

**SEC HISTORICAL SOCIETY**  
**June 6, 2007 Annual Meeting**

**“Beyond Borders: A New Approach to the Regulation of Global Securities Offerings”**

**HERBERT JANICK III:** I would like to welcome everybody who is here in person, and everyone who is listening to our live broadcast on [www.sechistorical.org](http://www.sechistorical.org), to the Securities and Exchange Commission Historical Society’s Eight Annual Meeting. The Society was founded in 1999 as a non-profit institution to preserve and share SEC and securities history. While separate and independent from the SEC, the Society is grateful for its strong and sustained relationship with the SEC and proud to host its annual meeting here today. Last week, our virtual museum and archive of the SEC and the securities industry celebrated the fifth anniversary of its founding on June 1, 2002. More than 5,000 people each month visit and use the virtual museum, which is free and accessible worldwide at all times. I encourage you to visit the museum on a regular basis, see what we add each month, and use the many rich resources available to you. After today’s broadcast, our annual meeting program - Beyond Borders: A New Approach to the Regulation of Global Securities Offerings - will join the more than 30 online programs already in the museum. The audio will be available immediately, a transcript will be ready later this summer, and I am proud to announce that all of our programs, including this one, can now be accessed as a podcast, so you can put that on your iPod right at home.

My fellow trustees and I are appreciative of the continuing support that SEC Chairman Christopher Cox has given to our work since becoming the SEC’s 28th Chairman in 2005. In time for our Annual Meeting last year, he made possible the public display of our James Landis bust on long-term loan to the SEC, which you can see in the foyer outside the auditorium. I am happy to announce that Chairman Cox has now given his approval for a display of historic photos from our virtual museum and archive to be placed in the SEC Visitor Center, starting in July. This display will be one of the activities that the SEC Historical Society will conduct to help commemorate the SEC’s upcoming 75th anniversary in 2009. I would like now to introduce David Martin, the Society’s President-Elect, and moderator for our program today: Beyond Borders: A New Approach to the Regulation of Global Securities Offerings.

**DAVID MARTIN:** Thank you, Herb. I am pleased to be moderating this program for two reasons. First, I believe in the mission of the Society to deliver programs and papers of value to a better understanding of the SEC’s role, past and future, in the capital markets of the world. And secondly, I am proud to be moderating this because it’s a very timely topic, and because of the intellectual caliber of our panelists today. I can personally say I’ve known and worked with each of these people for many years, and pleased and appreciative of that they are with us. I am honored to be speaking with them.

Edward Greene has published a remarkable paper for the Society’s museum, and we are going to invite Ed to the podium shortly to give you a synopsis of it. After doing that, I will introduce my panelists - Elisse Walter, Alan Beller and Craig Beazer - and ask them to say a few words on their perspectives on Ed’s remarks and his paper. I will then ask them to pose some questions and discuss issues with Ed, and I will at the end of our appointed time, blow the whistle, and referee the process in between. I should say at the

beginning that our comments are our own comments, and not the Society's. The Society should be given credit for giving us this opportunity, but not blame for what we may choose to do with it. And I know each one of the individual speakers would like to say that their comments are theirs, and not their own organizations. So without any objections to this order of business, let me start with some background as to the topic, and how we came with our speaker.

The program was developed by the Society's Division of Corporation Finance Committee and let me say for a minute, a word of credit to my co-members on that committee - Mickey Beach, Paul Belvin, Justin Klein, Bill Morley, Peter Romeo, Dick Rowe, and Elisse Walter - all alumni from the Division of Corporation Finance, who have put in a lot of work over the last year. We started thinking about this program about a year ago. I think it was to our great good fortune, that we reached out to Ed Greene to test drive the idea for this program, to which Ed gave us full and enthusiastic support, and volunteered to write this paper and be with us today. I must say a recent view of the news calendar and headlines shows us just how prescient Ed was, and how rightly we were to have followed his support for this program. In the last several months, the Chairman and each Commissioner, the Chief Economist, the Director of the Division of Corporation Finance and other senior SEC staff have all spoken significantly about the need to seek some kind of conjunction in global securities regulation. Just recently the U.S. Treasury Department, including the Secretary, has spoken about initiatives that would lead to the modernization of the U.S. regulatory system, particularly with respect to global matters. If you just read your e-mail inbox, you will see that this topic is now the headliner on many programs and the air-waves have been filled with additional articles speaking about this, including some by senior SEC staffers. So the time is right and with this as a backdrop for this program, and the timeliness of the topic, let me just say a word or two about our speaker and then bring him up to the podium for you.

