

**International Corporate Governance Network  
12<sup>th</sup> Annual Conference**

**Remarks of Commissioner Roel C. Campos  
Cape Town, South Africa  
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**I. Introduction.**

Good morning. To start, I'd like to thank the ICGN for putting together such an outstanding conference and for inviting me to participate. In particular, I want to thank Mark Anson, your current chairman, for inviting me and pushing to accept. I am very glad I came.

I'm especially honored to be here with Commissioner McCreevy. I want to say that Commissioner McCreevy brings to his position, not only an open mind, but also huge creativity and great energy. Many of his initiatives will aid all of Europe greatly. I congratulate Commissioner McCreevy on the fine work he is doing.

As always, the comments I make today are my own and do not reflect the opinions of the staff or the other Commissioners of the Securities and Exchange Commission.

Commissioner McCreevy's comments today about "smart regulation" reminded me of a story:

A man goes to a brain store to get some brain to complete a study. He sees a sign remarking on the quality of professional brains offered at this brain store, and begins to question the butcher about the cost of these brains. "How much does it cost for engineer brain?" "Three dollars an ounce," the butcher replies.

"How much does it cost for programmer brain?" "Four dollars an ounce," was the answer. "Hmm, how much for regulator brain?" "\$1,000 an ounce," the butcher replies emphatically. "Why is regulator brain so much more?" the man asks. The butcher looks at the man patiently and replies, "Do you know how many regulators we had to slaughter to get one ounce of brain?"

Under this principle (not rule), Commissioner McCreevy, to have "smart regulation," means that we will have to put many, many regulators' heads together and hope for the best.

**II. General Thoughts.**

All joking aside, let's get started. The summary description of this panel asks whether regulators are a help or hindrance. I will try to address the general question and, in doing so, touch on several areas of regulation. I will also offer a couple of concerns that I have about the general regulatory environment.

Let me start by answering the general question of whether regulators are a help or hindrance with question with some rhetorical questions of my own: Does anybody seriously think that market, on its own initiative, would address all of the complex issues posed by the financial markets nowadays? Absent regulation, would companies really make full disclosure of material facts? Would exchanges provide transparency and real-time information? Would controlling shareholders uphold the rights of minority shareholders? Would brokers provide best execution? Would advisers fully comply with their fiduciary duties? For that matter, do investors believe that voluntary codes of conduct, without enforcement, will produce a fair and equitable environment for all?

It seems almost impossible to answer “yes” to these questions. Therefore, the real question is how much and what type of regulation is best. I think we all agree that the best regulation is that which imposes the *fewest costs* and is the *least invasive*. I wholeheartedly agree with Commissioner McCreevy that less can certainly be more. So, yes, less regulation, but more intelligent regulation. This proposition is a given. Indeed, every regulator throughout the world that I know believes that the best regulation is the least that is required.

The critical issue is how to take this general proposition and carve it into a set of rules and principles that helps to guide conduct in a way that protects investors, yet promotes and facilitates capital formation. In my opinion, at least some degree of specificity is required if one wants to hold people accountable for their actions. I simply don't believe that human beings can be aspirationally led. If that were so, all that humankind would need would be the Golden Rule. (Or is it a principle?)

But our rules must make sense. Regulators cannot regulate in a vacuum. We cannot reside in ivory towers. We cannot ignore the realities of the financial marketplace. We must work carefully with businesses. We must also work diligently with investors. And we must talk and collaborate with fellow regulators in the different jurisdictions. The international dialogues that Commissioner McCreevy mentioned are extremely important.

Moreover, we must never cease asking the important questions. The job of a regulator involves a constant evaluation of the marketplace. It involves a constant study to determine which existing rules are outdated and which new rules may be needed. We want market forces to work. But as regulators, we must deal with the imperfections of the market, where informational imbalances, unfair competition, and outright frauds warp the fair playing field.

This is not just empty talk. Over the five years I've been at the SEC, some of our best rulemakings have been those that have eliminated unnecessary, overly burdensome and outdated rules. Let me give a few examples.

Consider *Securities Offering Reform*. We took significant steps to liberalize offerings under the Securities Act. We eased the communications rules to recognize the value of communication and to avoid unnecessary restrictions on offers. We also made it easier to register securities via automatic shelf registration statements that are

immediately effective. We adopted an “access equals delivery” model for prospectus delivery.

We’re continuing this right-sizing of our rules into 2007. Early this year, we significantly eased the restrictions on the ability of foreign private issuers in the U.S. to delist and deregister their securities. Then, we issued a number of rules designed to make it less burdensome for small business issuers in the U.S. For example, we proposed to eliminate all of Regulation S-B. We proposed to add additional Exchange Act registration exemptions for companies with numerous stock option holders. And we proposed to make it easier for smaller companies to use Forms S-3 and F-3, the short form registration statements. Finally, just this week, we published our proposal to eliminate the IFRS-US GAAP reconciliation requirement in certain instances, which I’ll talk about in a moment.

