about investor protection and  
18 market efficiency, we've been able to move quickly to execute  
19 new information sharing arrangements on both the regulatory  
20 and the enforcement sides. And I have no doubt that this is  
21 just the beginning.

22           The SEC and the regulators of every nation need to  
23 deal with the reality of global markets and we need to ensure  
24 that the great potential benefits for our investors and not  
25 the new array of risks and dangers are what manifest



1 themselves in the months and the years ahead. We want our  
2 investors to have choices, to enjoy lower transaction costs  
3 and to have greater opportunity for diversification. We want  
4 them to have more access to better information about foreign  
5 investments, and we want them to have these things within the  
6 context of our accustomed high standards of investor  
7 protection.

8           It's because of the changing nature of the global  
9 marketplace that we've begun to talk about the merits of  
10 mutual recognition. This approach, implemented selectively,  
11 would begin with an analysis of a foreign jurisdiction's  
12 regulator regime to determine if, in its overall effects and  
13 results it is substantially comparable to ours in the United  
14 States. If it is, the commission would then consider whether  
15 investment services already provided in the foreign  
16 jurisdiction might be offered to investors in the United  
17 States without Americans having to pay the full costs of both  
18 regulatory regimes.

19           Currently a foreign exchange that conducts business  
20 in the United States has to register the exchange and the  
21 securities trading on it with the SEC. And foreign  
22 broker-dealers that induce or attempt to induce trades by  
23 investors in the United States generally must also register  
24 with the SEC as well as with at least one SRO.

25           In contrast, selective mutual recognition could

1 permit foreign exchanges that are subject to comparable home  
2 country registration and regulation to place trading screens  
3 with U.S. brokers in the United States without need of  
4 compliance with effectively duplicative regulations here.  
5 Selective mutual recognition could similarly permit foreign  
6 broker-dealers that are subject to comparable regulatory  
7 standards in their home countries to have increased access to  
8 U.S. institutional investors without the U.S. investors  
9 having to pay double for both a foreign and a United States  
10 broker-dealer.

11 Our first mission of course is to protect  
12 investors. So as we consider these proposals for a new  
13 approach to foreign registration and regulation we'll have to  
14 become comfortable with our own ability to fairly evaluate  
15 the regulatory regimes of different countries in comparison  
16 with their own and to determine whether they produce results  
17 that are substantially comparable to our own approach.

18 At a minimum, this sort of undertaking would  
19 include a comprehensive review of the jurisdiction's  
20 commitment to investor protection. By looking at, among  
21 other things, the regulatory mandate of the foreign  
22 jurisdiction and how it's implemented and enforced.

23 For foreign exchanges and foreign broker dealers,  
24 we'd be interested in seeing how the home country addresses  
25 such things as fair markets, fraud manipulation and insider

1 trading and how they deal with such issues as registration  
2 qualifications, trading surveillance, sales practice  
3 standards, financial responsibility standards and dispute  
4 resolutions. And of course we'd expect that the foreign  
5 jurisdiction would provide reciprocal treatment to American  
6 exchanges and American broker-dealers seeking to conduct  
7 business in that country.

8 Our goal in all of this is to determine whether  
9 it's possible to develop a regulatory approach that captures  
10 all of the potential benefits of greater cross-border access  
11 to investment opportunities while providing the highest level  
12 of industrial protection.

13 Today's roundtable will be a very significant help  
14 in this work. And so again, I'd like to thank our  
15 distinguished panelists for your wisdom and your preparation  
16 and with that I will turn it again to our moderators,  
17 Ethiopis Tafara and Erik Sirri.

18 PANEL THREE

19 MR. TAFARA: Thank you, Chairman.

20 As you can see, we've arrived at the final panel of  
21 the day, which is going to focus on defining and measuring  
22 the comparability of regulatory regimes. We have quite a  
23 distinguished panel with us. I'll introduce each of them.

24 First is David Ruder, who is dean of Northwestern  
25 University Law School and a former chairman here at the SEC.

1 Next to him we have Harvey Pitt, founding partner of Kalorama  
2 Partners and also formerly a chairman of the SEC. Next to  
3 him is Rick Ketchum, who is the head of NYSE Regulation and  
4 formerly a director of market regulation here at the SEC.  
5 Next to him is Allen Ferrell, a professor of law at Harvard  
6 Law School. And finally, at the end is Alan Beller, a  
7 partner at Cleary Gottlieb Steen and Hamilton and formerly  
8 director of corporation finance here at the SEC.

9           With that I've been asked to launch this, so I'll  
10 ask the first question. Selective mutual and reciprocal  
11 recognition is an idea that's being proposed to address the  
12 challenges of providing effective and efficient oversight in  
13 the face of increasingly cross-border securities activity on  
14 the part of market participants as well as investors.

15           Is there a better response available to the  
16 commission, taking into account its investor protection  
17 mandate? You may have heard or may have seen articles  
18 suggesting that one thing we may want to consider is having a  
19 regulated market and an unregulated market. Your views on is  
20 there a better response to addressing what is happening when  
21 it comes to globalization of securities markets other than  
22 mutual recognition.

23           MR. RUDER: I'm just going to start because I  
24 participated for the last eight or nine years in the  
25 convergence process of the accounting standards between the

1 IFRS and the U.S. GAAP standards. And that process sought to  
2 create a single set or very close set of accounting  
3 standards. And that would be an ideal that might be reached.  
4 It is being reached in the accounting area. But I think  
5 probably it's too difficult a road to travel with regard to  
6 the areas that you're talking about. It would be quite  
7 difficult to get regimes that are almost identical rather  
8 than comparable. So I really don't think that the  
9 convergence approach or harmonization approach is the right  
10 way to go.

11 MR. PITT: I don't know, Ethiopis, whether there's a  
12 better approach ultimately, but I tend to look at this as  
13 something that would be done in stages. I think at the  
14 outset the question of mutual recognition is a very valuable  
15 way for the commission and other regulatory bodies to get  
16 started on a critical dialogue.

17 One way or another globalization is both here and  
18 more globalization is coming. And so the commission is going  
19 to be confronted with much more of a fait accompli than it  
20 already has to deal with right now.

21 The approach that has been laid out of mutual  
22 recognition is a wonderful way for the commission to start a  
23 dialogue. And whether or not at the end of all of these  
24 efforts and the end is many, many years down the road, in my  
25 view, we can get more harmonization of standards and the

1 like, it can only come from people discussing what's  
2 important to them and how they can work cooperatively and  
3 collaboratively together.

4           So to my way of thinking, this is the right  
5 approach for right now. I think we can all fine tune it, we  
6 can all give you additional suggestions and the like, but the  
7 notion that the commission would take the lead in starting  
8 this dialogue is to me what is critical and is a major step  
9 forward.

10           MR. KETCHUM: I would absolutely agree with Harvey.  
11 You really posed a couple of alternatives, one of which was  
12 moving to a purely harmonized world, the other of which is  
13 depending entirely on disclosure with respect -- as opposed  
14 to purely mutual recognition and looking at comparability.

15           I think comparability is an important leverage  
16 point for the commission and is important protection for  
17 investors. I do think though you ought to look at each of  
18 your tools and evaluate them together. I believe it would  
19 be -- having been involved in the mutual recognition  
20 discussion from my time at the SEC on, which I regret is a  
21 while ago at this point, mutual recognition can be a trap  
22 unless the standards are done fairly flexible. Comparability  
23 really does have to look at threshold comparability both  
24 coming in and, as Chairman Cox indicated, from an output  
25 standpoint.