In introducing Ed, it's a great pleasure for me personally because he was the Division Director of Corporation Finance when I joined this agency in 1980, and since then has been a real mentor personally and intellectually to me. His career has been one of energy, imagination, and excellence. At the Commission, after serving as Division Director, he was General Counsel. He went on to pursue a very distinguished career in private law practice with Cleary Gottlieb Steen & Hamilton, and he spent many years overseas both in the Tokyo and London offices for Cleary Gottlieb. More recently he has left private practice, and has become the General Counsel of Citi Markets and Banking. Throughout his career, Ed has been a prolific speaker and author, particularly with respect to global financial markets and we are very fortunate that he has published his paper with the Society, and he is willing to be with us today. Please welcome one of the agency's most distinguished alumni, Ed Greene.

**EDWARD GREENE:** Thank you David for those kind remarks. Cross-border capital markets activity has increased dramatically in recent years. This recent increased activity has caused market participants to focus on two issues. First, what makes one financial center more attractive than another in attracting cross-border business? Second, what's the appropriate model for regulating cross-border activities? I would like today to focus on the second issue. In particular, how we should regulate offerings by companies raising capital internationally outside their home market.

In my paper that David referred to, which has been posted, I propose to allow large European issuers to make public offerings using documents prepared in accordance

with the European Union Prospectus Directive. Today I advocate that our respect for the power of disclosure and market forces supports permitting large issuers to make these offerings in the United States without having them registered. My proposal is based on the following assumptions: that it is in U.S. investors' interest to diversify their portfolios by investing in foreign securities; that, for a variety of reasons, there will be fewer registered public offerings in the United States by foreign and private issuers; and that, even if the proposals to be discussed at the SEC Roundtable next week, even if those proposals are adopted, which would mean mutual recognition with respect to access of exchanges and broker/dealer to the U.S. to make foreign securities available, U.S. resident investors will still not have access to primary distributions, even offshore, because there is no exemption from Section 5 of the '33 Act if they participate. Thus I recommend we should permit public offerings by large European Union issuers in the United States without registration, perhaps with the further condition that the regulator from the home market have an MOU in place with the SEC.

A significant part of global capital raised today consists of offerings made across borders privately in what we call the wholesale market. There is not uniformity with respect to which investors are eligible to participate in private placements, the status of privately placed securities, or how investors can be solicited. It's fairly straightforward to raise capital privately, especially in the U.S. with the development of the Rule 144A market, which is one of the great innovations that the staff and the Commission have implemented. But with respect to raising money publicly, the traditional model has been one of national treatment. Public offerings in the United States must be registered and the U.S. prospectuses prepared under these rules are the same with respect to foreign companies and U.S. companies with some very small concessions made to foreign companies.

Now there are two other approaches in addition to national treatment that we need to consider for regulating cross-border offerings. One is mutual recognition; the other is to rely on disclosure and market forces with respect to offerings by companies of a certain size. With mutual recognition, the host country relies on the rules of the home country for doing a public offering, including contents of disclosure documents, stabilization and advertising rules. In addition to the liability regime of the home country, the offerings are subject to the fraud rules of the host country as well.

