THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

UNOFFICIAL TRANSCRIPT OF ROUNDTABLE DISCUSSION ON
MUTUAL RECOGNITION

(Amended 7/25/07)

Tuesday, June 12, 2007
9:13 a.m.

SEC Headquarters
100 F Street, N.E.
Washington, D.C.

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

And financial firms of all types, broker-dealers,
stock exchanges and investment advisors regularly seek merger
partners abroad. But perhaps most significantly investors
too increasingly look abroad for investment opportunities.

Part of this I like to believe is the result of the SEC's own
success.

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

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

As a result of technology, globalization and
reduced trade barriers, most market participants today, exchanges, broker-dealers, issuers and investors alike, operate across borders. Those who commit securities fraud also operate internationally. I believe that how the Securities and Exchange Commission responds to this changing environment is among the great challenges the agency faces today.

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

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

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

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

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

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

With that, I'd like to turn it over to our

moderators for the first panel, Erik Sirri and John White.

PANEL ONE

MR. WHITE: Thank you, Ethiopis and good morning.

I'm John White, the director of the Division of Corporation
Finance, and I'm very pleased to welcome all of you here
today.

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

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

So thank you very much on behalf of the commission and on
behalf of the staff for making, I guess I would say, all of
this possible today.

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

A quick word about mechanics: Erik and I will be asking a number of questions of the panelists. We anticipate that the commissioners will have some questions as well. We have asked the panelists not to actually make any formal opening statements, but we do plan to provide, at the end of this panel -- to give you a couple of minutes to either sum up or offer whatever thoughts you would find useful to the
commission and the staff that you think we should go forward with after today. So you can anticipate that each of you will have two minutes or thereabouts at the end.

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

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

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

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

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

MR. BEPLER: Is this on? Yes, thank you. I'm not too technology sophisticated. I think if we had been able to
do this perhaps 30 years ago or 35 when Capital Research
first got into non-U.S. investing in a large way we might not
have trading rooms all over the world, we might have had them
in the United States. However at that time there was no
methodology for delivering the information to the U.S., so I
think there are advantages to having people on the scene in
these various markets who have had prior experience working
in those markets.

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

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

MR. SIRRI: Let me push you a bit further. Suppose
you had a large order, a million shares of some name that
trades in London. How do you actually go about executing
that trade today if you're located in Los Angeles? If the
trader was in Los Angeles who received the order how would
you buy those U.K. listed stocks?

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

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

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

MR. KELLY: We've been accessing the developed
markets directly with brokers execution management systems on
our desktops. We've been doing that probably for six or
seven years that we've -- not only we can access those markets electronically in Malvern, Pennsylvania, but we can also do that in Brussels and in Melbourne, Australia where we also have traders on the ground there.

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

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

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

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

MR. HOWELL: Yes, I just thought I'd add to that. I mean a broad estimate at the moment is that of the FTSE 100, the 100 major stocks in London, U.S. ownership is in excess
of 20 percent. And so we have a structure and regime now that is working with a degree of efficiency to enable to U.S. institutional buy-side to gain access.

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

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

MR. SIRRI: Roberta.

MS. KARMEL: If I could just add to that from the vantage point of the individual investor, the individual
investor can buy particular foreign securities as just
described, by going through two intermediaries, or can buy
those foreign securities through a mutual fund or some kind
of a derivative. All of these involve transaction costs for
the individual investor, which maybe can be justified in
terms of investor protection, but which are perhaps a
discouragement to individual investors from broadly investing
in foreign securities.

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

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

I think market forces have kind of pushed things in
a direction where for the very large institutional investor
it is not a problem. If you take smaller investment advisors
where the economics of having foreign offices and foreign
trading rooms do not make sense given the size of the assets
they manage, it would be a great advantage because there is
definitely a spread in the cost of an ADR, and there are
costs of maintaining the ADR too. Some are sponsored by the
companies, but many are not. And therefore you would
achieve -- would allow lower costs for investment managers
and for those few individuals who wanted to do it themselves
if there was direct access in the U.S.

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

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

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

In terms of transparency, clearly if you shift from
the sophisticated investor to the individual or small
investor I think the smaller investor clearly -- the American
investor clearly has a disadvantage because they don't have
access to the information about the products that are
available on the other side of the pond.

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

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

One of the largest costs of an international trade
is custodial costs and settlement, and it's not having an
extra broker-dealer in the hop in that trading. Can the
competition of changes to the regulation where foreign
broker-dealers are recognized in the U.S. reduce the cost of 
settlement and affect settlement and custodial costs?

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

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

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

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

You're right, institutions already have this 
access. It's well worn. The path is very effective for 
them. But that's not global trading. If you look at, today, 
the issuance by foreign issuers, since 1986, 84 percent of 
those deals have had a 144A component. So the non-U.S. 
issuers are already accessing U.S. shareholders at the QIB
level or the most sophisticated investors, the institution is
already trading, and that really isn't a framework for
globalizing the markets with the SEC in a leadership
position.

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

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

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

If the registration statements are predicated on
two things, disclosure and accounting standards, you've gone
so far if that's where you're headed in allowing some mutual recognition of registration statements. If you can get there, then companies can hopefully list here as well as trade here. And so if you do that and then open up the screens to all investors and do that on a global basis, then U.S. investors will be able to trade on their time zone.

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

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

MR. SIRRI: Well, 144A, Capital Research, Vanguard, all very -- marks of QIBs or higher, so to speak, very sophisticated folks. I want to return to Roberta's point about the retail investors. Should we lump them together in
terms of the costs and benefits that we're citing for
increased access? Should we just say, well, what's good for
the institutional investor is good for the retail as well or
should there be special considerations paid when it comes to
foreign exchanges doing business in this country with regard
to retail investors?

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

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

It seems to me something like that would be a better incremental step than trying to differentiate between
institutional and retail investors. I think the real
benefits here may be for the smaller institutions and the
retail investors of the SEC goes forward with this proposal.

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

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

That will in turn reduce costs, improve products
and improve client service. And I think very importantly
that as a degree of momentum builds up with -- and I know
it's a matter for subsequent debate in a later panel, perhaps
increasing the element of solicitation, the element of
research that is available for private client investors, and
in turn that will lead to education and much better risk
management for those private clients.

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

investors.

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

MR. SIRRI: Commissioner Campos.

MR. CAMPOS: I find the remarks very interesting
about retail investors versus institutional and I wonder
whether anybody on the panel worries that if we go right in
and don't make a distinction between QIBs and retail
investors whether there aren't some inherent issues of
protection, dangers to retail investors, the fact they're not
generated. And if things go badly -- we have our garden
variety frauds and nothing to do with any particular
jurisdiction, it's just what occurs in life -- is there more
of a problem for us in that we've opened it up to retail
investors who then could go -- I'm giving you a couple
hypotheticals here, who then could possibly seek some type of
U.S. protection leading to perhaps a U.S. exertion of
jurisdiction, which we can't necessarily control?

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

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

So when we talk about similar regulator regimes
abroad, I think when it comes to retail they actually have to
be identical, not just similar; similar may not be enough.

So when it comes to disclosure requirements, issuer
registration, accounting standards, they need to be
identical. You need to have the same transparency that has
protected the retail investor here in the U.S. abroad in
order to have retail access quotes --

MR. CAMPOS: That makes it more difficult to have
the mutually recognized regime, doesn't it? You know,
because our comparability then, you're reducing the zone essentially of what is converged.

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

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

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

Number two, I think that if retail investors today are going to those markets, Commissioner, I think that the notion that they will be able to trade in markets where you have a regulatory framework where you, the SEC have satisfied
yourself there's some comparability, I think that allowing those investors to trade in reasonably liquid markets in their home country would be a plus to the competitive environment, and I think they would actually be perhaps more protected than they are today where they're going without the recognition protection that the SEC might be able to provide in a comparability framework.

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

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

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

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

MR. WHITE: Roberta.

