



U.S. Securities and Exchange Commission

Speech by SEC Staff: "Corporation Finance in 2008 – International Initiatives" Remarks Before PLI's Seventh Annual Institute on Securities Regulation in Europe

by

John W. White

*Director, Division of Corporation Finance
U.S. Securities and Exchange Commission*

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Good morning, and thank you, Ed [Greene]. As some of you may know, this is my second trip to London to speak before this Institute and I am very pleased to be back. The record crowd here today speaks volumes about the increasing importance of the global capital markets. As our capital markets become increasingly interconnected, it is important that regulators and market participants meet in forums like this to share thoughts. Last Thursday at a similar forum, the AICPA's International Issues conference, Chairman Cox provided an up-to-date summary of where the SEC is at on international securities matters.¹ He spoke broadly on international topics — I am going to drill down on a few points this morning.

Before I speak any further, however, I need to provide the "standard disclaimer" and remind you that as a matter of policy, the U.S. Securities and Exchange Commission disclaims any responsibility for the private statements of any SEC employee. The views I'm going to express today are solely my own and do not necessarily reflect the views of the SEC or of any of its members or of its staff, other than myself.

Last year at this time I spoke about the Commission's commitment to enhancing our global markets, particularly with regard to three topics — deregistration by foreign private issuers, efforts to improve the implementation of Section 404 of the Sarbanes-Oxley Act of 2002, and efforts to improve financial reporting through International Financial Reporting Standards (IFRS) and the promotion of accounting convergence. I am happy to report that significant progress has been made in each of these areas during the last year. So, I'll begin today by looking at what we've done on these three topics. Then I will shift to 2008 and give you a preview of

upcoming international initiatives, including some of my thoughts on mutual recognition. Let me emphasize just one point first, however. As we move forward, we will remain steadfast in our commitment to our complementary missions of investor protection and the promotion of quality capital formation when undertaking any changes to the current regulatory regime, with our goal being to better serve the needs of investors and issuers — in the U.S. and abroad.

Foreign Private Issuer Deregistration

This time last year, I reported that the Commission had re-proposed a rule (Exchange Act Rule 12h-6) to permit a foreign private issuer to terminate its Exchange Act reporting regarding a class of equity securities based solely on the issuer's U.S. trading volume compared to the trading volume in its primary market. We received substantial comment on the re-proposal, including numerous comments concerning the trading volume benchmark. After carefully considering commenters' views, the Commission adopted new Exchange Act Rule 12h-6 with a modification to the proposed trading volume benchmark.²

New Rule 12h-6 was effective on June 4, 2007 and it permits a foreign private issuer, regardless of its size, to terminate its Exchange Act registration and reporting obligations regarding a class of equity securities if the U.S. average daily trading volume (ADTV) of the subject class of securities has been no greater than 5% of its worldwide ADTV for a recent 12-month period (assuming it meets all the other conditions specified in Rule 12h-6). This new rule allows foreign private issuers with relatively low U.S. market interest in their U.S. registered securities to terminate their Exchange Act registration and reporting. We moved quickly (by Commission standards at least) so that eligible calendar year end foreign private issuers that were approaching the compliance deadline for their first reports under Sarbanes-Oxley Section 404 could deregister, if they so chose to, prior to being required to include those reports in their Form 20-Fs due June 30, 2007.

I believe this rule benefits both U.S. investors and non-U.S. issuers by providing a clearly defined process for deregistration with an appropriate benchmark. The Commission's hope is that with this benchmark in place, foreign private issuers will be more willing to register their securities with the SEC, or remain registered if they have already done so, knowing that they can avail themselves of the deregistration rule in the event U.S. market interest is low. As a result, the rule should benefit U.S. investors by providing them with more investment choices in the U.S. markets. The rule also builds in safeguards to protect U.S. investors, such as the prior reporting condition, which provides one complete year of Exchange Act reports upon which to base investment decisions before a foreign registrant can exit the reporting system, and the automatic Rule 12g3-2(b) exemption which is maintained through Internet postings of relevant information, which helps assure continued access to corporate information.