Mutual recognition typically requires the determination that the home country's regulatory and enforcement approach is comparable or at least consistent with the host country's. An example in which that determination was made was the U.S. - Canadian Multijurisdictional Disclosure System, which is still in place. The SEC has scheduled a roundtable next week, as I mentioned, to explore mutual recognition in two areas with implications for cross-border offerings: mutual recognition of home country regulation of foreign brokers and of stock exchanges. My proposal is a compatible supplement to this initiative and I would hope that we could integrate the three as we decide how to urge the Commission to go forward. A difficulty with mutual recognition is that it can be politicized.

In the European Union, with the adoption of the Prospectus Directive, and international financial reporting standards, prospectus content in public offerings is substantially equivalent to what one would produce in the United States today. And it will be all the more so, once the road map with respect international financial reporting standards is completed. But there are 27 countries in the EU with 27 separate regulatory regimes,

some with resources greater than others. While the prospectus in public offerings must be vetted by the home country, the level of that vetting may vary. If we were to explore mutual recognition with the EU, would it be on a country-by-country basis, or EU-wide? I think there would be concern with respect to the latter approach - EU-wide - because of the diversity of the countries involved. But then how do we decide that one home country in the EU is eligible but not another? Would we be willing to make distinctions between, say, the UK, Portugal, Germany or Poland, since the requirements for disclosure are generally the same throughout Europe now? This would be a judgment directly about the effectiveness of the regulators overseas. But I am not sure we have to get into a situation where we have to make that judgment, because an alternative approach to mutual recognition of individual EU countries might be to rely on a combination of disclosure, the legal context created by the recent EU Financial Services Action Plan legislation, and perhaps an MOU between the SEC and the home country regulator and have that in place with respect to large, well-followed companies wishing to raise capital in the United States. The SEC itself has recognized that well-known seasoned issuers - what we call WKSIs - should have access to the market without prior review of their offering documents.

A significant rationale for the mutual recognition initiatives being discussed next week at the roundtable is that U.S. investors are being disadvantaged by restrictions in place which make it difficult for them to acquire foreign securities. The contemplated remedy is to permit financial intermediaries that are subject to appropriate foreign regulations to offer U.S. investors access to foreign securities. That's a recognition of the fact that these purchases can be made in the secondary market today, even if not as efficiently as will be the case that these proposals were adopted. But if a secondary market purchase of foreign securities from financial intermediaries benefiting from mutual recognition would be permissible under this approach, one could ask why not direct purchases in primary offerings particularly by large, well-followed issuers? I would propose to allow such issuers to conduct distribution to the United States without requiring SEC registration because if we don't - even if the proposals I referred to, to be discussed at the roundtable were adopted - issuers still would not permit U.S. resident investors to participate in offshore primary offerings because participation might violate Section 5 of the '33 Act.

We need to rethink our approach here in the U.S. given the discussion on competitiveness. U.S. investors currently have access to foreign securities in the secondary market without any restriction at all. Moreover technology makes such investments much easier today than they were years ago when I was at the Commission. But under our current regulatory approach, retail investors in the U.S. can't purchase in an initial offering even if they are interested in doing so, onshore or offshore, unless it's registered. We don't permit them to make investments in public offerings based on non-conforming documents even with disclosure as to risks and identification of differences between what the U.S. requires and what the home country might require. Moreover to the extent they do acquire securities of a foreign issuer offshore in secondary market trades, their ability to bring a claim for fraud under U.S. law is by no means certain. But why not experiment? Why not allow unregistered offerings to be made publicly in U.S. with respect to certain companies if the disclosure is comparable?