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

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

I mean investors who invested in foreign securities
over the past five years probably did much better than
investors that invested only in U.S. securities. And who
knows what the next five years will be or the next ten years,
but it seems to me that the SEC should be encouraging
diversification by retail investors instead of discouraging
it.
At the same time, yes, the SEC is in the investor protection business. That's very important. The SEC could be criticized if this mutual recognition regime leads to a debacle. But our standards that we think are better than standards elsewhere really did not lead to a system where investors were all protected in the late 1990s here with our own U.S. companies, so I think we have to be more tolerant of other regimes.

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

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

MR. CONCANNON: Well, just to clarify my position on mutual recognition, I actually support what the commission has been doing. In terms of retail investors I don't think we can treat them like institutional investors in anything we
do in this area. We've never treated retail as institutional
investors throughout the framework of our securities law. So
I agree with Cathy actually, even though she doesn't agree
with me.

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

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

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

And that was Cathy's point earlier. Continue with
that progress, the private sector will follow.
I think the nirvana of international trading for me is what I call the global registration and the global share where you have an issuer register in multi-jurisdictions and their shares are available in the depositories of multi-jurisdiction. So I can open a position in London at the beginning of the London trading day and close that position in the U.S. at the end of the U.S. trading day.

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

MR. WHITE: Roberta.

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

I also think that as the SEC goes forward with this concept that it should look at how information by foreign issuers gets out into the marketplace. I think that one of the developments that the SEC embarked upon that has great
benefits for the retail investor is the Edgar system. I mean
anybody on a home computer can get information that has been
put into the SEC disclosure system.

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

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

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

So I think that once you -- I mean the markets have
proven, once you broaden, and even we can see it with issuers
that are listed in both markets, are dually listed, I think
that there is clearly a research component that goes along
with it that would provide more information, more access to
retail investors. So I think they will get what they need.
I think the marketplace will ensure that and the
investors will be able to follow the information more
closely.

MR. WHITE: Sandy.

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

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

They have single regulation. We have bifurcated
regulation. Not only do we have bifurcated regulation, we
have totally different philosophical bases to our regulation.
We, in this building, you follow the '34 Act, which means
that the ability to introduce new products go through a very sophisticated and cumbersome process that puts us at really competitive disadvantages in a lot of ways.

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

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

MR. WHITE: Jonathan.

MR. HOWELL: Yes, if I could just endorse everything that everyone has said, I think. Accounting and auditing standards, there is convergence. There's oversight of auditors coming in place. All of the major European regimes have full disclosure requirements and process of information, various results reporting regimes which are very similar in
style and content and form that one sees in the U.S.

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

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

   I think the real challenge for the commission and
others is to be able to embrace these types of aspects but be
able to draw the line between those regimes and those aspects
that they feel are able to meet mutual recognition and those
that perhaps may fall outside of that line which the
commission will have to draw. And I think that's going to be
interesting and a challenging element.
MR. SIRRI: Jonathan, you raised an interesting point. Last year the staff of the SEC got together and we compared two rule books. We took the rule book of one well known U.S. exchange and we compared it to the rule book of one well known non-U.S. exchange. And when we did that, I think we were somewhat struck by the differences when you really get down to the kind of comparisons there were.

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

MS. KINNEY: Well, I would argue you have to have a consistent framework of listing standards that, again, the SEC and the regulators with whom they're working are compatible. They don't have to be exact but they have to be compatible. I would say within the trading environment the one thing I suggest to the SEC is that I think as we go into this environment where there are differences that as the exchanges need to compete in that environment we would need
cooperation from the SEC to facilitate and move more quickly on rule filings that will keep the U.S. markets competitive from a trading perspective.

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

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

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

The real challenge will be for the regulators to
establish a process and mechanism and relationship which enables a mutual recognition, a mutual supervision, a mutual review of each other's not only principal standards but also the rules.

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

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

MR. SIRRI: But that could be a difficult exercise, so let me give you a specific example, Reg NMS. So here's a
rule that came in, without getting into the details of it, provides for protection of orders when they exist in multiple exchanges. A different country's regulatory system with regard to trading could very well have a system where a central market maker perhaps may have parity with customer orders or priority conceivably, depending on how things work. A retail investor wouldn't really have a basis for knowing that. I suspect sophisticated institutional would, but a lot of retail investors wouldn't know that, and that may be a custom that's in that particular country, a custom, and it may work very well there. Should we be concerned with that difference and the degree to which people understand that difference when we approach this mutual recognition question?

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

If the answer to that is yes, then there needs to be further examination of what those differences are and to what extent they can be bridged. If the answer is no, it's
not a fundamental material difference in the way that the
investor or user of the market is being treated, well, then
it's just a matter of making sure that there is complete
transparency and understanding about how that market works
and what the responsibilities are for the broker dealer or
the intermediary to ensure that the customers or the clients
who are using that particular market understand the terms,
understand the processes and understand what their
protections are.

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

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

MR. CONCANNON: I think that -- I agree, best
execution has to be reviewed whenever you're looking at that.
I think the exercise is actually important. You do have to look at the details. But again, do they have to be identical? If you come across a market that provides trading ahead, for example, as an acceptable practice, I don't think that's appropriate for retail investor orders because they'll never -- it will never be disclosed clearly enough that that practice is permitted.

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

MR. FRUCHER: I mean, Erik, with all due respect, we haven't fully implemented Reg NMS yet, and so I know it's a new religion but the fact is that our system has long functioned in other ways. I mean Cathy and her colleagues at the New York Stock Exchange have now finally embraced competition and now we're making it global, and I congratulate them for doing that. But foreign markets still function the way the old New
York Stock Exchange used to function. Most foreign markets are monopolies. There isn't much competition in those market places in terms of inter-market competition with linkage systems because there's nothing to link to. But in fact I think that by exposing the American investor in a broader way to foreign markets to start to export some of our dollars I think will lead to competition and possibly the creation of alternative markets, which I think is a good thing from a global perspective.

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

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

You know, it's not hard to imagine a world where, if this comes to pass and these foreign screens, which have very different rules, land here in one form or another in the United States, that your interaction as SROs with us changes. And in fact I can imagine a world where what you ask of us is
contingent on what those other screens are doing because you'll be competing with them on a business basis.

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

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

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

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

I mean the issue isn't between us and Europe. In some cases it's between us and Chicago. I mean you know how long it has taken us on the cash side of the market to try to get currency products because of definitional issues between
whether or not it's a security or whether or not it's a future.

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

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

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

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

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

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

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

MS. KINNEY: I think that my short list would be -- I think we should go forward with mutual recognition of
registration statements so that if a non-U.S. issuer would like to sell its securities to U.S. investors they should be permitted to do so with a listing in our markets as opposed to a 144A private placement. That would be number one.

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

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

And I guess what we'll be asking you to do is, and this really falls more to Erik, is that when we put a rule filing down to be able to compete with London when they have their screens in the U.S. and they're trading U.K. securities that we'd also like to have listed here and will list here I hope, that it doesn't take a year or longer to get that approved and that we have -- that you have in your mind some understanding of the international global trading framework that you're prepared to operate under for people coming in your direction. And then I would say to the other side that
you extract from the other regimes reciprocity in terms of our taking our screens to their environment so that we can compete for our issuers in the U.S. with investors in their markets on their hours and their currencies.

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

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

MS. KINNEY: We do. WE do.

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

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

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

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

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

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

MR. CONCANNON: I think there are a number of factors that are allowing capital formation away from the U.S. among global issuers. The markets are getting better internationally. There are more shareholder protections
being developed in what we used to refer to as developing
nations and our institutional investors are more comfortable
investing abroad in local markets than they were
historically.

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

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

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

When I look at my customer's margin, they study
their margin internationally and they find that their margin
is much more attractive in London than here in the U.S. And
when they're influencing offerings they do consider their
margin when they're consulting issuers on where they should
register and where they should issue shares.

MR. WHITE: Jonathan.