1                   And if there are more protections necessary from an  
2 investor standpoint then a combination of aggressive  
3 disclosure and perhaps even product limitations that reduce  
4 the risk to investors is one way you can move ahead. I think  
5 the key thing today, if I leave any message, is it's time to  
6 move ahead. And it's time to move ahead not just with one or  
7 two countries but with a meaningful number of countries that  
8 provides -- I think the press over time to move to a more  
9 harmonized regulatory environment.

10                   MR. FERRELL: The one point I would add to the other  
11 comments is obviously comparability and mutual recognition  
12 can induce convergence depending on how comparability is  
13 measured, and so the two interact in an important way.

14                   How they interact, which I think we're going to  
15 discuss later, depends on how we define comparability. So I  
16 think part of the answer is there's interaction between  
17 convergence and mutual recognition and also the strength of  
18 that interaction, the way in which mutual recognition may  
19 induce convergence is going to depend on how we think about  
20 comparability.

21                   MR. BELLER: It's hard to say something unsaid after  
22 the four gentlemen on my left, but I'll try.

23                   I think we have to have this conversation against a  
24 backdrop of several facts as sort of realities. One is that  
25 the percentage of market cap of U.S. public companies as a

1 percentage of global market cap is going down. That is a  
2 secular trend. There's nothing wrong with that, but it does  
3 mean that the pressure to provide investment opportunities in  
4 the global markets for U.S. investors is going to increase  
5 rather than decrease.

6 Foreign market quality has increased in recent  
7 years both in terms of business liquidity and in terms of  
8 regulatory robustness. When I went back to my law firm in  
9 August the thing that actually struck me most about  
10 globalization had -- China was in the headlines but my first  
11 or second day back one of my partners told me that we were  
12 doing a \$4 billion IPO for a Brazilian company with a listing  
13 only Sao Paulo, not in London, not in New York, only in Sao  
14 Paulo, with lots of global participation through 144A and  
15 other things.

16 And so -- and finally financial intermediaries  
17 really are global now. I think five years ago I don't think  
18 I would have said that, but it's true now. Our major  
19 financial players are as at home in London and Tokyo and Hong  
20 Kong as they are in New York, and they are agnostic as to  
21 where they execute. They execute on the basis of where they  
22 can provide the best service and where they can obtain the  
23 lowest cost, and that's just a completely different world  
24 from the world in which our current regulatory framework was  
25 designed.



1           Convergence is a great long-term goal. I think  
2 mutual recognition is a worthy objective. I'm a little bit  
3 worried. I support it but, I'm a little bit worried that  
4 it's a medium-term objective, and the markets and investors  
5 are not going to wait for the kinds of comparability analyses  
6 that you're going to have to do in 38 jurisdictions to get  
7 your first 38 data points.

8           I do think that by thinking about the context of  
9 the markets in which you're applying your principles you can  
10 make the exercise easier for yourselves. You can in  
11 particular I think look more closely at thresholds and look  
12 to disclosure to solve some of your other problems as opposed  
13 to looking at outcomes.

14           And the way I would do that is by sort of adjusting  
15 the rest of the matrix. I think of mutual recognition and  
16 comparability analysis as one dimension of a multidimensional  
17 matrix. Some of the other dimensions are the kinds of  
18 companies for which you would provide access. It's easier to  
19 think about comparability in the context of -- sized  
20 companies, whether they're registered or not, than it is  
21 penny stocks from even the EU. It's easier to think about  
22 comparability in the context of certain kinds of  
23 transactions, cash transactions as opposed to long-dated  
24 derivatives that are over the counter.

25           And obviously -- most of the discussion, a lot of

1 the discussion so far today has centered on the dimension of  
2 the matrix involving which investors. Obviously this is  
3 easier to think about in the context of QIBs.

4 On the other hand I don't think you get much bang  
5 for your buck with QIBs. But as you go down the chain to  
6 various categories of institutions and various categories of  
7 retail, the comparability analysis that I think you need to  
8 do changes. And so while I would embrace the mutual  
9 recognition framework I would do it within a flexible and  
10 perhaps staged concept.

11 MR. TAFARA: Let me follow up on a couple of points  
12 that have been raised by Rick and Alan and Harvey. And that  
13 is, understanding that there are multiple tools available to  
14 us, you're suggesting we can use different tools to address  
15 this issue and comparability is one of them; limitation as to  
16 the products is another; retail versus institutional investor  
17 is a third, and so on and so forth.

18 But focusing on comparability, where should we be  
19 looking for comparability, and what does it mean? In other  
20 words, recognizing we have these other tools and we could use  
21 them and may use them, but in certain areas we're going to  
22 want comparability -- what are those areas and how do we  
23 define comparability? Is it exactly the same rules? Is it  
24 looking at the outcomes achieved by those rules?

25 Feedback on that would be great, and I guess we'll

1 start on the reverse end. So we'll start with Allen Ferrell  
2 since, Alan, you just spoke on that issue a bit.

3 MR. FERRELL: So I think this could be -- there has  
4 been a lot of discussion on looking at regulations, whether  
5 the substance of the regulations is the same, and there has  
6 been already some discussion, and I'm sure there will be  
7 more, on regulatory enforcement and do we see enforcement at  
8 the same level or the same types of enforcement in different  
9 jurisdictions. And I think that's valuable information.

10 The point I would emphasize is what we ultimately  
11 care about is not the size of the regulatory apparatus or  
12 even how many enforcement cases are brought but rather how  
13 well are the markets working. And you can use objective  
14 financial data to get as relevant information.

15 So for example, if we're thinking about what is the  
16 level or the incidence of insider trading in a foreign  
17 jurisdiction you can look at, well, do they have 10(b)(5) or  
18 what are the enforcement cases they're bringing in the  
19 insider trading arena, but you could also look at bid-ask  
20 spreads and look at the adverse selection component of the  
21 bid-ask spread, get a sense of how much private information  
22 there is.

23 You could look at either indicia of how the  
24 financial markets are working, look at liquidity, you can  
25 look at the opaqueness of earnings and so forth, objective

1 financial data.

2 Just one other point on that. The World Bank has  
3 spent a lot of time and effort putting together financial  
4 sector development indicators that gather information on  
5 these types of -- this type of information on different  
6 jurisdictions.

7 So in terms of comparability I would not only focus  
8 on regulation and enforcement but also objective information  
9 about how the market is working such as bid-ask spreads and  
10 liquidity and other measures.

11 MR. KETCHUM: Well, first, I'm not going to second  
12 guess the subject matter list that the chairman just  
13 mentioned in his opening remarks. No one is going to  
14 argue -- and I believe it was Erik who ticked off a similar  
15 list this morning, that you don't look at things relating to  
16 registration standards, fair markets, generally sales  
17 practice issues, financial responsibility, dispute  
18 resolution. They're all relevant and important.

19 I think I would pick up on Alan Beller's remarks  
20 though before and recognize that given the evolution and  
21 demand for product outside of the United States it seems to  
22 me that what you don't want to do is get trapped into a  
23 detailed, step-by-step analysis of comparability with respect  
24 to each country on each of these points that goes down to  
25 each regulation that we have or could imagine having.

1                   And part of that reason is very similar to what  
2 Alan said. I'll speak my experience from Citigroup. My  
3 experience is that while undoubtedly the regulatory controls  
4 and how we focused and looked at it varied country by  
5 country, and undoubtedly they were most focused in the U.S.  
6 I would tell you that with respect to a range of actively  
7 trading companies, Citigroup's compliance, approach and focus  
8 did not change in a meaningful way across those countries  
9 with respect to the core issues of manipulative trading,  
10 insider trading, the questions of the type of products that  
11 we sell, the suitability standards et cetera.