New Rule 12h-6 has worked as expected, with an initial surge of 55

deregistration filings in June. This was followed by 28 more in the 3rd quarter and 17 in the 4th quarter, for a total of 100 foreign private issuers filing Form 15Fs to deregister in 2007. That figure does not include 25 foreign private issuers that had previously deregistered under the older exit rules but filed a Form 15F to gain the benefit of new Rule 12h-6. The 100 foreign private issuers correspond to just under 9% of all foreign registrants as of the beginning of the year — January 1, 2007. Fifty-three of the issuers that have deregistered are from the European Union. That being said, I must note that there has not been a shortage of foreign companies seeking to register classes of securities with the SEC. During the 2007 calendar year, more than 75 new foreign private issuers registered securities. Obviously there are many factors at work, but hopefully the Commission's recent regulatory actions, including the deregistration changes, will be a positive factor in the decisions of foreign registrants to choose and remain in the U.S. markets. Non-U.S. issuers may also be less concerned about the impact and costs of compliance with the Sarbanes-Oxley Act in light of the actions the Commission has taken to ease the burdens of compliance — which is precisely the subject I would like to discuss with you now.

Sarbanes-Oxley Act Section 404 and Internal Control over Financial Reporting

Many developments have occurred since I spoke on this topic one year ago. Last year, I reported that the Commission had just voted to propose guidance for corporate management regarding their assessments of their companies' internal control over financial reporting under Section 13(a) and Section 15(d) of the Exchange Act. On June 27, 2007, the Commission issued a final interpretive release providing this guidance for management with respect to its evaluation and assessment of internal control over financial reporting.³

The interpretive guidance stressed two broad principles. First, the guidance described a top-down, risk-based approach to management's evaluation of whether it has implemented controls that adequately address the risk that a material misstatement of the financial statements would not be timely prevented or detected. The guidance promotes efficiency by allowing management to focus on addressing the risk of a material misstatement of its financial statements. Second, management's evaluation of its controls should be based on its assessment of risk — meaning that the nature and extent of management's evaluation procedures should be aligned with the areas of financial reporting that pose the highest risks to its financial reporting. No substitute exists for management's own experience and informed judgment in designing an effective evaluation process for annually assessing internal controls over financial reporting. By allowing management the flexibility to make determinations regarding the areas that pose the highest risk to the company's financial reporting, they should be able to effectively and efficiently implement our rules in this area — ultimately resulting in lower costs.

At the same time the Commission published its interpretive guidance, it adopted an amendment to Exchange Act Rules 13a-15(c) and 15d-15(c) to

make clear that an evaluation conducted in accordance with the interpretive guidance was one way to satisfy the annual management evaluation required by those rules.⁴ Recognizing that a variety of ways exist to conduct an evaluation that will satisfy the rule requirements, the amended rules state that compliance with the interpretive guidance is voluntary. Thus, larger companies already complying with Section 404 need not alter their procedures based on the interpretive guidance. Smaller foreign private issuers that are calendar year end non-accelerated filers are making their first management evaluation under Section 404(a) as of December 31, 2007, and they are fast approaching the due date of their Form 20-Fs containing their first management report. I hope that those of you in this position are finding the interpretive guidance helpful when establishing your processes for evaluation of internal control over financial reporting — it was particularly targeted for smaller companies.

Under our current rules, non-accelerated filers (including smaller foreign private issuers) would be required to comply with the requirements of Section 404(b) — the auditor's attestation report — for the first time for fiscal years ending on or after December 15, 2008. On this front, however, in testimony in December before the U.S. House of Representatives Committee on Small Business, Chairman Cox stated that he intends to propose that the Commission authorize a further one-year delay in implementation of the Section 404(b) requirement for non-accelerated filers to fiscal years ending on or after December 15, 2009. As he indicated, the SEC plans to conduct a study of the costs and benefits of Section 404 compliance under the management guidance issued in 2007, as well as new Auditing Standard No. 5 (AS 5), which was approved by the Commission in July 2007 and is effective for audits of fiscal years ending on or after November 15, 2007. Also, the Public Company Accounting Oversight Board (PCAOB) is working on staff guidance in this area focused on auditing smaller companies. It published for public comment preliminary staff guidance in October, so an additional deferral of one year would allow additional time for the PCAOB to promulgate their guidance and for auditors of non-accelerated filers to incorporate such guidance into their audits. So stay tuned for more developments in this area shortly.