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

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

So I think at the margins what we're looking at
here is not something that will fundamentally change the
decision to list. I think on the broader point about
development of overseas markets outside of the U.S., I mean
the U.S. capital markets are operating very strongly in
London now.
You know, all of the major broker-dealers all of
the sell side, major components of the sell side, the hedge
fund community and the private equity as well have very, very
established long-term strong operations in London and the
rest of Europe. And I think, yes, that's something that the
commission and everybody here needs to focus on, but gosh,
you know, we need to just look in Asia as well. Those are
where the major pools of capital are going to be going
forward and where major exchanges are emerging. So don't
just focus on Europe. I think there's a much, much bigger
set of issues and development of capital markets that are
going to take place further east.

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

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

MR. FRUCHER: Well, I will concede.
MR. WHITE: I'm glad you directed this to Erik.

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

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

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

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

MR. SIRRI: You know, you put your finger on some of the constraints. There's legislation. There's principles in that legislation. So one example might be something that said that a market maker would only trade when
it's -- necessary to do so. That may not be the case in foreign markets. It may be otherwise. And I think you all know that as exchanges -- as the trading landscape has been evolving today because of electronic communications systems, because of ATSs, because of dark pools, because of ECNs, you all have been coming to us and asking for various kinds of relief as your competitive landscape changes.

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

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

MS. NAZARETH: Sandy, you raised a lot of interesting points obviously, and you and I have talked about some of these things before. You know, it seems to me that this would have to be a collaborative effort because you're the folks who are running up against all the problems in product development and produce formation because of issues
over, you know, what law applies, what jurisdiction does each
of the agencies have; is it a security; is it a future, you
know.

I think Chris talked about margining issues.
Obviously a lot of the margining issues now are again bumping
up against, you know, can we do portfolio margining, can
futures be in the securities account. All of these issues
are affecting your ability to compete internationally. It's
sort of the flip side of what we've been talking about here,
can foreign screens be put in the U.S. Your concern is,
okay, they come here and we are still not able to compete as
seamlessly as they are because of historical anomalies in our
own regime, and I think that's as critical an issue as any
that's been raised today.
And I do think that certainly we have opinions on
what the challenges have been but I think that the market
participants are sort of uniquely positioned to also add to
that dialogue and that debate so that we can figure out at
least what the issues are and what the questions are so we
can then ask for some relief or some clarity from Congress,
because I do think when you talk about the competitive issues
that these markets are facing, those are very significant
ones.
I don't think they're as widely understood as they
are perhaps with the people on this panel, but they're going
to have a very big impact on your ability to compete, particularly as we engage in more cross-border trading.

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

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

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

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

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

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

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

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

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

And that's kind of not answering your question very
well, but I think it's a more complicated issue than just saying everybody should have quarterly reporting. There are some good arguments against quarterly reporting too.

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

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

Have you thought about it from that perspective?

MR. CONCANNON: I'll take a stab and start.
Certainly from the issuer perspective, giving access to foreign issuers, giving them access to our retail investors here in the U.S., you certainly need -- it's the registration, it's the transparency associated with that registration of what that issuer does as a business and the disclosures requirements, the AK process are critical to the transparency of that issuer's business and to the retail investor.

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

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

MR. SIRRI: Duane and Steve, you are in essence the customers of the four folks on your right. Is there anything that you've heard since we started off over the last hour or
so that has -- have you had any thoughts, anything to change your views, because I think the way I would characterize your initial views was that we have terrific access as institutional investors. It can be better. It could perhaps be even better, maybe even more important for the mid-size or small advisors. Their access is pretty good so far. Is there anything -- do you have any thoughts given what you've heard your exchange folks say?

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

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

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

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

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

MR. WHITE: Roberta.

MS. KARMEL: I'd like to go back to Annette's
question, because I think it's really a very good question.
I've been sitting here thinking, all right, what is it
important in our system that we need to preserve, and I think
what's critical is protection against fraud, and we really haven't been talking about that today. We've been talking about particular disclosure kinds of items, accounting systems, market structure issues.

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

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

MS. KINNEY: I've also been thinking about Annette's question because it is a really important one. And I think that you're challenging us to think about two sides of this. One is the exchange's own rules because we clearly I think do a good job on setting listing standards for the companies
with independence and lots of disclosures about the company's operation and a variety of things.

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

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

So that's the kind of question that I think we all need to go in and think about and come back and give you a really thorough answer. But it falls both to the exchange side, I'll just take our own, but to the SEC too and what is it that we really think is vital. But I would also say I agree with Roberta's comments that I know we wouldn't be doing a line by line but more in the broad context of what are the things we really care a lot about in terms of the kinds of markets we run as well as the kind of issuers that
MR. CAMPOS: As soon as Roberta said "protection against fraud" the obvious thought was what does it mean about enforcement, and Kathy picked up on that. And indeed that's one of the things that we're constantly being -- my speeches overseas and all the commissioners were constantly being asked to compare our system of enforcement versus others. And of course, you know, there's lots of reasons we -- much of our enforcement is for the retail market and to keep the retail investors in the game, as it were.

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

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

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

MR. CAMPOS: The abolition.

MR. FRUCHER: Even the Constitution has amendments.

So the point is the world has changed. You don't have open outcry. You have machines that go cross border now.

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

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

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

MR. FRUCHER: Well, first of all, I think enforcement is a function -- first and foremost it's a function of dialogue and negotiation. I mean you have to get on some common playing field and reach common understandings of how you are going to enforce, and that's not a unitary or
a solitary matter. We can't do this in this room or in this building or in this city by ourselves.

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

MR. FRUCHER: I'm sorry?

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

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

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

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

MR. CAMPOS: Should we negotiate the sanctions, Sandy, in terms of this, how we sanction somebody in Europe
and how we sanction somebody in the U.S.?

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

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

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

MS. KARMEL: These are very difficult problems. I
think it's going to be a real challenge for the SEC to move
ahead to a selective mutual recognition regime, but it should
be done because I don't think it's healthy for our markets or
actually fair to retail investors to have -- people are
saying 84 percent of the IPO deals in private placements that
retail investors can't access.
And I think too often when the SEC has confronted difficult issues like this it simply exempted various segments of the market for the benefit of institutional investors. And I don't think that's what should be done here. I think the SEC should confront these problems head on and come up with a regime that includes the ability of individual investors as well as institutional investors to more easily access foreign securities for investment.

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

I think, as we've all said, I think the differentiation between institutional and private client access is very important. But perhaps over the medium to longer term there is more to be gained ultimately for private funds, given that the institutions are already effectively doing this. So therefore I'd advocate that there's a staged, graduated, carefully measured approach to this, which gives
opportunities to make sure all the right checks and balances
are in place.

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

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

That jurisdiction is in, that jurisdiction is out.
And I think that's going to make it very, very difficult to
progress this at a sensible pace whilst achieving all of the
objectives. So therefore a lot of perseverance and intent
will be required and there will be lots of reasons why it's
too difficult, I'm sure.
But I think there is quite a good prize here to be achieved, and I think ultimately it will lead to convergence around the world. And I think importantly that will mean that those jurisdictions, those exchanges, those issuance regimes that are willing and able to meet the challenge that the commission sets out, those participants in the U.S. markets and those participants in those regimes that are willing to assist and go along with this process, they'll be a prize for those who operate in those markets.

MR. WHITE: Sandy.

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

We are living in a world that's galloping towards globalization. I as an American am proud of the fact that our markets are leading the way in that globalization and that couldn't be possible without the fact that the commission, in record-breaking time, has changed and modified how we have done business to allow for that kind of serious paradigm change, for it to be accomplished. And I think the commission should be quite proud, and we are proud of the commission.
I just -- this is one of a serious, of a number of questions that have to be looked at and they have to be looked at expeditiously. The world is moving too fast for business as usual, and I'm confident that the commission will, in fact, be a leader as opposed to an anchor in this transformation.

MR. WHITE: Chris.

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

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

But I applaud what the commission is doing. I think we benefit as U.S. investors, we benefit as issuers.
So I applaud and really think we should move first with registration harmonization of issuer -- issuer obligation is the area of focus, and everything flows from that.