And if you think of it, this approach is an extension of the current practice but to a wider group of investors. Today, we allow foreign companies to conduct what are de facto public offerings in the United States to qualified institutional investors relying on Rule

144A. From 1999 to the first half of 2006, 94% by value of global IPOs that did not list in the United States included a Rule 144A tranche. There are no restrictions on shares purchased in Rule 144A offerings. They are freely tradable in the home market after the offering. And without regulation requiring any particular disclosure, market forces have settled on documentation that is the same as that used in the home country with minor exceptions. So if we have permitted what are in effect public offerings to institutional investors, why not consider expanding the universe of those eligible investors? And if we do consider expanding it, who should we include? There are two alternatives that I have been thinking quite a bit about recently. One would be European Union WKSIs being allowed to conduct non-registered public offerings in the United States using home country offering materials prepared in accordance with the requirements of the Prospectus Directive. The criteria would be similar to those were used for WKSIs here in the U.S., that is, 700 million of equity outstanding in the public markets held by non-affiliates.

Of course these companies would be subject to the home country liability regime as well as U.S. anti-fraud rules if they conducted an offering in the United States. Just like they are in the U.S., European WKSIs are well-followed in the market by analysts, generally have a global investor base, and have appropriate incentives to make full, fair and timely disclosure and their offering documents under the prospectus directive would be equivalent to what U.S. companies prepare. Because of the comparability of disclosure, and the convergence of the U.S. and the EU markets, I would allow these companies to sell to any U.S. investors with appropriate disclosure of risk and differences in liability regimes. And even though not registered, one has to keep in mind that U.S. brokers can only recommend suitable investments for their clients and issuers would bear the risk of liability under Rule 10b-5. But then the question is why not let these EU WKSIs use their home country offering documents but still require a registration statement to be filed with the SEC; that's the approach we have taken with the Canadian Multijurisdictional System.

In my view, registration would be a disincentive for European WKSIs to raise capital publicly in the U.S. First we subject them to a number of U.S. requirements that may be duplicative or inconsistent with their home country regime. Secondly the U.S. prospectus liability regime and our litigation environment would be a disincentive, especially since these companies already have full access to the Rule 144A public market. And if we don't adopt my approach, issuers will still not let U.S. resident investors participate in primary offerings, even if the proposals to be discussed next week at the roundtable are adopted.

The European Union rules on disclosure liability in connection with such an offering by European WKSIs and Rule 10b-5 potential liability, should be of sufficient use to protect U.S. investors. I believe the value of U.S. prospectus liability in this situation to investors is marginal. And building on the experience of the 144A market, which is a wonderfully efficient market, I can't emphasize that enough - we could also consider WKSI equivalents from any part of the world. Here, though, one might want to limit the eligible investor class to those with investment experience in the region or industry as opposed to focusing on net worth, which is the typical approach we have taken for a accredited investors. This is the approach that's been taken, for example, by the UK FSA, which permits private customers of financial intermediaries who have sufficient knowledge and understanding rather than net worth to be classed as intermediate customers, which means they have less regulatory oversight. I would not limit access to primary offerings

by WKSIs just to institutions. There are many U.S. individual investors who are sophisticated but who are today forced to invest only in the secondary market. Clearly this proposal is controversial, but so was shelf-registration when we started it 25 years ago. Markets are converging, as reflected by the fact that many markets have implemented many portions of the Sarbanes-Oxley Act, notwithstanding the rap Sarbanes-Oxley has taken recently. Now, we must keep in mind that there are alternatives for many companies raising capital. There have been fewer new public offerings in the United States by foreign private issuers and I do not think that trend will change. Perhaps, then, we should try an experiment. Let's start with European WKSIs in a pilot program, then consider whether to expand to another countries. To encourage regulatory cooperation, perhaps condition the pilot program on the European Union home country in which the issuer is located having an MOU in place with the SEC. And with that I will turn it over to my fellow panelists.

**DAVID MARTIN:** Thank you very much. Now we are going have a change in the agenda because SEC Chairman Christopher Cox has been able to join us, probably for only a short time. Mr. Chairman, would you be able to say a few words to us?