A final note on this topic — in September 2007 the staffs of the Office of Chief Accountant and the Division of Corporation Finance updated the Frequently Asked Questions regarding Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports. These FAQ's can be found on the SEC's website.⁵ Questions 12 through 15 were added and pertain to issues that specifically affect foreign private issuers.

International Financial Reporting Standards (or IFRS)

Where do I begin on this topic? Tremendous strides have been made in this area over the past year.

- In March, we conducted a staff roundtable on IFRS.⁶

- In April, the Commission issued a next steps press release.⁷
- In July, a proposing release was issued relating to elimination of reconciliation to U.S. GAAP by foreign private issuers using IFRS.⁸
- In August, a concept release was issued relating to the possible use of IFRS by U.S. issuers.⁹
- In November, the Commission voted to approve elimination of reconciliation to U.S. generally accepted accounting principles (U.S. GAAP) by certain foreign private issuers using IFRS.
- In December, the Commission held two roundtables relating to use of IFRS by U.S. issuers.¹⁰

Quite a year! While I can only speak for myself, I am comfortable telling you that the staff at the SEC — particularly in the Division of Corporation Finance — is deeply committed to the goal of achieving a single set of high quality, globally accepted accounting standards and we truly are interested in hearing from all stakeholders as we continue to progress down this road.

The most exciting development in the international arena this past year, in my opinion, was the Commission's adoption of rules to accept from foreign private issuers financial statements prepared in accordance with IFRS as issued by the International Accounting Standards Board (IASB), without a reconciliation to U.S. GAAP. Of course, a foreign private issuer that files its financial statements using a basis of accounting other than IFRS as issued by the IASB must continue to follow the current requirements regarding reconciliation to U.S. GAAP. The newly adopted rules are applicable to financial statements for fiscal years ending after November 15, 2007 — so this is a particularly significant development for those foreign private issuers that have a calendar year end and prepare financial statements in accordance with IFRS. The Commission's acceptance of these IFRS financial statements is a very important and significant step in its longstanding work toward reducing disparity in accounting standards.

I want to draw your attention to one issue raised by the timing of the new rule with respect to eliminating the reconciliation requirement. The rule is effective March 4, 2008. Until the rule is effective, companies are subject to the existing rules regarding the inclusion of U.S. GAAP information. Some foreign private issuers with a fiscal year ending after November 15, 2007 may wish to file their annual report on Form 20-F prior to March 4, 2008 using financial statements prepared in accordance with IFRS as issued by the IASB and exclude the U.S. GAAP reconciliation. If you or your clients are in this situation, I encourage you to contact the Division of Corporation Finance's Office of Chief Accountant to discuss your facts and circumstances. Of course, any accommodation or waiver request must be made in writing.

This now gets me to the possible use of IFRS by U.S. issuers, which includes

issuers incorporated outside the U.S. that fail to meet the definition of foreign private issuer — those issuers are treated the same as domestic issuers. This topic remains before the Commission. As I mentioned, in August 2007 the Commission issued a concept release seeking information about the extent and nature of the public's interest in allowing U.S. issuers to prepare financial statements in accordance with IFRS as issued by the IASB for purposes of complying with the rules and regulations of the Commission, rather than preparing financial statements in accordance with U.S. GAAP, as is currently the standard. The comment period closed November 13, 2007 and members of the staff have been hard at work reviewing the comments submitted.

In an effort to obtain additional feedback from stakeholders, the Commission held two roundtables on IFRS in December 2007. The first roundtable focused on the "big picture" question of whether U.S. issuers should be permitted to report their financial statements using IFRS rather than U.S. GAAP. The second roundtable focused on the practical issues surrounding the possible future use of IFRS by U.S. issuers — that is, the mechanics of making the transition successful.