12                   The change, if it existed, was in a fairly subtle  
13 way. And within that context, I think you want to -- I think  
14 it would be better to look to an environment where you  
15 satisfy yourself for threshold standards, threshold controls  
16 and then look to only limit it to products that are well  
17 covered from an analyst standpoint, whether it be -- or other  
18 standards and give a clear disclosure requirements that are  
19 built in, and perhaps leverage from that country as to the  
20 type of suitability reviews that foreign brokers will do  
21 before they let U.S. customers participate in the program  
22 over all.

23                   But I don't think what you want is to spend the  
24 next three years on a detailed, step-by-step analysis. I  
25 think you want to get started with a more threshold analysis

1 that there are controls and focus and a meaningful  
2 examination program in a range of countries. And I think  
3 you'll find that it exists.

4 MR. TAFARA: Commissioner Atkins, you had a  
5 question?

6 MR. ATKINS: Yes, I just wanted to put two cents in  
7 because I agree completely with that. As Professor Ferrell  
8 said too, I think we have to look at lots of different things  
9 and we cannot do a bottom up sort of approach, which I think  
10 has been suggested at some point.

11 But what's too bad -- with the distinguished panel  
12 here we don't really have any representatives of other  
13 regulators here in the U.S. that actually do this sort of  
14 thing at the Fed and the CFTC basically where they do take  
15 sort of a top-down approach to looking at -- obviously they  
16 have different regimes, different types of systems they're  
17 looking at and perhaps different missions, but I think we  
18 could probably learn a lot from that if you all have any  
19 experience on that if you all have any experience on that  
20 side.

21 MR. RUDER: Could I speak to that? This dovetails  
22 with what I was going to say. I think the commission is in a  
23 wonderful position to be a world leader in this effort to  
24 achieve comparable regimes and to increase the regulatory  
25 compatibility across markets. And I would encourage the

1 commission not only to consult with the domestic regulators,  
2 other domestic regulators but to consult at the outset with  
3 the major regulators in the world.

4           The commission over the years has been very  
5 cooperative in creating other regimes. It assisted China in  
6 creating its securities regulatory system. It has been in  
7 cooperative environment with EU and assisted in the creation  
8 of CAESAR. And it seems to me that this should not be a  
9 go-it-alone approach for the commission but a leadership  
10 approach so that you don't say, "this is what we do, this is  
11 what we want," but you try to engage the other regulators of  
12 the world so this becomes a common thrust and bring these  
13 regulators along with you in whatever comparability analysis  
14 you try to make.

15           MR. TAFARA: Harvey.

16           MR. PITT: Yes, I was just going to -- I think David  
17 has picked up most of what I was going to say. I think you  
18 don't start by telling people what the shape of the table is.  
19 What you do is you try to get them to the table and then have  
20 a dialogue about what they think is important as well as what  
21 you think is important.

22           Obviously the commission will have to have ideas  
23 about the issues that are of importance to it. I think the  
24 chairman gave a very good list of some of the types of  
25 issues. Erik has done that. You've got disclosure issues,

1 insider trading issues, you've got suitability issues. I do  
2 think the fairness and vigilance provided for marketplaces is  
3 very, very important as well, but having in your mind a list  
4 of issues is different from insisting, as the price of  
5 admission to the table, that everybody is going to agree with  
6 what's on your list to begin with.

7           You may find at the end of the day that you won't  
8 be able to reach agreement. That's always a possibility.  
9 But I think where people have constructive approaches and  
10 where they want to work collaboratively, the goal would be to  
11 lay out the types of issues and also listen to what issues  
12 other foreign regulators want.

13           And I also want to echo the suggestion of meeting  
14 with other domestic regulators. The CFTC in particular has  
15 done a lot in the area of mutual recognition. Its precedents  
16 may not be exactly what the commission would wind up with,  
17 but certainly having engaged in the process the CFTC has an  
18 experiential level that I think the SEC can use.

19           I think the SEC can also rely on its own efforts  
20 with Canada and the multi-jurisdictional disclosure approach  
21 and the like. So there are a number of precedents that the  
22 commission can look to but the goal is to get people to start  
23 talking and to start discussing and to start thinking about  
24 the issues rather than sort of coming in with a set of  
25 conclusions that are going to dictate whether people find



1 this process attractive at all.

2 MR. FERRELL: I want to add one more thing in  
3 thinking about comparability. And that is -- and I don't  
4 think people have suggested otherwise, that optimal  
5 regulatory regime is going to differ across jurisdiction. I  
6 think the most relevant difference would be systems where you  
7 have concentrated ownership of firms and systems. U.S., UK  
8 and Australia, we have dispersed ownership. So what might  
9 make sense in a regime where you have dispersed ownership of  
10 firms might be different than in a system like kind of all  
11 Europe where you have concentrated ownership, where the  
12 agency problem is really going to be between the controlling  
13 shareholder and minority shareholder, where in the U.S. at  
14 least with respect to most firms, the agency problem that  
15 you're worried about is between managers and dispersed  
16 shareholders.

17 And so I think, thinking about comparability you  
18 have to take into account the different agency problems that  
19 different jurisdictions have to deal with.

20 MR. SIRRI: If I can put Allen's point and Alan's  
21 point together, the approach is one of thresholds but also  
22 one of taking into account in some sense national differences  
23 that might arise endogenously because of the settings that  
24 you're in.

25 What I'm struck by is a couple things. One is that

1 U.S. has a strong equity culture. We have a strong retail  
2 base of shareholders and participants in the capital markets.  
3 That's something that characterizes our capital markets, not  
4 so in all other countries. And second is that at least we've  
5 tended to view ourselves I think as a high principle, high  
6 standard regulator.

7 I think when you put those two things together and  
8 then you confront other regimes that are going to be coming  
9 in the door you can sort of predict the direction from which  
10 they'll be coming. You realize that you won't be situated in  
11 the middle of the pack on some of these investor protection  
12 principles that you care about, and so the threshold  
13 principle becomes one of really -- an operational question of  
14 what does it really mean.

15 I understand the principle of threshold but it's  
16 really a question of where you draw that line. How are we to  
17 come to grips with that, given that we know how this  
18 landscape looks?

19 MR. BELLER: I guess my reaction to that is that it  
20 may well depend on the group of investors that you're going  
21 to try to do this with initially. I think if you -- I agree  
22 with you. The U.S. retail equity culture is probably unique,  
23 and if you're going to try to do this on day one with that  
24 entire pool of investors I guess I'm frankly a little  
25 skeptical that you're going to find more than one or two, if

1 that, jurisdictions that you're going to be comfortable with,  
2 even line drawing on a threshold basis.

3 I think that if you -- and I don't like the idea of  
4 drawing lines that exclude retail investors because they  
5 don't have \$5 million. I don't like it partly because I  
6 think if this exercise is successful it's mostly for those  
7 people that you would exclude, and I don't like it because  
8 I'm not sure sophistication -- and I've always had this,  
9 while I can argue the other side from a regulatory efficiency  
10 point of view, money is not the same thing as sophistication.