MR. WHITE: Cathy.

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

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

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

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

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

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

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

MR. WHITE: Duane.

MR. KELLY: I guess I'll make my last comment.

Along the lines of the individual or retail investor, Vanguard ultimately has millions and millions of individual shareholders that are investing with us. It sounds like, based on the discussion, that the individual or retail investor is going to come along right away. I think things need to be opened up. It needs to be more competitive to bring down the expense to the retail investor to access international companies.

Because Vanguard has some experience with individual shareholders and I've been around long enough to kind of be exposed to some of that, I think it's vital
to -- as things are opened up and the individual investor is
brought in, that it goes smoothly, it's successful. And I
think, along those lines, it's understanding what their
expectations are, and that along the lines of what we
discussed, disclosure, financial statements, all those types
of things, and then as you open it up and decide who comes
in, that the standards be very high and they make sense and
are fair, and that, over time, the exchanges or countries
that are left out will have a desire to improve their
capabilities in this area and come in, reach those standards
and come in.

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

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

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

Disclosure, there was absolutely no disclosure when
I started doing this 35 years ago. And now we don't
necessarily have the same level of disclosure outside the
U.S. that we do in the U.S., in some cases it's actually more
full, but we have enough. And so I don't think there's much
point in arguing about relatively minor issues that may have
been very important at a point in history but aren't really
important to full time investors now. And I would put
quarterly reports in that thing.

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

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

So I mean look at what has worked and recognize
that everyone will have to compromise on this. And not all
of these rules we've gotten used to are really crucial to
fairness for the individual investor.

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

Thank you.

(Break.)

PANEL TWO

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

For this panel we're pleased to welcome again a
group of distinguished panelists. We have, starting on the
right, Harold Evensky, who is the president of Evensky &
Katz. Next to him is Ed Greene for Citigroup. Next to him
is David Grayson, the managing director of Auerbach Grayson &
Company. Next to him is Chris Amato, the director of
international marketing at E*Trade. Next to him is James
Allen, the chairman and CEO of Hilliard Lyons, and at the far
day of the panel is David Aufhauser, the managing director of
the UBS and the general counsel of the investment bank and a
member of the group managing board.
All right. This panel is scheduled to run from now until 1 p.m., at which point we'll begin our final panel on defining and measuring the comparability of regulatory regimes. But for the next hour and 45 minutes we'll focus on broker-dealer access. We anticipate that they'll be questions from commissioners. They'll be jumping in; we may be jumping in, and I want to encourage you as panelists to feel free to signal to us that you want to enter the discussion at any time. So we'd like to keep it, as with the first panel, as a dialogue.

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

MR. AUFHAUSER: Well, it's kind of a clunky process if it's done out of the U.S. And I think those that fall within the functional definition of an institutional investor, which is basically above $100 million, frequently do it also through their foreign offices. A lot of my competitors -- our competitors also have sort of dual-hatted broker-dealer licensed people in places like London and the like.
We chose not to do that. That has some tax and some SRO, supervisory and regulatory implications that are think are too complex for us to deal with. But basically though the foreign offices directly or through following and going through the many hurdles to talk to somebody here in the U.S., which -- I know the previous panel, the two institutional purchasers said that on balance they thought that the proposal here for substitute compliance or mutual recognition probably offered them modest gains that they've already adjusted to the regulatory regime.

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

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

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

Somewhere between eight and nine percent of our client assets now are in foreign investments of some form,
about two-thirds mutual fund and ADRs and then direct investments, with ADRs being the dominant portion of that balance.

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

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

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

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

MR. GRAYSON: First of all, our only business, I guess, unlike the other panelists, Erik, our only business is
the sale of foreign stocks to major U.S. institutions. We don't deal in U.S. securities. It's a very tiny part of our business.

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

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

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

And all of our local brokers operate under 15(a)(6), operate under our regulatory umbrella. We do tremendous due diligence on the local brokers. Either myself or my partner visits every one of the brokers. We check on their financials. We visit the local SEC, the local exchanges. We check with their peers. So we do a lot of diligence on the local broker.
MR. SIRRI: You know, one of the things that we're discussing is changing, making it easier for foreign broker-dealers to deal directly with U.S. institutional investors, and your firm sits right in the middle of that. For anyone in the panel, in a world where that contact becomes easier, where the U.S. broker dealer is not such a key part of that process perhaps may be removed directly. How should we think about that issue? Is that something that we should -- are there any concerns that are raised, sticking with the institutional investors, just for the moment?

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

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

So what is the best way to allow people to go forward? I think with respect to institutional investors, they are particularly sophisticated. I would have two requirements I think if we were to go forward. One is that there be an effective MOU in place between you and the
jurisdiction which the broker-dealers were acting from.

Secondly, probably have some level of experience with respect
to the institutional investor.

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

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

And I don't think that's going to be particularly
controversial with respect to the kind of access you want.
Another way you might also think about it is limit it to the
types of securities you would have. For example, I view that
well known seasoned issuers, as you defined it under the '33
Act, those companies are pretty well disciplined by the
market, have comparable disclosure to U.S. companies, and so
you might have that as a criteria as well. Because the
market will discipline, that disclosure is going to be
adequate.

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

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

MR. AUFHAUSER: I was just going to say the only
thing that's really forfeited is the added cost of having an
intermediary. I think otherwise they will have the same
level of immediate access, the universe of products, direct
talk and, if you will, perfect market information to the extent it's available directly from the source without the need for any kind of choreography of chaperoning or anything like that.

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

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

If you look at our broker-dealer regulatory regime it is obviously overwhelmingly tipped towards investor protections, sales practice rules and the like. So I guess it would be helpful for me if you would address how we would
go about satisfying ourselves that those same standards were going to be applied universally if we let foreign brokers with whom we have basically no oversight role -- how we are going to make ourselves comfortable that we're going to satisfy what is probably our primary obligation, which is investor protection.

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

And they have always been treated with -- buyer beware. They can reach around the world. They like to participate in a certain country. They have their teams of analysts and people and staff and lawyers who are assessing whatever those economic risks are due to them, whether it's a political risk involved in investing in certain countries whereas the retail client does not have this behind them, they don't have teams of staff and members and whatnot, and to reach around the world and expect them to be protected, that is part of why going through a U.S. broker-dealer is advantageous to them for that protection purpose.
There is nothing that stops U.S. retail from reaching around the world right now. My firm happens to allow them direct access into six different markets around the world. You'd like to wake up at 2:00 in the morning and place a trade into the U.K., we will help facilitate that.

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

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

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

But at the same time the customer benefits from being under the protection of civil and different regulatory
rules that are here so that if they were able to actually
just hand their assets over overseas, what do we do then?
You know, who's going to stand up and fight for them if that
broker-dealer goes under, there's fraud involved?
The FSA this morning turned around and stated they
did not have the regulatory tools that you do to chase down
trading ahead. They've had, they believe a quarter, 25
percent of all buyouts have experienced trading ahead. And
they stated that in an article this morning, an insider did,
and they don't even have the tools that you do.
MR. TAFARA: As Erik indicated, the thought is to
provide more direct access from foreign brokers to U.S.
investors on the basis of looking at the regime that applies
to that foreign broker to determine whether or not its
comparable.
The question I would have is should we be doing
that at all and in terms of comparability, what should we be
focusing on? To restate the question I think Commissioner
Nazareth asked in the earlier panel, what is it about our
regulatory regime we care about enough such that there would
have to be comparability in that area? And the next question
would be, is it different whether you're talking about
institutional investors or retail investors.
MR. GREENE: Going back to Commissioner Nazareth's
comment about retail investors and trying to answer your
question at the same time, I think that the SEC -- you're
talking about having oversight into foreign brokers, but your
MOU is with foreign stock exchanges. So just like there are
unscrupulous members of the New York Stock Exchange there are
unscrupulous members of the Borsa Italiano or any other stock
exchange in the world.