Each roundtable consisted of two panels, one of which explored the question from the perspective of the U.S. markets, and the second of which explored the question from the perspective of global markets. The latter perspective was particularly informative, given the number of countries that have already gone through the process of transitioning to the use of IFRS. We were pleased to have Richard Thorpe of the UK Financial Services Authority participate and share his insights on the IFRS transition in Europe.

I would like to mention some of the interesting and thoughtful comments and points raised at those roundtables. Looking back, it appears there were three issues that generated near universal agreement among participants.

First, our goal should be a single set of high-quality, globally accepted accounting standards. Panelists believed that uniform global standards would provide significant benefits to all stakeholders in the global capital markets, including those in the U.S. capital markets.

Second, the rest of the world is already heading in this direction and their endpoint is IFRS — not U.S. GAAP. There was little consideration given to the idea that U.S. GAAP could become the uniform global standard. This is an "inconvenient truth" for many in the U.S.

Third, the possible future use of IFRS by U.S. issuers would require a multifaceted transition process and, as such, requires a comprehensive plan to make the transition to IFRS reporting successful.

Of course, with any important policy decision there is going to be disagreement and we received quite diverse opinions from participants on a number of topics. Participants discussed the options for proceeding on the matters discussed in the concept release by proposing rules, the feasibility of two GAAPs coexisting in the U.S. capital markets, the problems with

jurisdictional adaptations of IFRS, the impact of the concept release on the convergence process between U.S. GAAP and IFRS, and concerns with respect to the IASB governance structure. Participants also discussed the costs and benefits of allowing the use of IFRS in the U.S., why issuers would or would not switch to using IFRS, the mechanics of the transition for U.S. issuers, transition timing, investor education, auditor education, the regulatory, contractual, and legal implications of a transition to IFRS, the impact on private companies and even the CPA exam.

One of the more debated topics was how to proceed from the concept release. Participants expressed a wide range of views and a number of overlapping options emerged:

- Have the Commission lay out a so-called "road map" of steps forward.
- Allow the voluntary use of IFRS for an indeterminate period. Under this option, we would allow some or all U.S. issuers to use either IFRS or U.S. GAAP for an indefinite period of time.
- Set a fixed date in the future for the mandatory use of IFRS. Under this option, we would select a date in the future and require that all issuers switch to using IFRS at that time. This was the approach followed in Europe.
- A "wait and see" approach on further rulemaking by the SEC, allowing convergence, investor understanding and the infrastructure for IFRS to further develop over the next few years.
- Various combinations of the above.

I found the roundtables to be interesting and informative. It is always helpful to learn from real-world experiences. Although I realize that most of you in the audience are, or represent, non-U.S. stakeholders, I urge you follow these developments carefully as this will likely remain an active area for the Commission, the standard-setters and all the various stakeholders. That's it on last year's initiatives. Let's turn to 2008.

Upcoming International Initiatives

So, where are we heading with respect to international rulemaking initiatives? After dealing with two of the more visible issues facing foreign companies — IFRS and deregistration — this coming year I anticipate that we will be turning to several less high profile, but nonetheless important, matters relating to foreign private issuers. I expect that these foreign issuer reporting enhancements may take a variety of forms and relate to a variety of rules — as we move forward, we may recommend providing relief and easing requirements for foreign issuers in some areas, while establishing new requirements in others, to achieve a fair and balanced regulatory approach to foreign issuers.

One area that I think we should consider revisions in is the Exchange Act Section 12(g) "entrance rules" for foreign private issuers, particularly in light of the new deregistration rules, or "exit rules" if you will. Under the current regulatory regime, a foreign private issuer is not required to register under the Exchange Act if its assets do not exceed \$10 million, it has fewer than 500 shareholders of record worldwide, and fewer than 300 shareholders resident in the United States. Under a regulatory accommodation that dates back 40 years, a foreign private issuer can exceed these thresholds but still not be required to register under the Exchange Act if, before it exceeds those thresholds, it establishes and maintains the exemption under Rule 12g3-2(b). Under this exemption, historically a foreign company has submitted to the SEC paper copies of its home country disclosure documents and these paper copies are then made available to investors through the SEC's Public Reference Room.