11 But I do think there are ways to -- and maybe leave  
12 aside the whole issue of mutual recognition of broker-dealers  
13 for a moment. Let's just talk about registered  
14 broker-dealers in this country. If they were the gatekeepers  
15 of a comparability system, a registered broker-dealer had to  
16 say, "Mr. Smith understands what it is to invest in global EU  
17 securities and has enough experience in that area that we  
18 would be prepared to solicit and sell to him," I think you  
19 leave yourself with a different exercise in terms of what  
20 threshold regulation you're comfortable with and the degree  
21 to which you think disclosure can fill in the gaps because if  
22 Mr. Smith is sophisticated enough to invest in the EU it  
23 carries with it -- that determination carries with it certain  
24 judgments about what Mr. Smith or Ms. Smith understands.

25 And I think if you don't start with that kind of an

1 exercise I think maybe the retail equity culture is, to use  
2 Rick's word, is a trap when you're trying to do a  
3 mutual -- or mutual recognition becomes a trap when you're  
4 trying to do it all the way up and down the food chain.

5 MR. KETCHUM: I'd love to follow up on Alan's point  
6 because I think it's a very powerful and important point  
7 really with what I was trying to make before, which is I  
8 don't think you have to be enfolded in a single mutual  
9 recognition concept for all investors and all products. I  
10 think you can think of different tiers looking at regulatory  
11 risks because I think your point, Erik, that you aren't going  
12 to find that equity culture and there will be meaningful  
13 differences in how attentive different regulators are is  
14 absolutely correct.

15 But it's not a reason not to get started. And I  
16 think Alan's suggestion is a good way of dividing it. You  
17 can look at standards that either are limited on a product  
18 basis with respect to widely followed companies or, from the  
19 standpoint of an investor basis, hopefully beyond just  
20 institutional investors, perhaps some individual investors,  
21 but those with substantial wear-with-all.

22 But I think there should be a means moving to a  
23 wider range of equity investors if not all individual  
24 investors in which you continue to depend on U.S.  
25 broker-dealers for some penumbra over what you're doing. It

1 doesn't mean you do into the horrific bureaucratic nature of  
2 rule 15(a)(6) that I helped bequeath to you, but it does mean  
3 that you can, as Alan says, depend on the affiliate U.S.  
4 broker-dealer to do the type of things that you're asking  
5 firms to do with respect to portfolio margining, more careful  
6 suitability analyses, more careful analyses with respect to  
7 disclosure and understanding with investors. And that may be  
8 a means of jumping to another level of investors.

9           Sure, that does exclude some broker-dealers who  
10 don't have affiliates. Maybe there's contractual  
11 relationships that can be traded just as you have in rule  
12 15(a)(6) now. But depending when you get to that equity  
13 culture in individual investors on some level of U.S.  
14 supervisory oversight, it's not a bad thing if it doesn't  
15 have all the trappings that rule 15(a)(6) has.

16           MR. PITT: I think there's a good analogy with what  
17 the FSA has been proposing with respect to hedge fund  
18 regulation. Rather than regulate the hedge funds directly  
19 they regulate the people who are in the marketplace and who  
20 have the obligation to make sure that investments are  
21 appropriate for whoever they sell them to. The same type of  
22 system could work in this type of marketplace.

23           The goal really is to figure out different levels  
24 of investors. I think you don't want to foreclose individual  
25 investors and I also don't think we want to overlook the fact

1 that institutional investors are also individual investors.  
2 We've got pension funds and trust funds and so on, and so  
3 many individuals are already in the markets in any event and  
4 will be, and the differentiation is really one that requires  
5 somebody to exercise some fiduciary oversight, some review,  
6 but not necessarily to preclude the movement toward mutual  
7 recognition where the exact scope of the foreign brokers  
8 obligations don't comport with our own.

9 MR. RUDER: I think that you need to be careful  
10 about whether you're going to look at the foreign  
11 jurisdiction as having the rules that you think are  
12 desirable, I use suitability as an example, or whether you  
13 decide that as a condition of accepting a foreign  
14 jurisdiction's regulation you would retain some element of  
15 suitability. Maybe it's the retaining of the fraud rules  
16 that you talked about in your article, Ethiopis. But you  
17 really need to make some distinctions about whether you're  
18 going to rely upon the other regulators or whether you're  
19 going to say, yes, these are some barriers to entry that we  
20 have to have in order accept the comparability.

21 MR. TAFARA: Picking up on that last point, I mean  
22 mutual recognition in essence is a form of reliance in  
23 several areas. It's reliance on foreign laws. It's reliance  
24 on foreign regulation. It's reliance on foreign supervision,  
25 and then you get to enforcement.

1           The question there for me is do we go as far as  
2 relying on the foreign enforcement regime or is it distinct  
3 enough, is this an issue that's different enough that you  
4 need to think about it differently, maybe rely to a lesser  
5 degree, as David has said, retain the ability to intervene  
6 when you have lying, cheating and stealing involving U.S.  
7 investors emanating from a foreign market participant. I'd  
8 be interested in views on that.

9           MR. FERRELL: One basic concern I have about looking  
10 at -- enforcement is obviously important. Bringing  
11 enforcement cases is obviously important. The concern I  
12 have, using enforcement as part of -- enforcement should be  
13 part of the comparability analysis, but my concern is that  
14 you could easily imagine situations where you have high  
15 levels of enforcement and high levels of underlying fraud or  
16 whatever the bad conduct is.

17           You could have situations or jurisdictions with low  
18 levels of enforcement, low levels underlying fraud. You  
19 could imagine equilibrium outcomes, situations where the  
20 level of enforcement or the level of enforcement cases is not  
21 necessarily a one-to-one relationship with the level of  
22 underlying bad conduct. And so if you're going to use  
23 enforcement for a proxy for what the probability of fraud or  
24 bad conduct is, I think that's going to be a problematic  
25 without using additional information.

1                   MR. BELLER: Think about where we were in 2002 in  
2 terms of the number of enforcement cases we were bringing and  
3 was that an index of -- what was that an index of?

4                   MR. PITT: I think looking at it from an enforcement  
5 perspective may really skew what it is we're trying to  
6 achieve. First of all, enforcement in this country with our  
7 very high standards of regulation is almost exclusively  
8 after-the-fact enforcement. In this country, almost anyone  
9 can become a broker-dealer. There's very minimal capital  
10 requirements and so on, so what we wind up doing is  
11 protecting investors by going after people who have already  
12 defrauded someone.

13                   I don't say that as a means of saying we should  
14 excuse fraud on the part of foreign operatives, but just  
15 simply to have a clear understanding of what it is we're  
16 talking about when we look at our system and why our system  
17 is effective.

18                   One thing, as I read the excellent paper that  
19 Ethiopis and Mr. Patterson did, I believe the critical  
20 element is that the commission is never going to give up its  
21 ability to pursue fraud. And so if somebody is defrauded and  
22 there's an out and out fraud here, we ought to keep in the  
23 back of our mind that the commission is going to reserve that  
24 power, number one.

25                   Second, the question really becomes what standards



1 do foreign jurisdictions have and how do they go about  
2 enforcing them. There is no reason why people have to have a  
3 forum in the U.S. or the application of U.S. laws, and the  
4 supreme court has already dealt with that issue on many, many  
5 times.

6           And indeed the same issue arose when Lloyds of  
7 London was sued under the securities laws, and the courts of  
8 appeals unanimously said basically people who agree to be  
9 sued in London or agree to have suit in London with UK law to  
10 be left to that.