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

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

The other point I want to make is that most global
firms offer their clients direct execution or execution in
foreign markets. When you get into it you find that the
global brokers, the U.S.-based global brokers are actually
limiting execution to a handful of European markets and maybe
some major Asian ones. And the reason they don't go beyond
that is because the cost of execution and the cost of
settlement and the cost of custody for a retail-sized
transaction makes no sense.

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

MR. SIRRI: David.

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

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

I mean one of the predicates already is they have to subject themselves to service of process and to the
jurisdiction of the U.S. courts. So certainly for private
litigation and presumably for sovereign litigation by the SEC
they're perfectly subject to the long arm of the law and the
long arm of recovery.

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

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

I think what I would suggest that one do is to
focus on what David suggested. Why don't we identify two or
three key markets where there's active trading? I would
suggest Tokyo, London -- and basically there review what
types of enforcement powers are in place in terms of
cooperation between regulators.
Third, we have the consent to service a jurisdiction, and fourth, let's start with broker-dealers of a certain size that we are satisfied have adequate capital, adequate internal policies with respect to managing conflicts, and we would basically hold them responsible with respect to how they execute trades, with respect to U.S. investors.

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

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

MR. EVENSKY: Yes, I deal in "the retail world." I mean that's what I live in every day with individual investors. I would agree that, as a generic cutoff, $100 million and below is probably retail. That can be subdivided into a lot of other subcategories, but very broadly I'd suggest that general retail may be under a million dollar
investable net worth; what I would call the wealthy, between one and twenty, fifty; and then over that would be the private family office.

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

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

There are certainly other instances in which reduction in cost does not get passed on to the retail world. It was suggested that the transaction cost maybe was discouraging retail investors from international investing. I'm aware of no research that indicates that. There is a concept in behavioral economics, home country bias, and I believe that absolutely is what drives the lack of
investment, the relative lack in international investments. The fact of the matter is it is substantial, just under 15 percent of the mutual fund equity market today is in international. About 30 percent of ETFs are, and in new issues last year about 40 percent. So there is a growing interest. There is absolutely access to the international markets for the general retail audience.

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

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

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

MR. EVENSKY: If we were to use that specific of an investment, which is not something we're likely to do, we would probably look today through specialized funds or ETFs. Certainly we are aware of the availability through our
custodians, whether it's an E*Trade or Fidelity or Schwab.
And we do have on rare occasion a client that may ask it and
we will set that up, but that is by far the exception to the
rule.

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

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

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

So the question is, do you think that your
investors are denied access to participate in a variety of
offerings that are going forth globally because they are
forced to buy that in the secondary market?

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

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

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

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

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

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

I think the fastest way though if you want to look at cost reduction, it's not having competition. My competition versus us versus the rest of the international players here, we face a very expensive custodial relationships and clearing relationships around the world. There is no central clearing agency for most of these places, so that cost has to be assumed somewhere,
either by ourselves or by the retail investor or spread, diversified across many investors. And that is done when the ETFs, the U.S. retail accesses those able to participate from the institutions in their mutual fund, their no-load funds, their ETFs, whatever. They get to ride the coattails of the institutional clearinghouse, so they actually get cheaper access to the foreign markets.

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

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

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

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

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

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

MR. GREENE: And I don't know that mutual recognition -- unfortunately -- I think that is the key issue in terms of cross border training. I'm not sure what mutual recognition gets you, but it seems to me that we're going to
have to hope that market forces who consolidate exchanges will lead to less costly clearing and settling. But that is clearly the case, especially in Europe where it's much more expensive than the U.S. And even if we basically kept the mutual recognition of foreign access, we're not going to address the problem that he highlighted and we need to see if there's some alternatives that we can think about.

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

MR. AMATO: What we've done and we're still refining is not a finished, completely finished product, but we are trying -- the experience is one that -- unfortunately all the different places around the world use different symbology for their things. If you're reaching into Japan it's a numeric code that represents the stock you'd like to buy versus here in the states we actually have a five-letter symbol that represents that stock for the over counter trade, and then you could have -- so if you reached out, instead of to place that New York trade. You're very used to saying "I want to buy IBM," but if you wanted to go overseas and buy a large
corporation over there in Japan, you're going to dial 6009, I want to buy 6009 in Japan. And that experience is a little different. And then you've got pricing differentiations. For the retail client, it's an education for them. They really don't understand that quotes in British pounds -- they don't represent the decimal in the quote. So they see 1745 and they're thinking, what does that represent; 1,745 British pounds per share? No, it's 17.45 British pounds per share. But it's an assumed thing. So when the retail were to see these screens there's an education process that needs to go into effect here to say "this is what this means; this is what -- you know, that experience." We try to make it as real as possible to them, but at the same time it's a completely different experience.

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

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

MR. AMATO: Local currency. We do have both
available to the client. If they'd like to trade in dollars we have a system for that. If they'd like to trade in local currency, be it yen, Hong Kong dollars, British pounds, we allow that as well. We allow the trade to go through and settle, and it represents to the client in the local currency currently.

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

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

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

Right now we have, as I described earlier, this clunky system which basically bars, without a chaperone or otherwise, a direct conversation with a broker-dealer abroad
who may have been following the stock in question that investor may want.

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

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

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

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

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

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

And it strikes me that, at least on the institutional side, if the 15(a)(6) is awkward, doesn't provide much benefits, then we should provide direct access. And the question is, with these various services we might be a bit more liberal in terms of people coming into the country presenting ideas, depending upon if it's an M&A transaction or just an overview with respect to investing in a foreign country as opposed to soliciting an actual trade. But I think we need to modify dramatically 15(a)(6) and open it up to a wider group of investors beyond the limited ones that are eligible today.

MR. GRAYSON: I agree with David's characterization that the rule can be clunky. I think it's clunky if you are a global broker like UBS or Citibank or Goldman Sachs or
Merrill Lynch and you have affiliates overseas and they want to come in and they're subject to the chaperoning rule or any of the other parts of 15(a)(6).

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

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

So on one hand I think that the rule has to be opened up and there has to be flexibility. On the other hand I think that there has to be greater supervision with regard
to independent or local broker-dealers.

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

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

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

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

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

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

MR. ALLEN: Well, we break down our client base in very much the way, I think it was Harold who described a customer base of the mass affluent being $100,000 to $1
million and then affluent being $1 million to $5 million and then high net worth beyond that. And the sweet spot for us is in the mass affluent area, so investors who fall below that million dollar threshold, although we have clients in all of those categories. And the mutual fund concept for that investor group makes tremendous sense because of course it gives you adequate diversification within a particular investment.

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

MR. TAFARA: Going back to the solicitation issue and staying in the institutional investor space, one of the ideas that was bandied about is allowing foreign
broker-dealers to access U.S. institutional investors but only with respect to foreign securities in the interest of trying to address some of the competitive issues.

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

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

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

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

So to a retail investor in the United States, that makes it sort of easy to buy those. For foreign
broker-dealers, there's no problem with foreign
broker-dealers coming into the United States so long as they
are regulated somehow or some point.

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

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

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

So it's really not an informational issue. It's
more of a -- it is a regulatory issue, and it has to do with
monitoring the local brokers or giving some oversight to
protect institutional investors in the United States.
I'm not sure if I answered your question.

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

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

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

MR. EVENSKY: In terms of dropping it down, there were comments that if this were to happen that U.S. standards would evolve that would encourage foreign changes. And the example discussed was the reports, quarterly, semiannually,
annually. I would be concerned about my clients in the retail markets being guinea pigs during this evolutionary period.

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

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

So if you do away with 15(a)(6) or parts of 15(a)(6) and you permit local foreign brokers, foreign brokers to freely come to the United States without any kind of regulatory oversight, then I think 144A goes out the window too, because if they're not going to subject themselves to U.S. regulation, they're certainly not going to care about 144A.
MR. GREENE: I find that odd because the issuer doesn't subject itself at all and the issuer is the one that's preparing the disclosure document. You want the broker to be held to a higher standard with respect to an issuer documentation? I think that market works very, very efficiently. And the point is there's more and more consensus that the wholesale market, which this is, ought to be much less regulated and we ought to move toward harmonization if we can.