In 1967, when this rule was initially added to the Exchange Act, it represented an intelligent and pragmatic approach to applying Section 12(g) to foreign companies. But even the best rules can outlive their usefulness. In connection with the deregistration rulemaking, some commenters noted that we should revise the entrance rules under Section 12(g), which like the old exit rules, they said are outdated. Actually, we didn't need commenters to point this out — the staff has recognized for some time that the 300 U.S. holder registration threshold under Section 12(g), as well as the whole Rule 12g3-2(b) exemptive process, may no longer best serve investors' or issuers' interests. The shortcomings of this regulatory structure in the current global investment environment are easily identifiable. As two examples, foreign companies that follow the process and establish the exemption in time can have substantial (even very substantial) levels of U.S. ownership and interest in their securities, and yet they are never subject to Exchange Act registration; and paper copies of anything submitted to the SEC are not readily accessible to investors over the Internet.

In my opinion, the deregistration rules could provide a model for how to approach possible rulemaking in this area. For example, having moved to using a trading volume threshold and Internet postings in the context of deregistration, perhaps those same concepts can be put to use in the context of our registration requirements. Recently, the Commission has dealt in part with the second shortcoming noted — in the deregistration rulemaking we changed our rules and now permit all foreign private issuers to maintain their Rule 12g3-2(b) exemption by posting relevant information on their websites, which, believe me, are much more accessible than finding paper documents through the Public Reference Room.

Against this backdrop, it seems to be an ideal time for the Commission to consider the noted shortcomings directly. The Commission could achieve this goal by providing a more widely available and self-operating Exchange Act exemption for publicly traded foreign companies that put current information on the Internet, which is almost every public company already. This exemption could apply going forward regardless of whether the foreign issuer had applied for the exemption at an earlier point. The Commission could also recognize that, at some point, U.S. investor interest in a particular company,

and thus U.S. regulatory interest, is sufficiently high to require that the company submit to Exchange Act registration and not have the Rule 12g3-2 (b) exemption available.

Turning to another area, Securities Offering Reform has been tremendously successful and beneficial to both U.S. and foreign companies. Over two years have passed since Securities Offering Reform was adopted, and the passage of time has enabled us to have a better sense of its benefits and potential drawbacks. Particularly noteworthy is the use of automatic shelf registrations by well-known seasoned issuers (WKSIs), not only by U.S. companies but foreign companies as well. Last year over 30 foreign companies filed automatic shelf registrations. Of course, I would like to see additional foreign companies use automatic shelf registrations when raising capital; however, I am aware that the current rules regarding the age of financial statements raise concern for foreign WKSIs and may limit the use of automatic shelf registrations. Unlike U.S. companies, which if they are in compliance with their Exchange Act reporting obligations can pretty much use automatic shelf registration whenever they want, foreign private issuers may face an additional U.S. GAAP financial statement hurdle under the Commission's age of financial statement rules, unless of course they file under U.S. GAAP or, as a result of our recent rule change, IFRS as issued by the IASB.

Foreign private issuers are only required to provide financial statements once a year, six months after their year end, but those financial statements supplied in their annual report on Form 20-F may be stale at various times during the year. Thus, a foreign private WKSI desiring to use its automatic shelf registration statement may need to incur the time and cost of supplying a reconciliation of interim financial statements that is not otherwise required under our Exchange Act rules. Some issuers may ultimately decide to take their offerings to other markets or to the U.S. Rule 144A market instead. Even though this issue is mitigated for some by our recent rule change eliminating reconciliation for issuers using IFRS as issued by the IASB, it will remain for those foreign private WKSIs that do not report in IFRS or U.S. GAAP. I believe that this particular area could be addressed by us in a way that is beneficial to foreign private issuers and investors.