11           So you can have disclosure that lets people know  
12 when they operate that there are going to be certain  
13 restrictions that are going to be applied to them, certain  
14 things that they won't get that they would have if they were  
15 dealing with a U.S. broker. And if they choose to deal with  
16 that broker being in a position competently to make the  
17 judgment and understand what the difference is, we're not  
18 giving up enforcement. We're only indicating that there may  
19 be a potential difference in enforcement, and that, to me, is  
20 an important distinction to keep in mind.

21           MR. RUDER: I want to just return to a point that I  
22 talked about earlier about the commission being a leader. I  
23 think when the commission thinks about enforcement it needs  
24 to look at what the other regulators seem to be like. How  
25 are they organized? Are they well enough funded? Do they

1 have enough staff? Do they have a regulatory attitude? Do  
2 they have independence from the political and business  
3 community which may impede the kind of regulatory emphasis  
4 you'd like to have, and are they cooperative with the U.S.  
5 and other countries in terms of the enforcement regime, and,  
6 I would add to that, the inspection regime which we have here  
7 that -- not after the fact, Harvey, but before the fact, some  
8 work being done to make sure that standards are met. But I  
9 think the quality of these regulators is just as important as  
10 the quality of their standards.

11 MR. BELLER: I guess I'd say a couple of things  
12 about enforcement. One, I agree absolutely with the notion  
13 that wherever you and we go with this anti-fraud jurisdiction  
14 will be maintained. And indeed, when it comes to private  
15 litigation I suspect that it's not in the hands of the people  
16 in this building anyway.

17 So I think that -- I think whatever we're talking  
18 about here in terms of a mutual recognition regime and in  
19 terms of securities being -- more access to securities for  
20 U.S. investors to foreign securities, there will be enough  
21 activity in the United States so that jurisdiction will lie.

22 The choice of law point that was made earlier is, I  
23 think, a very interesting one when you get past the fraud  
24 issue. And that will depend in part on sort of where you go  
25 with your exercise.

1           The last point I would make is that what was said  
2 earlier about meeting with regulators and doing this as a  
3 dialogue is certainly important in the enforcement area, both  
4 in evaluating the enforcement quality of the markets that  
5 you're going to be thinking about an in actually executing.

6           I mean I think the commission has had some signal  
7 successes, maybe not as many as some people would say would  
8 be appropriate, but has nonetheless had some signal successes  
9 in cooperating with foreign litigators over the years.  
10 That's going to become an increasingly important part of the  
11 enforcement business, and you can only do that, I think, as  
12 effectively as you can if you start talking early and keep  
13 talking often both as you go through this exercise and then  
14 after you've implemented it.

15           MR. FERRELL: I wanted to make a comment related to  
16 what Harvey and David just said. In terms of the ex-ante  
17 versus ex-post enforcement tools there's actually a very good  
18 paper by Andre Schleifer and La Porta where they actually  
19 went around to -- I think it's 49 different countries and  
20 measured the degree of ex-ante enforcement and the degree of  
21 ex-post enforcement. There's a lot of variation across  
22 countries in terms of whether ex-ante or ex-post enforcement.  
23 And also sometimes it acts as a substitute so you may up your  
24 ex-ante in the jurisdiction and have lower ex-post. So I  
25 think empirically that's very important.

1           The comment about the quality of the regulators  
2 being important that David mentioned is obviously true, and I  
3 agree with. I guess the concern I have is the degree to  
4 which mutual recognition or comparability is going to be  
5 based on subjective, even if true, impressions and the extent  
6 to which you can ground a mutual recognition, maybe for some  
7 investors in some companies, in objective data that you can  
8 point to that can serve as the foundation. And that goes  
9 back to my original comment about maybe using financial data  
10 as an additional relevant piece of information there.

11           MR. SIRRI: Let me change topics a little bit off of  
12 enforcement to the question of if we proceed down a path of  
13 mutual recognition what it means to the institutions as they  
14 now do business in the United States. So I'm going to be  
15 totally unfair and I'm going to ask Alan Beller this question  
16 because I'm going to ask him to put on the hat of his old  
17 job.

18           And it's really a question about corporate finance  
19 that says if we go down a path and we allow screens, let's  
20 say foreign screens to come here, then what does it mean for  
21 the business as we now understand it of the exchanges?  
22 Because to be on an exchange you have to be a reporting  
23 issuer, and it seems to me there would be a natural question  
24 that folks would ask which is frankly why should I pay the  
25 freight, why should I jump through those hoops when I can

1 just access that capital through a foreign screen that would  
2 be here otherwise because the point of this exercise is of  
3 course to lower the transactions cost for people to access  
4 that capital.

5 I know you're familiar with this question, so how  
6 should we think about that.

7 MR. BELLER: Yes. I actually think, during my time  
8 in the building, which for those of you who don't know was  
9 2002 to 2006, I would have -- I did say, and I don't mind  
10 saying I said that for some level of institutional investor  
11 and -- not just QIBs because I think that was done and gone,  
12 I was not troubled by the notion that you would have freer  
13 access without registration and disclosure to U.S. standards.

14 I didn't say that because and I don't feel that way  
15 because I don't think the U.S. standards are aspirationally  
16 great. I do think that. And if you'd asked me in 1992 I  
17 would have said exactly the opposite.

18 But I think we are in a situation where unless  
19 you're going to take a step which is completely antithetical  
20 with the direction in which we've been going and a step I  
21 would disagree with, and that is if there are a certain  
22 number of U.S. holders of a foreign security it's going to  
23 have to register, unless you go there and that is just -- you  
24 can't go there.

25 Then you're looking at a situation which here, as I

1 think in most of the world -- it's not true with emerging  
2 markets, but most of the world of developed securities  
3 markets, we are in an environment of home country listing and  
4 global trading. And once you accept that we're in an  
5 environment of home country listing and global trading it  
6 seems to me that it has to follow that there's going to be  
7 some level of foreign securities activity, primary,  
8 secondary -- Ed Greene talked about primary offerings on the  
9 second panel. But whatever you do with primary offerings  
10 there's going to be secondary market trading in foreign  
11 securities to U.S. investors.

12           And in a sense this almost turns for me into a  
13 question of okay, how can we make that the best quality  
14 market, not are we going to have it because I think the  
15 question of are we going to have it has long since been  
16 answered.

17           MR. SIRRI: So maybe I can broaden this out a little  
18 bit. What this means to me then is I can imagine a world  
19 where the screens come and then a domestic exchange says,  
20 "well, here we have a foreign screen with an unregistered  
21 security trading on it." I as a domestically regulated,  
22 Section 6 registered exchange say I would -- I offer  
23 protections, so surely if a less regulated venue has an  
24 unregistered security I, as the more regulated venue, should  
25 have that security as well.

1                   MR. BELLER: No question in my mind that one -- I  
2    mean you asked Cathy Kinney earlier this morning what she was  
3    going to ask for, and I think she said she was going to ask  
4    for this.  A, I think she will, and b, I think it's  
5    absolutely appropriate.  I mean if you're going to let a  
6    foreign market access into this country from some  
7    jurisdictions because on balance it's good for U.S.  
8    investors, for sure, it's also good for U.S. investors and  
9    good for competition if our domestic markets can provide  
10   access to those same securities.

11                   MR. KETCHUM: Not surprisingly, albeit from a New  
12    York Stock Exchange Regulation not from Cathy's viewpoint, I  
13    think the commission, not necessarily tying these things from  
14    a simultaneity standpoint, has to be thinking exactly this  
15    way.  In the end, why is it not attractive if you're going to  
16    make available in this country unregistered foreign  
17    securities more flexibly, to allow those unregistered  
18    securities to also be handled by registered U.S.  
19    broker-dealers and registered U.S. exchanges and building  
20    special suitability disclosure requirements and the rest just  
21    as you've done in a variety of other approaches to be able to  
22    better regulate them from the standpoint of whatever risk is  
23    there.