**CHRISTOPHER COX:** I am going to go with the flow of this program; I want to make sure that everything stays on track. First of all, welcome to all of our panel; this is a very, very distinguished panel. Ed has done a great job of kicking us off. Second, welcome to everyone here and thank you all for joining us in the SEC's auditorium for what is I think a wonderful idea that the Historical Society has had here to host this discussion as part of the commemoration of the SEC's seventy-third year. It's a sunny day outside and we are air-conditioned inside. So we immediately see some differences between us and 73 years ago; certainly no facility like this was available at the time of the founding of the SEC. So we have a lot to be grateful for these days in Washington D.C. We got a large cool room on a hot summer day and also ice cream immediately following the more substantive part of the program.

It was 10 years to the day of the founding of the SEC that the Allies launched the invasion at Normandy that led to the liberation of Europe. With the end of the war came the end of the Depression and the post-war years are the consequence of the bravery of those Rangers that scaled the cliffs and all the other Americans who fought. Americans turned their historic efforts to working in peace time to extend free markets even through the tensions of the Cold War that followed. America was by and large in a celebratory mood because we had much to celebrate, including the successes of sustained government policies of Democratic and Republican Administrations to promote the free flow of investment in our capital markets built on a foundation of investor protection that became the model for the entire world.

History's current has carried us through dramatic cultural changes as well that continued this day and in fact it was on this date June 6, 1955 that Bill Haley and the Comets reached number one on the hit parade with "Rock Around the Clock" and exactly five years to the day later also, on June 6, 1960, that Roy Orbison released "Only the Lonely." So if you remember those songs you will feel right at home during today's tour down the SEC's memory lane.

We've all come here today because we appreciate the rhythms, the music if you will, of the now-global marketplace. Today's theme of Beyond Borders really does reach that essential point as we near the end of the first decade of the 21st century and our

markets continue to reach for new highs. The history of the SEC and our markets now takes us everywhere in the world into every time zone. And I think each of us is inexorably led to the notion that the future history of the SEC and of our global capital markets may well help literally billions of new people to reach previously unimagined levels of prosperity and individual freedom. It's not too much to hope that if we are successful in building such a world, not only prosperity but peace among nations will be the result. As the 19th century French economist Frederic Bastiat observed, "Where goods cannot cross borders, soldiers will." By insuring the integrity of our worldwide markets, by taking our war against fraud and unfair dealing into the international arena, we at the SEC are doing the valiant work of peacemakers.

It's true that much of our world remains disorderly and grim, even while markets grow but I don't think that observation fundamentally rebuts Bastiat. He surely would have recognized why some of our national differences including differences in the regulation of trade in capital markets must continue to exist, while we do our best to reconcile them. Another great thinker, Alfred North Whitehead, offered in the last century what might be taken as a friendly corrective to Bastiat: "Other nations of different habits," he said, "are not enemies: they are godsend. Men require of their neighbors something sufficiently akin, to be understood, something sufficiently different, to provoke attention, and something great enough to command attention. We must not expect, however, all the virtues."

Following that kind of enlightened thinking, the SEC, under the guidance of Ethiopis Tafara and the leadership of each of the Divisions and Offices of our agency, is working to develop a new framework for securities regulation in the global era, in which foreign stock exchanges, foreign broker-dealers, and foreign securities might all find a way to integrate with our own domestic system of regulation and investor protection.

With this kind of consequential and hopeful vision laid before us, I'm eager to hear what each of our panelists has to say. We've gotten a good start without me, but I know that Ed, and Alan and Craig and David and Elisse, this wonderful panel brought together by the SEC Historical Society are going to help us do this important thinking. There is a lot of thinking to be done on this exciting road ahead. So I hope that any headaches that you might feel later on in the afternoon are caused only by eating the ice cream too fast. Congratulations to all of you, to all of us in the SEC family on this celebration of our seventy-third birthday and many thanks to the SEC Historical Society for all of your fine work in organizing this event.