Another area where change may be warranted, and this area is somewhat tied to my discussion of the use of Securities Offering Reform by foreign private WKSIs, is the annual report filing deadline for foreign issuers. In this regard, the Commission has sought comment on advancing the six-month Form 20-F filing deadline several times since the late 1970s, most recently in connection with the IFRS proposing release. Today, Form 20-Fs are due six months after year end, while 10-Ks are due in 60, 75 or 90 days, depending on company size. The time seems right to revisit this head-on, in light of our foreign issuer registrant population, current global practices on annual filings, continued advances in information technology, and investor expectations. Of course, I cannot predict what may be proposed, much less adopted, but I will note that when the accelerated filing deadlines for U.S. issuers were implemented a few years ago, they were phased in gradually — I would think that a similarly measured approach could be appropriate here.

One other area that bears some attention is the basic application of the foreign private issuer definition itself. As you know, under the Commission's rules, a foreign private issuer is any foreign issuer, other than a foreign government, except an issuer that has more than 50% of its outstanding voting securities directly or indirectly owned of record by U.S. residents and either the majority of the executive officers or directors are U.S. citizens or residents, more than 50% of the issuer's assets are located in the U.S., or the issuer's business is principally administered in the U.S. Whether a foreign company comes within or falls outside that definition is a continuous determination that has extremely important regulatory consequences, such as little things like compliance with Section 16, the proxy rules, Form 8-K reports and full U.S. GAAP financial statements. While the definition itself seems to be working, it may be appropriate to provide a definitive process with specific measurement dates that companies can look to so they don't find themselves suddenly caught in a world they did not create, such as when their U.S. shareholder base rises above 50%.

The cross-border tender offer rules are another area in which the staff may recommend revisions in the near future. In fact, revisions to these rules are currently the number one rulemaking priority in our Office of Mergers and Acquisitions. With eight years of experience using the current rules, I believe that most will agree that the rules have worked well in balancing the need to promote the inclusion of U.S. security holders in cross-border transactions against the need to provide the protections of the federal securities laws to those holders. Despite the success of these rules however, the staff is considering revisions to address areas that may not be working as well as expected and areas where relief could be expanded. For example, it may be appropriate to make revisions with respect to the way U.S. ownership of the target securities is calculated.

There are more items we are looking at, but that's probably enough detail for this morning. Please stay tuned.

Mutual Recognition

I'd like to close with a hot topic that I have not previously publicly discussed at any length — possible Commission initiatives relating to mutual recognition of foreign securities regulatory regimes for the purpose of permitting various types of foreign financial intermediaries, such as brokers or exchanges, greater access to U.S. investors. Of course, as many of you know, quite a lot of discussion is occurring regarding what the Commission's plans may be on mutual recognition, particularly with respect to brokers and exchanges. On that front, one thing that I can say with certainty is that the Commission and the staff will consider any issues presented by possible mutual recognition arrangements closely and carefully before deciding to move forward. What type of arrangement, if any, emerges from that consideration remains open.

Mutual recognition was addressed at a Commission roundtable on June 12, 2007, and SEC staff members have spoken or written about the idea of

mutual recognition and foreign market access on various occasions. While the roundtable and these staff statements have been helpful in framing some of the questions that would need to be addressed with respect to foreign brokers and exchanges, I believe it is useful to begin to frame the questions as they relate to the foreign companies whose securities would be tradable through a mutual recognition system. While some of the commenters at the roundtable noted that the standards for listed companies should be part of the mutual recognition process, most of the staff's focus has been on the exchanges and broker-dealers themselves.

I believe the issues relating to listed companies deserve significant attention because they are as important as the issues relating to the exchanges and brokers. This is because foreign exchanges and brokers would become, to a large extent, significant conduits for bringing into the U.S. markets and to U.S. investors the securities of foreign issuers. If I could try an analogy, it would be as if the federal government regulated the companies that imported cars into the United States and the dealerships that sold those cars, but did not assure that those cars being sold to U.S. drivers met appropriate standards for emissions and passenger safety. A good regulator should look at the products that are offered and sold through an import arrangement. In this case, the product of course is corporate securities.