24                   But why would one ever want to only provide that  
25    access to unregistered entities as opposed to the other?  And

1 it requires a scheme. It's not immediate, but I do think  
2 it's the other part of this that the commission has to  
3 pursue.

4 MR. SIRRI: Then does anyone ever register in that  
5 world?

6 MR. KETCHUM: Sure. If there's differential  
7 standards, if there is both from a suitability standpoint,  
8 disclosure standpoint and the rest and putting aside whether  
9 you allow U.S. companies that primarily do business and  
10 incorporate in the United States to do this, which is  
11 obviously a separate question, I think plenty of companies  
12 register, as long as it truly is tiered. It's just tiered in  
13 a way that allows U.S. competitiveness and the U.S.  
14 regulatory scheme to be meaningful in this country with  
15 respect to those securities rather than less important.

16 MR. PITT: I think you have to ask yourself two  
17 questions: who are we protecting and from what? We heard in  
18 the last panel that people are already trading in these  
19 securities. Right now they go through circumlocutions. As  
20 Alan pointed out earlier there's no direct jurisdictional  
21 nexus in some of these cases and so on, and there are a lot  
22 of protections missing.

23 The goal here really is to make our markets more  
24 competitive without lessening our standards for individuals.  
25 It seems to me if what we're talking about are foreign



1 securities and someone has the choice of making that  
2 transaction through a regulated exchange with a regulated  
3 broker-dealer or doing it through an unregulated  
4 broker-dealer in a foreign screen and the differences are  
5 explained to them, then the marketplace will make that kind  
6 of decision.

7 I'm also assuming the same thing will be true  
8 overseas, but my view is that it's happening anyway so we  
9 ought to think about the ways in which we can make the  
10 process provide better safeguards for investors not think  
11 about ways in which we can prevent investors from doing what  
12 they're already doing.

13 MR. RUDER: I just have to take a very negative line  
14 here. Are we talking about home country listing with no  
15 supervision of what those listing standards are so that we  
16 have all kinds of companies listed on exchanges without any  
17 regulation and then having those screens in the United States  
18 of those exchanges so they can be seen by every retail  
19 investor and then having solicitation by foreign  
20 broker-dealers of those investors and then disclosing it to  
21 our retail investors; don't worry, we just want you to know  
22 you're at risk?

23 I think we need to need to make sure that we are  
24 putting the retail investor protections up front and not  
25 creating a whole scheme that would put them at terrible risk.

1                   MR. TAFARA: We have multiple interventions.  
2 Harvey, you can go first.

3                   MR. PITT: I just want to come back to something I  
4 said a little bit earlier. We're at the beginning of this  
5 process not at the end. We're not opening up any floodgates.  
6 We're trying to come up with a dialogue and we're trying to  
7 come up with a tiered, as I think has been suggested several  
8 times by speakers, a tiered approach.

9                   So at the beginning, one of the questions -- and I  
10 think Alan made this point in his opening remarks was -- one  
11 of the suggestions you look at which issuers, what standards  
12 apply and so on. We don't have to open everything up all at  
13 once. But the problem is if we sit here and try to envision  
14 everything that could go wrong we will never get started.

15                   The goal is really to say we have an objective, we  
16 are very mindful of investor protection. We're not willing  
17 to change our entire regulatory scheme over night, but we  
18 need to make a start. And so we have a dialogue and we get  
19 going and we set standards. We're not at the end game yet.

20                   MR. SIRRI: Alan.

21                   MR. BELLER: No, I mean I think that's exactly  
22 right. You don't -- by starting with not just one tier but  
23 different tiers in different areas, it seems to me we will  
24 have a much better idea of what the risks are by the time you  
25 get to asking the question that David is I think fairly

1 asking. But it's the question at the end, as Harvey said,  
2 which is do we open it to all issuers, all investors, all  
3 markets.

4 Today I think it's a different question. Do you  
5 open it to some investors for some issuers, for some markets?  
6 And I think that's a very different question.

7 MR. TAFARA: For the sake of argument I'd like to  
8 probe this issue a little bit further because the arbitrage  
9 that Erik is referring to with respect to the securities  
10 equally applies -- the potential for it at least with respect  
11 to the brokers and the exchanges.

12 So as somebody I think in one of the earlier panels  
13 said, if I have access to the same set of U.S. investors by  
14 virtue of complying with a set of rules somewhere else which  
15 I may find more favorable for whatever reason, how do we  
16 prevent that from happening, how do you make sure that you  
17 don't end up actually off-shoring a lot of the exchange  
18 business and the broker business? And I ask that for the  
19 sake of argument because I'm interesting in hearing what your  
20 view is.

21 MR. BELLER: I think that this a much bigger risk in  
22 the broker-dealer area than it is in the market area, and I  
23 actually think about your two mutual recognition topics very  
24 differently. I think in the market area the risk of  
25 regulatory arbitrage is less, and I -- again, if you start

1 with a set of larger issuers then I think you reduce that  
2 risk further.

3 I mean it's -- again, I'm a great partisan of the  
4 SEC's disclosure standards for companies. But I'm also a  
5 believer in the fact that it is for the world's largest, most  
6 well followed companies, it's market pressure as much as  
7 anybody's disclosure rules which set the disclosure  
8 standards.

9 And somebody said there are 20 companies that have  
10 announced they're going to de-register. They won't be doing  
11 their Sarbanes-Oxley internal control reports perhaps or they  
12 will probably be doing the assessments but not the audits.  
13 They might not have CEO, CFO certifications anymore, and I  
14 think those are all good things.

15 But I don't expect the disclosure of those  
16 companies to deteriorate, especially if they're in the large  
17 category. I don't expect the disclosure of those companies  
18 to deteriorate in the short, medium or long term because I  
19 think it's investors who push them as much as we do -- or  
20 once we, now you.

21 MR. KETCHUM: There's a lot of pieces of arbitrage,  
22 and the question is important and it doesn't have a simple  
23 answer. I agree with Alan's basic answer with respect to  
24 companies, and from an exchange standpoint there will always  
25 be tremendous desirability in a home market listing and with

1 the New York Stock Exchange listing companies on the New York  
2 Stock Exchange here, whatever desire we may have with respect  
3 to other parts of the company having freer access into the  
4 U.S. or the like.

5 And I think if you look at how the EU has evolved  
6 from a home market listing standpoint and the rest, it's  
7 clear that that doesn't just dissolve even if there's more  
8 flexibility.

9 There will be arbitrage issues that the commission  
10 will have to address. We just talked about one, what should  
11 be the standard with respect to unregistered securities  
12 trading in one way or another on U.S. markets. I think the  
13 commission, if it moves in this direction, will eventually  
14 have to address that.

15 Ethiopis, you mentioned others with respect to your  
16 Law Review article and the rest in which if U.S. exchanges  
17 are expected even on the peripheries more with foreign  
18 exchanges -- and Erik, I think you mentioned it in your  
19 speech -- then they will have to be able to respond, at least  
20 with respect to the peripheries, more quickly than the manner  
21 in which they're able to respond in the U.S. regulatory  
22 system now, and it will require some thinking about how rules  
23 are reviewed by the commission. And, to your credit, you're  
24 already doing some of that thinking.