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

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

If we go back to the first principles, why are we here, is to discuss what opportunity is there for greater access for U.S. investor base to foreign securities and how
can we do that so that their decisions are made in an informed way without being fooled unfairly, and if fooled unfairly can we reach the guys who fool them?

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

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

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

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

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

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

There are very sophisticated investors who can, I think -- would be prepared to go to markets today knowing what the risk would be. But that's going to be the trade off. And we can't take it all the way down I don't think, but I think we can move it a bit further.
MR. SIRRI: Disclosure has its benefits, but I guess what I'm asking is will we be comfortable in a disclosure world. Disclosing away basically the protections that are typically in place when you deal with a U.S. broker-dealer, is that a direction we want to go?

Jim, you were going to --

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

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

MR. ALLEN: I think you should move up the spectrum there. And you get into the $5 to $10 million space, your problem gets reduced to some extent and you mitigate some of those issues. But even there I think you're going to have some real problems. So I just -- unregistered securities, unregistered broker-dealers with added disclosure doesn't get
MR. TAFARA: I'd like to ask the question slightly differently, getting back to the protections that are available through a U.S.-registered broker-dealer. I mean as David Aufhauser keeps reminding us, what we're saying is we'd like to see what similar protections are available by virtue of the regulation of a foreign broker-dealer. So the question I would ask is what protections do you think are important, we should be looking for in analyzing a foreign regime and determining that its comparable to what we have here.

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

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

MR. GRAYSON: I'd like to ask the question again.
So you have an MOU with a foreign stock exchange and you have a broker underneath there and they're soliciting retail transactions in the United States, the retail client has a problem with that foreign broker-dealer, what happens, what's his remedy?

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

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

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

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

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

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

Harold.

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

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

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

MR. GREENE: Well, but these investors are investing around the world today and they're investing through
mechanisms that don't -- the question is, if we want to have
the process a bit more accessible, what should we do to give
them more protections than they currently have today if they
basically decide to invest on a global basis.

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

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

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

MR. AUFHAUSER: I readily concede that if you
conclude that a foreign broker-dealer can act with impunity
here then we shouldn't be having this discussion. And I
I don't want to sound naive, but I don't think that's the case.

I think what I've already outlined previously in terms of enforcement powers and subjecting themselves to jurisdiction allied with the review that the commission is going to make of the very broker-dealer who is asking to do this.

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

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

I mean we're going to have the fundamental anti-fraud provisions of American law. They're always going to apply. If someone has got a question about suitability and thinks that the suitability definition under MIFID if
continental Europe is unacceptably low then write a contract
so it migrates to a defined standard.

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

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

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

MR. AUFHAUSER: I think I've probably said enough.

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

I wouldn't give up the ghost however on the global
harmonization and convergence dynamic because that's the best
way to have the entire world migrate to a standard which is
very high. And I think there was an underlying question in
some of the papers that you sent out to the panel about
whether there's a risk of arbitrage, regulatory arbitrage
downward here. And I think the dynamic is just the opposite,
particularly if the commission is the judge.

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

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

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

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

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

MR. SIRRI: Chris.

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

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

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

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

And he said, he whispered to me. He said, "we're going to open up our own broker-dealer in the United States and sell to U.S. institutions, institutions only." And that let me to tell him a little bit about this roundtable today. And he turned to me and he says, "well, if that's the case, forget it; I'm not going to open up an office in New York, I'll just solicit business directly from the Middle East
because, as he saw it, there was no oversight on him."

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

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

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

Thank you.

MR. GREENE: I've been thinking, as you know, Ethiopis, about this issue. And I would suggest the following. And that is, I believe that to go forward you need to have a conceptual framework as to how you go forward for harmonization, how would you go forward from mutual
recognition, in which areas would you rely upon mutual recognition and would there be different levels of comparability.

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

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

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

But don't look at this just as these two issues.
It's part of a broader problem in my view.

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

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

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

Finally I think the reality is, and I believe Commissioner Campos had raised it, is what I'd call a PR
risk. If this happens down the road and there is a problem
the retail market is going to turn around -- as one of my
clients said, "I'm not sure of the current regulations, but
if a foreign organization wants to move to the U.S. they
should be subject to the same rules."

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

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

Let's have lunch.

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

(Break.)

CHAIRMAN COX: Welcome back from lunch and to the
seventh inning stretch of the SEC's roundtable on mutual
recognition. You've already been enlightened by two panels
focused on the potential impact on U.S. market participants
from greater access by foreign markets and from greater access for foreign broker-dealers.

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

At a time when United States' demand for foreign investment opportunities from retail and institutional investors alike is growing, carefully evaluating the potential benefits and the very real risks of adopting a selective mutual recognition approach is urgent business.

I'd like to take this opportunity to thank each of our distinguished panelists, those who have already presented and those who are up next, for all of the preparation and wisdom that you are providing us.

We're honored to have with us representatives of the retail and institutional investor community, broker-dealers and exchanges as well as professors, former division directors and even former chairmen of the Securities and Exchange Commission. Each of you is helping us to build a better picture of cross-border capital flows and the most effective ways to harmonize our objectives of investor protection, orderly and efficient markets and healthy capital formation.
Innovations in technology have eliminated many physical barriers to market access. Time, distance and the ability to move capital between countries are no longer obstacles. That's meant more and more investors looking beyond their own countries' borders for investment opportunities. And today we can see an ever increasing share of investors' capital allocated outside of their home countries.

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

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

The SEC and the regulators of every nation need to deal with the reality of global markets and we need to ensure that the great potential benefits for our investors and not the new array of risks and dangers are what manifest
themselves in the months and the years ahead. We want our
investors to have choices, to enjoy lower transaction costs
and to have greater opportunity for diversification. We want
them to have more access to better information about foreign
investments, and we want them to have these things within the
context of our accustomed high standards of investor
protection.

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

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

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

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

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

For foreign exchanges and foreign broker dealers,
we'd be interested in seeing how the home country addresses
such things as fair markets, fraud manipulation and insider
trading and how they deal with such issues as registration
qualifications, trading surveillance, sales practice
standards, financial responsibility standards and dispute
resolutions. And of course we'd expect that the foreign
jurisdiction would provide reciprocal treatment to American
exchanges and American broker-dealers seeking to conduct
business in that country.

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

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

PANEL THREE

MR. TAFARA: Thank you, Chairman.

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

First is David Ruder, who is dean of Northwestern
University Law School and a former chairman here at the SEC.
Next to him we have Harvey Pitt, founding partner of Kalorama Partners and also formerly a chairman of the SEC. Next to him is Rick Ketchum, who is the head of NYSE Regulation and formerly a director of market regulation here at the SEC. Next to him is Allen Ferrell, a professor of law at Harvard Law School. And finally, at the end is Alan Beller, a partner at Cleary Gottlieb Steen and Hamilton and formerly director of corporation finance here at the SEC.

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

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

MR. RUDER: I'm just going to start because I participated for the last eight or nine years in the convergence process of the accounting standards between the
IFRS and the U.S. GAAP standards. And that process sought to create a single set or very close set of accounting standards. And that would be an ideal that might be reached. It is being reached in the accounting area. But I think probably it's too difficult a road to travel with regard to the areas that you're talking about. It would be quite difficult to get regimes that are almost identical rather than comparable. So I really don't think that the convergence approach or harmonization approach is the right way to go.

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

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

The approach that has been laid out of mutual recognition is a wonderful way for the commission to start a dialogue. And whether or not at the end of all of these efforts and the end is many, many years down the road, in my view, we can get more harmonization of standards and the
like, it can only come from people discussing what's important to them and how they can work cooperatively and collaboratively together.