Providing a mutual recognition regime that permits U.S. investors ready access, through U.S. broker-dealers, to foreign listed securities, would make a wide range of investment products more available to those investors than they are today. As a result, establishing and evaluating standards for those products (which would include looking at the standards applicable to those products in their country of origin) is an essential part of such a regime.

So let's talk about the standards that might apply to the foreign companies whose securities would be traded on a foreign exchange that was accessible by U.S. investors through a mutual recognition regime. While over the course of time, perhaps, such a regime could apply to all securities of all issuers traded on such a market, initially it seems appropriate to limit trading to plain vanilla securities, such as ordinary or common equity shares, of those companies that appear to have a broad market following. We could look to our WKSI definition — \$700 million global public float, as a benchmark for this purpose. It is these securities and these issuers in which U.S. investors are likely to have the most interest. In addition, it would also seem appropriate, again at least initially, to limit access to those companies with an established track record of stock trading and public disclosure, such as those that have been public for at least a year or six months. But again, as I mentioned before, only time will tell what arrangements, if any, would be made in this area.

The mutual recognition model is premised in large part on a determination that a home country regulatory regime provides comparable protections and results to the protections and results afforded to U.S. investors under the federal securities laws. This determination would relate not only to brokers, dealers, exchanges and perhaps other financial intermediaries, but also to the standards applicable to the listed companies involved. Issuer disclosure is

one of the hallmarks of the U.S. regulatory regime and a key aspect of market transparency. In assessing comparability, there would need to be consideration of a foreign jurisdiction's issuer standards with respect to financial and non-financial disclosure and corporate governance.

In some areas, we are fortunate because high quality international standards have already been developed by regulatory bodies, and it would be appropriate to look to those standards as the point of reference in an assessment. These standards include IFRS as issued by the IASB, and the International Disclosure Standards developed by the International Organization of Securities Commissions (IOSCO), including its all important MD&A requirement. In addition, it almost goes without saying that corporate information, including annual disclosure documents prepared under these standards, should be available to investors free of charge over the Internet. In assessing comparability of issuer disclosure, it would no doubt be necessary to consider a wide range of factors for each market and jurisdiction. No one set of standards will provide the sole template into which a foreign market would need to fit.

Against that backdrop, in the corporate governance arena, there are several areas that we could look to that I think are now widely acknowledged as being key to good governance: audit committees, or another type of corporate body responsible for auditor oversight; and strong internal control over financial reporting and management reports to shareholders on the strength of those internal controls. In addition, in recognition of the significant role that auditors play in the financial reporting system, it would seem appropriate to look to whether a home country had in place an independent entity that has oversight of the overall activities of audit firms in that country. We could also look to whether a home country had rules or enforced guidelines under which auditors' conflicts of interest are minimized, with appropriate limits on those non-audit services that can present inherent conflicts of interest that may undermine the integrity of the audit process.

Lastly, in this area of issuer standards, there should also be consideration of whether foreign companies treat, or whether the home country regulator or exchange requires foreign companies to treat, U.S. investors equally with home country investors, or equally with other foreign investors. This consideration could extend to many different matters, such as whether U.S. holders receive the same mailings as other investors, whether proxies are solicited in the same manner, and whether rights offers are extended on an equal basis.

Now, one other topic: I will call it the 1933 Act topic. Virtually all of the discussions relating to mutual recognition and foreign market access into the United States have been centered on giving U.S. investors an improved ability to buy and sell securities in those markets in ordinary secondary market transactions. I think it is fair to say that there are different concerns and interests at stake when companies are involved in capital raising. Mutual recognition, as it is being discussed by most people at this time, at least, does not extend to capital raising and offerings. And so, it is important at least at this initial stage that there be procedures and processes in place to

make sure that a regulatory arrangement that is designed to facilitate U.S. investor access to foreign markets does not indirectly give foreign companies the ability to do their financings in the United States in unregistered offerings. To date, this has not been a focus of compliance concern in the dialogue on mutual recognition, but I think that is largely because we do not have foreign stock exchanges operating in the United States providing broad access, through U.S. broker-dealers, to U.S. investors. This is an area which may need to be addressed in a mutual recognition regime, especially if the regime contemplates broad foreign access to U.S. investors.