25 So yes, I think there will be pressures. I think

1 they're primarily pressures at the periphery. I don't think  
2 it would change basic tenants as to desirability of home  
3 market listing or interest in the New York Stock Exchange to  
4 operate in the United States. I do think there will be areas  
5 for the commission to look at.

6 MR. BELLER: There's also -- there's a flip side of  
7 the regulatory arbitrage issue, which I think it's very  
8 important for the commission to be mindful of as it begins  
9 this exercise. And that is there will be increased pressure  
10 on you by domestic market participants -- broker-dealers, if  
11 you do this with broker-dealers, exchanges if you do it with  
12 markets, issuers -- to pull back on what will be argued,  
13 perhaps correctly, perhaps incorrectly, are unnecessary  
14 regulatory burdens that domestic participants currently  
15 operate under.

16 And you will have difficult decisions to make as a  
17 result of those pressures, and it will come with this  
18 exercise.

19 MR. SIRRI: Let me follow up if I might on the exact  
20 point.

21 MR. PITT: I was just going to say I think the  
22 answer to the question of how do you deal with the problem is  
23 exactly the way you've just dealt with it. You raise the  
24 question and you don't necessarily move too quickly at the  
25 beginning.

1                   This is a new concept. We need experience. We  
2 need to develop some sense of comfort that, for certain  
3 companies or certain foreign brokers, et cetera, the  
4 disparities are not great. That's what's involved with  
5 making the assessment that I think was a fundamental premise  
6 of the article, which is the commission gets to decide.

7                   It doesn't have to let every company come in and it  
8 doesn't have to take action that it's afraid will create  
9 regulatory arbitrage. It can move carefully. I think it  
10 needs to move collaboratively but there's no question in my  
11 mind that the commission can control this process and get  
12 some real experience before it makes ultimate decisions.

13                  MR. SIRRI: Let me loop back to the point that Alan  
14 had made. It seems to me we've been talking -- for instance,  
15 the number of times 144A is brought up, which is, if you  
16 will, an alternate to the registration system. We know it's  
17 a pretty liquid capital market. Within the trading space you  
18 see alternative trading systems, ATSS, as an alternate to  
19 exchanges.

20                  One conclusion -- I'm curious if you would agree  
21 with this. Given the competitive pressures on the businesses  
22 that are represented here, is it viable to have, within the  
23 context of what we're talking about, that is as screens and  
24 brokers come in, someone maintain a business model that is  
25 really a high standard business model in the face of medium

1 standard business models that may come in with disclosure.

2 That is, today we have a choice with 144A. You can  
3 go 144A or listed. Now if it's not a viable business you  
4 lose regulatory choice, you don't have competing models, but  
5 in fact you may get all pressed to one point and homogenized.

6 Do you think there's space for there still to be  
7 competition in the regulatory space, by which I mean there's  
8 still a market for listings? People would say yes, I'll pay  
9 the regulatory freight to get the benefit of what that  
10 certification means.

11 MR. PITT: I think the answer is yes. I think there  
12 is, there still will be a market for listings. Although  
13 frankly I think listing is becoming infinitely less important  
14 than where stocks are actually traded. That's already  
15 happening with or without this effort, but the question that  
16 you posed still requires a major leap from where I think this  
17 process is at the moment, and it requires a leap to say,  
18 medium level foreign brokers, for example, who don't adhere  
19 to the highest standards will be allowed to come into this  
20 country.

21 At the outset, why would you do that? At the  
22 outset, you are looking for relative comparability. And I  
23 think that while we want to be sensible about what standards  
24 are applied. So the fact that some people allow electronic  
25 confirmations instead of hard copy confirmations, those are



1 not the kinds of issues that I think the commission need  
2 pause over.

3           But I think that in the beginning you're going to  
4 be looking at regulatory regimes that you believe are most  
5 comparable. Where they're not comparable or where you have  
6 real concerns -- I think before there's mutual recognition  
7 there has to be a discussion. There has to be some kind of  
8 discourse and some kind of understanding of how investors  
9 will be protected and how you'll avoid regulatory arbitrage.

10           But the problem I guess I have is if you set up the  
11 strawman now, which is to say that if I do this why would  
12 anybody want to be registered in the U.S., you'll never get  
13 started. The goal is to say I'm very mindful of the fact  
14 that if we go too quickly and we do this carelessly we are  
15 going to undermine our own regulatory regime. But that's not  
16 a prerequisite of getting started on this process.

17           MR. FERRELL: Just an additional comment on  
18 regulatory competition, there's, as many of you know, a  
19 debate about the competitiveness of the U.S. markets and  
20 whether that's changed over the last several years. There is  
21 recent work done by Rene Stultz and some other researchers  
22 where even though there's been a drop in public listings in  
23 the New York Stock Exchange recently you still see firms that  
24 do list in the New York Stock Exchange controlling for a  
25 number of other factors do get a valuation premium as a

1 result of listing. And that's very robust and that's  
2 including post-Sarbanes-Oxley.

3 Firms that list on the London Stock Exchange in the  
4 study, even though they have been fairly successful in  
5 getting cross listings, you don't see an increase in firm  
6 valuation. So that's just a long-winded way of saying that  
7 there is regulatory competition and there is very good  
8 reasons for companies to want to bind themselves to higher  
9 quality disclosure, and you see that in firm valuation.

10 MR. RUDER: I'd just like to agree with Harvey that  
11 you need to start and you need to find areas in which the  
12 decisions seem relatively easy. And I guess I'm agreeing  
13 with Ed Greene as well that there must be some companies that  
14 you could allow to sell here which had adequate disclosures.  
15 There must be some exchanges that have a really wonderful  
16 surveillance and markets protected against manipulations.  
17 There must be some broker-dealers that you can trust.

18 Those are areas that you probably can start with  
19 and that's where we should be.

20 CHAIRMAN COX: I'll start off by asking about what's  
21 going on today because allusion has been made several times  
22 to the fact that with a little bit of extra effort retail  
23 customers in the United States currently have access to  
24 foreign securities on foreign markets, they can call a  
25 foreign broker dealer up on the internet or otherwise open an

1 account and away they go.

2 I take it that first there is no accreditation  
3 standard or any other standard that differentiates today  
4 between retail investors who do this. It's just anything  
5 goes, right?

6 MR. BELLER: Correct.

7 CHAIRMAN COX: So aren't we sort of in the wild west  
8 right now, and isn't this in part a discussion about how to  
9 tame the environment?

10 MR. BELLER: Well, with respect to U.S.  
11 broker-dealers who solicit that activity from their customers  
12 there are suitability rules and so forth so I don't think --

13 CHAIRMAN COX: Of course if you're doing  
14 solicitation you're in a different realm.

15 MR. BELLER: But I mean I do think that you have an  
16 environment where people can do this. You have an  
17 environment where the transaction costs for doing it are  
18 relative to U.S. transaction costs extraordinarily high. You  
19 have an environment where it's not an ordinary course part of  
20 even sophisticated retail investors' portfolio management,  
21 and you have a situation where the commission has been for  
22 the last several years I think cognizant of all of these  
23 issues but largely in reactive mode.

24 And in a sense what we're talking about here is  
25 something that turns all four of those things around. It

1 puts the commission in a leadership position rather than a  
2 reactive position on a very important issue. If you're  
3 successful I think you will lead to better portfolio  
4 management in so far as it relates to international  
5 securities for a larger segment of the investing public.