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

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

I think comparability is an important leverage point for the commission and is important protection for investors. I do think though you ought to look at each of your tools and evaluate them together. I believe it would be -- having been involved in the mutual recognition discussion from my time at the SEC on, which I regret is a while ago at this point, mutual recognition can be a trap unless the standards are done fairly flexible. Comparability really does have to look at threshold comparability both coming in and, as Chairman Cox indicated, from an output standpoint.
And if there are more protections necessary from an investor standpoint then a combination of aggressive disclosure and perhaps even product limitations that reduce the risk to investors is one way you can move ahead. I think the key thing today, if I leave any message, is it's time to move ahead. And it's time to move ahead not just with one or two countries but with a meaningful number of countries that provides -- I think the press over time to move to a more harmonized regulatory environment.

MR. FERRELL: The one point I would add to the other comments is obviously comparability and mutual recognition can induce convergence depending on how comparability is measured, and so the two interact in an important way. How they interact, which I think we're going to discuss later, depends on how we define comparability. So I think part of the answer is there's interaction between convergence and mutual recognition and also the strength of that interaction, the way in which mutual recognition may induce convergence is going to depend on how we think about comparability.

MR. BELLER: It's hard to say something unsaid after the four gentlemen on my left, but I'll try. I think we have to have this conversation against a backdrop of several facts as sort of realities. One is that the percentage of market cap of U.S. public companies as a
percentage of global market cap is going down. That is a
secular trend. There's nothing wrong with that, but it does
mean that the pressure to provide investment opportunities in
the global markets for U.S. investors is going to increase
rather than decrease.

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

And so -- and finally financial intermediaries
really are global now. I think five years ago I don't think
I would have said that, but it's true now. Our major
financial players are as at home in London and Tokyo and Hong
Kong as they are in New York, and they are agnostic as to
where they execute. They execute on the basis of where they
can provide the best service and where they can obtain the
lowest cost, and that's just a completely different world
from the world in which our current regulatory framework was
designed.
Convergence is a great long-term goal. I think mutual recognition is a worthy objective. I'm a little bit worried. I support it but, I'm a little bit worried that it's a medium-term objective, and the markets and investors are not going to wait for the kinds of comparability analyses that you're going to have to do in 38 jurisdictions to get your first 38 data points.

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

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

And obviously -- most of the discussion, a lot of
the discussion so far today has centered on the dimension of
the matrix involving which investors. Obviously this is
easier to think about in the context of QIBs.

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

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

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

Feedback on that would be great, and I guess we'll
start on the reverse end. So we'll start with Allen Ferrell
since, Alan, you just spoke on that issue a bit.

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

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

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

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

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

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

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

I think I would pick up on Alan Beller's remarks though before and recognize that given the evolution and demand for product outside of the United States it seems to me that what you don't want to do is get trapped into a detailed, step-by-step analysis of comparability with respect to each country on each of these points that goes down to each regulation that we have or could imagine having.
And part of that reason is very similar to what Alan said. I'll speak my experience from Citigroup. My experience is that while undoubtedly the regulatory controls and how we focused and looked at it varied country by country, and undoubtedly they were most focused in the U.S. I would tell you that with respect to a range of actively trading companies, Citigroup's compliance, approach and focus did not change in a meaningful way across those countries with respect to the core issues of manipulative trading, insider trading, the questions of the type of products that we sell, the suitability standards et cetera.

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

But I don't think what you want is to spend the next three years on a detailed, step-by-step analysis. I think you want to get started with a more threshold analysis
that there are controls and focus and a meaningful examination program in a range of countries. And I think you’ll find that it exists.

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

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

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

MR. RUDER: Could I speak to that? This dovetails with what I was going to say. I think the commission is in a wonderful position to be a world leader in this effort to achieve comparable regimes and to increase the regulatory compatibility across markets. And I would encourage the
commission not only to consult with the domestic regulators, other domestic regulators but to consult at the outset with the major regulators in the world.

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

MR. TAFARA: Harvey.

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

Obviously the commission will have to have ideas about the issues that are of importance to it. I think the chairman gave a very good list of some of the types of issues. Erik has done that. You've got disclosure issues,
insider trading issues, you've got suitability issues. I do think the fairness and vigilance provided for marketplaces is very, very important as well, but having in your mind a list of issues is different from insisting, as the price of admission to the table, that everybody is going to agree with what's on your list to begin with.

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

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

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

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

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

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

What I'm struck by is a couple things. One is that
U.S. has a strong equity culture. We have a strong retail base of shareholders and participants in the capital markets. That's something that characterizes our capital markets, not so in all other countries. And second is that at least we've tended to view ourselves I think as a high principle, high standard regulator.

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

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

MR. BELLER: I guess my reaction to that is that it may well depend on the group of investors that you're going to try to do this with initially. I think if you -- I agree with you. The U.S. retail equity culture is probably unique, and if you're going to try to do this on day one with that entire pool of investors I guess I'm frankly a little skeptical that you're going to find more than one or two, if
that, jurisdictions that you're going to be comfortable with, even line drawing on a threshold basis.

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

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

And I think if you don't start with that kind of an
exercise I think maybe the retail equity culture is, to use
Rick's word, is a trap when you're trying to do a
mutual -- or mutual recognition becomes a trap when you're
trying to do it all the way up and down the food chain.

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

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

But I think there should be a means moving to a
wider range of equity investors if not all individual
investors in which you continue to depend on U.S.
broker-dealers for some penumbra over what you're doing. It
doesn't mean you do into the horrific bureaucratic nature of rule 15(a)(6) that I helped bequeath to you, but it does mean that you can, as Alan says, depend on the affiliate U.S. broker-dealer to do the type of things that you're asking firms to do with respect to portfolio margining, more careful suitability analyses, more careful analyses with respect to disclosure and understanding with investors. And that may be a means of jumping to another level of investors.

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

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

The goal really is to figure out different levels of investors. I think you don't want to foreclose individual investors and I also don't think we want to overlook the fact
that institutional investors are also individual investors. We've got pension funds and trust funds and so on, and so many individuals are already in the markets in any event and will be, and the differentiation is really one that requires somebody to exercise some fiduciary oversight, some review, but not necessarily to preclude the movement toward mutual recognition where the exact scope of the foreign brokers obligations don't comport with our own.

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

MR. TAFARA: Picking up on that last point, I mean mutual recognition in essence is a form of reliance in several areas. It's reliance on foreign laws. It's reliance on foreign regulation. It's reliance on foreign supervision, and then you get to enforcement.
The question there for me is do we go as far as relying on the foreign enforcement regime or is it distinct enough, is this an issue that's different enough that you need to think about it differently, maybe rely to a lesser degree, as David has said, retain the ability to intervene when you have lying, cheating and stealing involving U.S. investors emanating from a foreign market participant. I'd be interested in views on that.

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

You could have situations or jurisdictions with low levels of enforcement, low levels underlying fraud. You could imagine equilibrium outcomes, situations where the level of enforcement or the level of enforcement cases is not necessarily a one-to-one relationship with the level of underlying bad conduct. And so if you're going to use enforcement for a proxy for what the probability of fraud or bad conduct is, I think that's going to be a problematic without using additional information.
MR. BELLER: Think about where we were in 2002 in terms of the number of enforcement cases we were bringing and was that an index of -- what was that an index of?

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

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

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

Second, the question really becomes what standards
do foreign jurisdictions have and how do they go about enforcing them. There is no reason why people have to have a forum in the U.S. or the application of U.S. laws, and the supreme court has already dealt with that issue on many, many times.

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

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

MR. RUDER: I want to just return to a point that I talked about earlier about the commission being a leader. I think when the commission thinks about enforcement it needs to look at what the other regulators seem to be like. How are they organized? Are they well enough funded? Do they
have enough staff? Do they have a regulatory attitude? Do they have independence from the political and business community which may impede the kind of regulatory emphasis you'd like to have, and are they cooperative with the U.S. and other countries in terms of the enforcement regime, and, I would add to that, the inspection regime which we have here that -- not after the fact, Harvey, but before the fact, some work being done to make sure that standards are met. But I think the quality of these regulators is just as important as the quality of their standards.