If the Commission were to adopt some form of mutual recognition, exchanges and brokers could need to put in place enhanced systems to guard against indirect unregistered capital raising from U.S. investors. The situation with IPOs in a foreign market is relatively straightforward. As I mentioned earlier, it could be appropriate to restrict the foreign companies whose securities are tradable through an access regime to those with a track record, meaning they have been public for a period of time. But the more difficult situation involves companies that are already publicly traded and that undertake a capital raising in their home market using newly issued securities that are fungible with those already trading. It could be appropriate for some procedure to be put into place by a financial intermediary to guard against U.S. investors simply buying into an offering. For example, there might be some time period of restricting access to trading a particular company's securities to protect against the company, in effect, raising funds from U.S. investors. What these procedures could be will no doubt be different for each jurisdiction, but the principle should be clear — no direct or indirect capital raising from U.S. investors.

Where the Commission will come out on these various issues, we will need to wait and see. One thing is certain: the time appears right to focus on these important issues, and investors will be well-served through public discussion and input which will inform the Commission's decisions.

With that, I believe that I will close. I have enjoyed sharing my thoughts with you today and let me just say that, one year from today, I hope we have made as much progress on these 2008 initiatives as we did last year on our 2007 initiatives.

Thank you for inviting me.

Endnotes

¹ "International Business - An SEC Perspective" Address to the American Institute of Certified Public Accountants' International Issues Conference, Christopher Cox, Chairman, U.S. Securities and Exchange Commission, January 10, 2008, available at <http://www.sec.gov/news/speech/2008/spch011008cc.htm>.

² SEC Release No. 34-55540, "Termination of a Foreign Private Issuer's

Registration of a Class of Securities Under Section 12(g) and Duty to File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934," March 27, 2007, available at <http://www.sec.gov/rules/final/2007/34-55540.pdf>.

³ SEC Release No. 33-8810, "Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934," June 20, 2007, available at <http://www.sec.gov/rules/interp/2007/33-8810.pdf>.

⁴ SEC Release No. 33-8809, "Amendments to Rules Regarding Management's Report on Internal Control Over Financial Reporting," June 20, 2007, available at <http://www.sec.gov/rules/final/2007/33-8809.pdf>.

⁵ See "Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports," revised September 24, 2007, available at <http://www.sec.gov/info/accountants/controlfaq.htm>.

⁶ See Press Release 2007-19, "SEC Staff Roundtable on International Financial Reporting Standards "Roadmap" Set for March 6," February 13, 2007, available at <http://www.sec.gov/news/press/2007/2007-19.htm>. See also SEC Spotlight on: International Financial Reporting Standards "Roadmap," available at <http://www.sec.gov/spotlight/ifrsroadmap.htm> for archived webcasts, unofficial roundtable transcripts, and other materials.

⁷ See Press Release 2007-72, "SEC Announces Next Steps Relating to International Financial Reporting Standards," April 24, 2007, available at <http://www.sec.gov/news/press/2007/2007-72.htm>.

⁸ SEC Release No. 33-8818, "Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards Without Reconciliation to U.S. GAAP," July 2, 2007, available at <http://www.sec.gov/rules/proposed/2007/33-8818.pdf>.

⁹ SEC Release No. 33-8831, "Concept Release on Allowing U.S. Issuers to Prepare Financial Statements in Accordance with International Financial Reporting Standards," August 7, 2007, available at <http://www.sec.gov/rules/concept/2007/33-8831.pdf>.

¹⁰ See Press Release 2007-261, "SEC Announces Roundtable Discussions Regarding International Financial Reporting Standards," December 12, 2007, available at <http://www.sec.gov/news/press/2007/2007-261.htm>. See also SEC Spotlight on: International Financial Reporting Standards "Roadmap," available at <http://www.sec.gov/spotlight/ifrsroadmap.htm> for archived webcasts, unofficial roundtable transcripts, and other materials.

<http://www.sec.gov/news/speech/2008/spch011408jww.htm>