6           The low end of retail should probably never touch  
7 anything but mutual funds in my personal opinion, but there  
8 are certainly retail investors who ought to be more aware of  
9 the diversification opportunities that there are now. If you  
10 open the access to get the competition both from foreign  
11 exchanges and to their U.S. counterparts you will get, I  
12 would surmise, pretty substantial advances in clearance and  
13 settlement and custody arrangements. It will be worth it to  
14 the New York Stock Exchange to try to figure out a way to  
15 settle a custody and clear this stuff cheaper than it does  
16 today. Ditto the foreign exchanges who try to come in here.

17           And those are the kinds of advantages I think you  
18 get from this kind of an initiative. And the flip side is  
19 you want to do it in the way that I think we've all been  
20 talking about, tiered and not reckless so that you don't  
21 leave our markets exposed to unacceptable levels of risk.  
22 But if you want no risk we should close up shop.

23           MR. TAFARA: I am cognizant of the time, getting  
24 towards the end of the time for this panel, but I wanted to  
25 afford each of you an opportunity to give us some final

1 thoughts on the topics that we've addressed during the course  
2 of the panel, mutual recognition, comparability, arbitrage,  
3 competition and the like. And I think we'll start to my  
4 immediate right with David Ruder.

5 MR. RUDER: Well, I may sound like a broken record,  
6 but I think this is a great opportunity for the commission to  
7 be a leader in the area of mutual recognition.

8 The experience that I had at the IASB when we were  
9 trying to create accounting standards was that to the extent  
10 that the U.S. seemed to be trying to impose U.S. GAAP on the  
11 world there wasn't much cooperation. But once it became  
12 apparent that the approach was to be cooperative and to  
13 engage the rest of the world in the process, there was a  
14 great opportunity for progress.

15 MR. PITT: First I want to commend the commission  
16 because I think this is an important topic and I think the  
17 commission has done a real service both to investors and to  
18 itself by having this dialogue.

19 I just have a few points. First, I really think we  
20 need to get the process started. I can't stress that enough.  
21 As a corollary to that, I don't think we should allow  
22 potential problems stopping us from exploring how we can do  
23 this and do this effectively. The potential problems were  
24 important because we don't want to do something that  
25 undermines the great system. But by the same token we don't

1 want to stop before we ever got started.

2           There are at least four critical goals, it seems to  
3 me, that would come out of a process like this. First is  
4 elevating global standards, which is something I believe we  
5 should all want to do, and that will work to the advantage of  
6 American investors beyond anything that happens with mutual  
7 recognition.

8           Second, I think we want to work collaboratively  
9 instead of dictating what our conclusions are. Third, we  
10 want to provide all of our capital markets and the  
11 participants with all the incentives they need to elevate  
12 their own best practices as well as elevating regulations.  
13 And last but by no means least we want to make sure that we  
14 don't do anything to diminish investor protection as a  
15 result.

16           But I think, as the chairman's last question, sort  
17 of preface, the fact of the matter is there are no  
18 protections right now and we have a chance to impose a lot.  
19 I think we should judge what we wind up doing in that context  
20 based on what's actually happening as opposed to what we  
21 think may happen because we can do this in graduated steps.

22           I think we should only look at major issues. And  
23 finally I think it's very important as a reality check that  
24 we don't make the assumption that every rule we have on the  
25 books in the best that could be applied to the particular

1 process or transaction that's going.

2 Other countries may well have thought about better  
3 ways of doing the same thing and therefore we can learn and  
4 help investors in that way as well.

5 MR. KETCHUM: I think, as is always the case here, I  
6 agree with really virtually everything that both David and  
7 Harvey said. I don't want to reiterate all of them, but I do  
8 think a couple deserve it. Given the profound change from  
9 the standpoint of competitive positioning, the rest of the  
10 world and the United States, if the commission is going to  
11 maintain leadership both from a capital markets and  
12 regulation standpoint, the time to begin is now.

13 And to begin requires focusing on the very real  
14 questions of investor protection, relative competitive  
15 benefit one way or another and the overall impact on the U.S.  
16 regulatory scheme. You need to look at that and ask it with  
17 respect to each step you're taking, not be worried that there  
18 may be -- this may move you down to a point eventually where  
19 those questions may genuinely be called into question.

20 There are numerous steps that can be taken that  
21 would not risk the very significant realm of protection that  
22 commission investors can take. There are a variety of ways  
23 you can control that, mentioned here today from the  
24 standpoint of product, from the standpoint of providing  
25 access and ability to do things from a U.S. broker-dealer and

1 U.S. exchange standpoint.

2 I think the key thing here is to start and to  
3 evaluate each thing as to its impact individually and not  
4 over the potential that somehow sometime in the future it may  
5 all unravel. And with that I think the commission really can  
6 begin a process that will powerfully change the dialogue from  
7 a regulation standpoint not only here but also abroad.

8 MR. FERRELL: I also want to commend the commission  
9 for undertaking this dialogue and starting this process. I  
10 just want to say two quick things in summary. First of all,  
11 I think this is reflected in other comments as well, just to  
12 keep in mind or bear in mind that there's many ways to skin a  
13 cat, so different jurisdictions may rely on different mixes  
14 of regulations and market mechanisms to achieve the same  
15 outcomes, different mixes of ex-ante and ex-post, many  
16 different types of approaches that jurisdictions may have,  
17 and they may be equally effective in reaching the goal of  
18 having a high quality market.

19 The second thing is just that different  
20 jurisdictions might need different regulations. And so  
21 comparability cannot mean having in substance what the U.S.  
22 has on a number of different issues. That being said, my  
23 reading the empirical evidence on what affects firm value,  
24 what affects quality of markets is that a unifying theme  
25 that's important across all types of jurisdictions,



1 concentrated ownership or not, is disclosure. And that does  
2 seem to be an overarching, important regulatory tool.

3 MR. BELLER: I would -- I'll add my voice to  
4 commending the commission for doing this. Also I'd like to  
5 thank you for the opportunity to be here.

6 I do think globalization has happened. It  
7 continues. It's important for the commission to begin now,  
8 and I think by beginning now you really can take a leadership  
9 position in framing the global discussion and the global  
10 framework that investors will trade under.

11 I think the upside is very considerable. I do  
12 believe you can do this with appropriate protections so that  
13 the risks are not zero but the risks are manageable. And I  
14 actually think that this kind of an exercise -- the global  
15 markets tend to move to quality and not to -- I mean  
16 Ethiopis's article, not the one we've been focusing on but  
17 your other one talks about the march towards regulatory  
18 optimization. And doing this well I think can have that very  
19 salutary byproduct and it's another reason I would do it.  
20 And today is the day to start.

21 CHAIRMAN COX: Now is time to sum up. I think  
22 you've done a fabulous job of, at least for today, concluding  
23 what was a really enlightening presentation by all three  
24 panels. I think you can judge from the commissioners'  
25 interest in this and our active involvement that we too are

1 intensely focused.

2           Because we are looking toward potential action this  
3 year on this topic, this is very, very timely as well. So  
4 thank you once again for sharing your wisdom with us, and of  
5 course we hope we can call on you again.

6           And thanks especially to Erik and Ethiopis for  
7 being with us all day and doing a splendid job of MC'ing all  
8 of this and moderating it. And of course, to my fellow  
9 commissioners, thank you for -- it's hard for commissioners  
10 to remain silent this long, and so -- you know how interested  
11 we all are in learning. Thank you very much for your very  
12 high level participation and interest.

13           With that, we're concluded.

14           (Applause.)

15           (Whereupon, at 3:27 p.m., the roundtable was  
16 concluded.)

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