### **III. Convergence.**

Moving forward, the biggest challenge regulators will face is how to promote convergence of international regulations in a way that promotes a highly efficient trading of securities across borders. In some respects, we’re already moving there rapidly. Witness the NYSE/Euronext merger, the convergence of accounting standards and the increased focus on mutual recognition.

But we must also recognize that there are political and sovereign concerns that will always be in tension with the desire of regulators to open markets and increase efficiencies. Nobody wants to be the politician who approves rules that send jobs offshore. This will continue to be a challenge.

There will always be different approaches. But I don’t think that asking the question, “which is better,” really gets to the heart of the inquiry. Rather, regulators in every jurisdiction must ask themselves: Is this regulation necessary? Is it narrowly-tailored to solve the problem at hand without being overly burdensome? Have we thought about the international implications of our rules? Have we considered objections and comments from companies, shareholders and other stakeholders? I think if regulators ask questions like these, they will be a big help to the market.

Let me discuss a few areas where we can see this in practice.

### **IV. IFRS-GAAP.**

The first topic is convergence in accounting standards. Intelligent regulation, and in some cases, deregulation, is absolutely needed. Regulators from around the world must coordinate in order to produce standards that actually protect investors, yet also serve to reduce unnecessary reconciliation and duplicative work.

I’m pleased to report that the SEC’s efforts toward eliminating the IFRS/US GAAP reconciliation requirement are continuing. Just a few months ago, Commissioner McCreevy was kind enough to visit us in Washington for our IFRS roadmap roundtable.

There, he and our Chairman Chris Cox both affirmed their commitment to eliminating the need for reconciliation.

Just this week, we at the SEC published rules proposing to eliminate the reconciliation requirement. This is a big step forward, although it is really the first step in our formal rulemaking process to eliminate reconciliation. The next step is to receive and assess the public commentary that we receive on the rulemaking release.

There are a few points worth highlighting. Notably, the short-term goal of our rulemaking proposal is to eliminate the reconciliation requirement between US GAAP and IFRS as promulgated by the IASB. However, we must ensure that this *short-term goal* doesn't remove the pressure to pursue the *long-term goal*.

As we make clear in the release, the long-term goal is not merely the elimination of the reconciliation requirement. Rather, the goal is a single, high-quality, globally-accepted set of accounting principles. Simply put, the use of a common set of high-quality accounting standards will help investors understand investment opportunities more clearly and with greater comparability than if they had to gain familiarity with a multiplicity of national accounting standards. We are also open to exploring the idea of whether U.S. domestic issuers should be allowed to use IFRS themselves.

I should also note that while convergence is a long-term goal, the SEC has still proposed to eliminate the reconciliation requirement even though in many respects US GAAP and IFRS are not identical. This also brings me back to my point about intelligent and minimal regulation. Even though standards are not the same, we are proposing to trust companies to be consistent in the application of accounting standards – particularly as mutual recognition, interactive data and increasing globalization make it far easier for investors to evaluate and consider companies from all over the world.

## **V. Mutual Recognition.**

Mutual recognition is another subject area in which regulators must be active. It is absolutely impossible for me to believe that different jurisdictions around the world can effect such a movement without significant input from regulators. That said, this does not necessarily mean that we need more regulation in this regard. Rather, it may mean a relaxing of regulation in targeted areas.

Mutual recognition offers the potential to respond to changing global realities by protecting investors more, while at the same time offering them more opportunities. The reality is that investors in the U.S. and around the world are seeking to invest in foreign markets, as regulatory standards around the world increase. However, investing in overseas markets involves high transaction costs and significant regulatory risks. But investors are seeking to do this anyway. So, the goal of mutual recognition is to expand opportunities to invest in foreign markets, lower transaction costs and improve investor protection. These are lofty goals.

Each national regulator faces significant challenges in implementing a framework for mutual recognition. For example, avoiding two sets of standards – one for foreign

companies that may be exempt from registration and oversight in the local jurisdiction, and separate standards that are arguably tougher for domestic companies – will be difficult, but necessary.

Moreover, as Commissioner McCreevy mentioned, international dialogues are important, and in particular, the dialogues about mutual recognition are tricky. Once discussions are undertaken with a particular jurisdiction, there is the potential for a serious loss of face if that jurisdiction is deemed unacceptable. The discussion about mutual recognition with European jurisdictions must include consultation at the EC level in parallel with individual jurisdictions. Discussions with CESR and the College of Euronext regulators might also be an efficient way to dialogue about mutual recognition.

Still, we are now on this road, and I look forward to working with fellow regulators and visionary officials like Commissioner McCreevy to make mutual recognition a reality that will be hugely beneficial to both business and investors.