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

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

The choice of law point that was made earlier is, I think, a very interesting one when you get past the fraud issue. And that will depend in part on sort of where you go with your exercise.
The last point I would make is that what was said earlier about meeting with regulators and doing this as a dialogue is certainly important in the enforcement area, both in evaluating the enforcement quality of the markets that you're going to be thinking about and in actually executing. I mean I think the commission has had some signal successes, maybe not as many as some people would say would be appropriate, but has nonetheless had some signal successes in cooperating with foreign litigators over the years. That's going to become an increasingly important part of the enforcement business, and you can only do that, I think, as effectively as you can if you start talking early and keep talking often both as you go through this exercise and then after you've implemented it.

MR. FERRELL: I wanted to make a comment related to what Harvey and David just said. In terms of the ex-ante versus ex-post enforcement tools there's actually a very good paper by Andre Schleifer and La Porta where they actually went around to -- I think it's 49 different countries and measured the degree of ex-ante enforcement and the degree of ex-post enforcement. There's a lot of variation across countries in terms of whether ex-ante or ex-post enforcement. And also sometimes it acts as a substitute so you may up your ex-ante in the jurisdiction and have lower ex-post. So I think empirically that's very important.
The comment about the quality of the regulators being important that David mentioned is obviously true, and I agree with. I guess the concern I have is the degree to which mutual recognition or comparability is going to be based on subjective, even if true, impressions and the extent to which you can ground a mutual recognition, maybe for some investors in some companies, in objective data that you can point to that can serve as the foundation. And that goes back to my original comment about maybe using financial data as an additional relevant piece of information there.

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

And it's really a question about corporate finance that says if we go down a path and we allow screens, let's say foreign screens to come here, then what does it mean for the business as we now understand it of the exchanges? Because to be on an exchange you have to be a reporting issuer, and it seems to me there would be a natural question that folks would ask which is frankly why should I pay the freight, why should I jump through those hoops when I can
just access that capital through a foreign screen that would
be here otherwise because the point of this exercise is of
course to lower the transactions cost for people to access
that capital.

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

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

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

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

Then you're looking at a situation which here, as I
think in most of the world -- it's not true with emerging markets, but most of the world of developed securities markets, we are in an environment of home country listing and global trading. And once you accept that we're in an environment of home country listing and global trading it seems to me that it has to follow that there's going to be some level of foreign securities activity, primary, secondary -- Ed Greene talked about primary offerings on the second panel. But whatever you do with primary offerings there's going to be secondary market trading in foreign securities to U.S. investors.

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

MR. SIRRI: So maybe I can broaden this out a little bit. What this means to me then is I can imagine a world where the screens come and then a domestic exchange says, "well, here we have a foreign screen with an unregistered security trading on it." I as a domestically regulated, Section 6 registered exchange say I would -- I offer protections, so surely if a less regulated venue has an unregistered security I, as the more regulated venue, should have that security as well.
MR. BELLER: No question in my mind that one -- I mean you asked Cathy Kinney earlier this morning what she was going to ask for, and I think she said she was going to ask for this. A, I think she will, and b, I think it's absolutely appropriate. I mean if you're going to let a foreign market access into this country from some jurisdictions because on balance it's good for U.S. investors, for sure, it's also good for U.S. investors and good for competition if our domestic markets can provide access to those same securities.

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

But why would one ever want to only provide that access to unregistered entities as opposed to the other? And
it requires a scheme. It's not immediate, but I do think it's the other part of this that the commission has to pursue.

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

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

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

The goal here really is to make our markets more competitive without lessening our standards for individuals. It seems to me if what we're talking about are foreign
securities and someone has the choice of making that
transaction through a regulated exchange with a regulated
broker-dealer or doing it through an unregulated
broker-dealer in a foreign screen and the differences are
explained to them, then the marketplace will make that kind
of decision.

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

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

I think we need to need to make sure that we are
putting the retail investor protections up front and not
creating a whole scheme that would put them at terrible risk.
MR. TAFARA: We have multiple interventions.
Harvey, you can go first.

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

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

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

MR. SIRRI: Alan.

MR. BELLER: No, I mean I think that's exactly right. You don't -- by starting with not just one tier but different tiers in different areas, it seems to me we will have a much better idea of what the risks are by the time you get to asking the question that David is I think fairly
asking. But it's the question at the end, as Harvey said, which is do we open it to all issuers, all investors, all markets.

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

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

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

MR. BELLER: I think that this a much bigger risk in the broker-dealer area than it is in the market area, and I actually think about your two mutual recognition topics very differently. I think in the market area the risk of regulatory arbitrage is less, and I -- again, if you start
with a set of larger issuers then I think you reduce that risk further.

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

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

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

MR. KETCHUM: There's a lot of pieces of arbitrage, and the question is important and it doesn't have a simple answer. I agree with Alan's basic answer with respect to companies, and from an exchange standpoint there will always be tremendous desirability in a home market listing and with
the New York Stock Exchange listing companies on the New York Stock Exchange here, whatever desire we may have with respect to other parts of the company having freer access into the U.S. or the like.

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

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

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

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

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

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

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

MR. PITT: I was just going to say I think the answer to the question of how do you deal with the problem is exactly the way you've just dealt with it. You raise the question and you don't necessarily move too quickly at the beginning.
This is a new concept. We need experience. We need to develop some sense of comfort that, for certain companies or certain foreign brokers, et cetera, the disparities are not great. That's what's involved with making the assessment that I think was a fundamental premise of the article, which is the commission gets to decide.

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

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

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

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

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

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

At the outset, why would you do that? At the outset, you are looking for relative comparability. And I think that while we want to be sensible about what standards are applied. So the fact that some people allow electronic confirmations instead of hard copy confirmations, those are
not the kinds of issues that I think the commission need
pause over.

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

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

MR. FERRELL: Just an additional comment on
regulatory competition, there's, as many of you know, a
debate about the competitiveness of the U.S. markets and
whether that's changed over the last several years. There is
recent work done by Rene Stultz and some other researchers
where even though there's been a drop in public listings in
the New York Stock Exchange recently you still see firms that
do list in the New York Stock Exchange controlling for a
number of other factors do get a valuation premium as a
result of listing. And that's very robust and that's including post-Sarbanes-Oxley.

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

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

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

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

MR. BELLER: Correct.

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

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

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

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

And in a sense what we're talking about here is something that turns all four of those things around. It
puts the commission in a leadership position rather than a reactive position on a very important issue. If you're successful I think you will lead to better portfolio management in so far as it relates to international securities for a larger segment of the investing public.

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

And those are the kinds of advantages I think you get from this kind of an initiative. And the flip side is you want to do it in the way that I think we've all been talking about, tiered and not reckless so that you don't leave our markets exposed to unacceptable levels of risk.

But if you want no risk we should close up shop.

MR. TAFARA: I am cognizant of the time, getting towards the end of the time for this panel, but I wanted to afford each of you an opportunity to give us some final
thoughts on the topics that we've addressed during the course
of the panel, mutual recognition, comparability, arbitrage,
competition and the like. And I think we'll start to my
immediate right with David Ruder.

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

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

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

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

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

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

But I think, as the chairman's last question, sort of pressage, the fact of the matter is there are no protections right now and we have a chance to impose a lot. I think we should judge what we wind up doing in that context based on what's actually happening as opposed to what we think may happen because we can do this in graduated steps. I think we should only look at major issues. And finally I think it's very important as a reality check that we don't make the assumption that every rule we have on the books in the best that could be applied to the particular
process or transaction that's going.

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

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

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

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

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

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

The second thing is just that different jurisdictions might need different regulations. And so comparability cannot mean having in substance what the U.S. has on a number of different issues. That being said, my reading the empirical evidence on what affects firm value, what affects quality of markets is that a unifying theme that's important across all types of jurisdictions,
concentrated ownership or not, is disclosure. And that does
seem to be an overarching, important regulatory tool.

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

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

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

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

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

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

With that, we're concluded.

(Applause.)

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