## **VI. Concerns.**

I have a couple of concerns regarding the general environment today regarding regulation. I offer them as observations and cautions, and not as criticisms of any jurisdiction or other regulators.

First, it is clear that we live in a world of huge competition among financial centers. London, New York, Hong Kong, Tokyo, Singapore, Paris and others are, to a great extent, trying to lure issuers to list in local exchanges. These financial centers also seek to attract hedge fund operators and bankers to operate in their centers.

There is substantial commercial marketing being done, and one of the elements in this marketing is the promise that local regulators are friendlier or “kinder and gentler” to issuers, bankers and managers than are other jurisdictions – with tougher and less kind regulators – like the U.S. SEC.

It seems to me that recent regulator terminology – “principles over rules,” “lighter touch,” “better regulation,” “smarter regulation,” and other terms – are essentially code words to convey the message to industry that they have an accommodating and forgiving local regulator and little to fear from enforcement.

Perhaps I am the only one who worries that this trend can bring trouble.

First, if regulators allow themselves to be caught up in the commercial marketing propaganda, they risk losing their most important asset: their reputation for fairness and integrity. As noted earlier, does this mean that the local regulator is going to be kinder and gentler to foreign players to attract and keep them in the local market? There is a risk of creating a two-tier system that favors foreign participants over domestic players, which will also be of concern to investors. There are recent examples in particular jurisdictions of these problems emerging with efforts to attract foreign funds.

There is a separate problem with the recent initiatives (smart regulation, better regulation, etc.) that I mentioned. The focus of those initiatives seems always to be to make life easier for the industry – less red tape, fewer rules, broader principles that allow wide latitude. Why is there little or no discussion about investors? Why is there not more in “better regulation” or “smarter regulation” about protecting investors?

I fear that in the generalized frenzy to attract listings and bankers, the fundamental purpose of regulation is being lost. To my thinking, regulation must first protect investors and protect capital. In Bill Clinton type of jargon – “It’s the investor, stupid.”

It is a truism that most capital will go to those markets where it is best protected and can achieve reasonable returns. Notice that I did not use the term “highest returns.” Some risk capital will always chase alpha in higher risk markets, but not the preponderance of capital. So, if markets protect capital well (regulation, enforcement, viable remedies, rule of law), those markets will produce liquidity. The players will follow – issuers, bankers, managers, broker-dealers. Fish attract fishermen. Capital and liquidity attract everyone else.

I am concerned that to a large degree regulators may find themselves caught in a sophisticated race to the bottom as a result of this commercial marketing from financial centers. I also tire of the endless and mindless accusations that the United States and the SEC are solely rules based and that Sarbanes Oxley is excessive. Let’s review a few facts:

1. The SEC’s rule book is actually shorter than that of many other regulators, including the UK’s.
2. The passage of the Sarbanes-Oxley Act offers investors in U.S. securities the most significant new protections in the U.S. since the 1930s.
3. Investors throughout the world love the Sarbanes-Oxley Act and are willing to pay for its requirements.
4. The Sarbanes-Oxley Act is a magnet for foreign capital investment in the U.S. Large foreign institutional investors tell me that the protections of the Sarbanes-Oxley Act are a large reason why they invest in equities in the U.S.
5. The Sarbanes-Oxley Act is being mimicked in local ways in jurisdictions around the world. The issue of the audit requirement for internal controls under SOX 404 has been fixed by the recent management guidance and new AS5 standard issued by the PCAOB.
6. So far, 22 foreign companies have raised \$4.4 billion in U.S. IPOs through June of this year. If this pace continues, the number of foreign IPOs in 2007 will surpass the existing record, which was set just last year, of 34 companies.

7. European hedge funds like GLG have gone public in the U.S. this year. Ten Chinese companies have conducted their IPOs in the U.S. this year. Why? They uniformly say that the cost of capital is low and that they want to show investors that they meet the highest standards in the world. Indeed, studies consistently show that shares cross-listed in the U.S. will sell at a premium of 15-30% greater than the shares in home markets.

I present these facts to support my fundamental premise that protecting capital and having high standards creates successful markets. Thomas Friedman, one of the gurus of the global economy, has said that having no regulation is like a freeway without any signs. Regulators must not, as we say in America, “take their eyes off the ball.” (A baseball metaphor – one can only hit the ball with a bat if one focuses totally on the ball as it is pitched.) Again, the mission is to protect investors and capital.

So, yes, I believe that “better” and “smarter” regulation should seek to ease needless burdens on the industry. Such initiatives should seek efficiencies and seek to be fast and responsive to product innovations and new needs. However, I hope that such initiatives will maintain a critical and necessary balance and also – once again – protect capital and investors. If regulators keep their eyes on the ball (the basic mission), they will contribute mightily to the success of their markets.

## **VII. Conclusion.**

I think my time is up, but I’m looking forward to participating in the discussion. Thank you very much.