**DAVID MARTIN:** Thank you Chairman Cox. Ed has given us some ideas to think and talk about and Chairman Cox has warned us of the difficulties and challenges in implementing some of those ideas. Each of the panelists is here for a reason. They've thought, they've worked, they've discussed, they've considered international global finance in many different venues and contexts, and I would like to introduce them and ask them each to say a word about the perspective that they bring to these issues. To your left, Alan Beller, a once and current partner at Cleary Gottlieb and also the immediate former Director of the Division of Corporation Finance. Alan's career has been solid and excellent in the international corporate finance and capital markets areas. To my right, the next one to the left of you is Craig Beazer, standing in for Mike McAlevey, with General Electric. Craig and I have worked on global finance issues, and I was thrilled, when Mike was diverted by another challenge, that Craig could step in and be with us on such very short notice. Craig is the Vice-President, General Counsel and

Secretary of General Electric Capital and General Electric Capital Services. I think of him as essentially the General Counsel to the corporate treasury function at GE. And to my left is Elisse Walter. Elisse thinks of herself as a permanent regulator, I suppose, having been in the regulatory business since 1977 when she came to the SEC. She is currently the Executive Senior Vice-President for Policy Affairs for NASD. She was a Deputy of the Division of the Corporation Finance and also served at the CFTC, where she was General Counsel. So, can I start to my far right and ask Alan to say a few words about his perspective on these issues before we engage Ed in some dialogue.

**ALAN BELLER:** Yes, David, thank you. I do have some questions for Ed. My overriding observation about this proposal is that Ed's thought about opening a greater spectrum of our offering markets to non-US WKSIs-sized companies can't be examined in a vacuum that excludes how you address the trading markets at the same time. It was Milton Cohen's genius back in 1966 to make us think about disclosure in the trading markets and the offering markets as integrated. Ed was actually here as Director when the first giant steps in that direction, culminating in shelf registration, took place and I think Ed's question raises some really interesting proposals about or questions about what U.S. exchanges should be allowed to list and trade, if his proposal were to come to fruition in some form and also relates to the questions about mutual recognition of foreign exchanges. I see Ethiopis there in the audience, and his article and Ed's come together very much at that point. There is a roundtable coming up a week from yesterday that will address mutual recognition of exchanges and I think what we are talking about today and at least that aspect of the mutual recognition discussion are very much integrally related. So, that's my perspective on this, but I will reserve some thoughts for Ed for a few minutes from now.

**DAVID MARTIN:** Great, Craig?

**CRAIG BEAZER:** Well my perspective at GE Capital - and I should say my remarks should not be attributed to GE Capital or any member of the GE Company family - but as a well-known seasoned issuer here in the States, I think my approach to Ed's proposal is that it's a wonderful one, as long as there is reciprocity for us. GE Capital to date has issued \$18.5 billion, U.S. equivalent, of debt in Europe and that's approximately 39% of our overall debt issuance in 2007. We have domestic programs in Australia, Switzerland, Japan, also in Thailand, as well. Those programs have been successful through concessions that we have negotiated with the applicable securities regulators, but a move toward a pilot program where there is reciprocity, where WKSIs are recognized here as well as overseas, would certainly help us as we move forward and drive home trying to issue more locally in the domestic markets, which is probably where we are going to be.

**DAVID MARTIN:** Thank you, Craig. Elisse?

**ELISSE WALTER:** Thank you David who has committed the enormous faux pas of reminding people how long I have been a regulator and therefore how old I am. But moving on from that, I guess as the dubbed regulator, although I must say there are some very powerful ex-regulators sitting to my right and to my left with whom I am proud to share this table, but as the person, in essence, representing the regulatory point of view and the retail investor point of view, I guess I have a number of questions. I don't have answers but I've got questions with respect to Ed's proposal, which comes either explicitly or implicitly with a notion of comparability and when you look at what Ed has to

say, it's focused on the regulatory principles which of course are extremely important. But I think we also need to focus on implementation, interpretation and enforcement. There is a very interesting study that was conducted at Indiana University last year, which analyzed the effect of insider trading laws on the marketplace, and pointed out that the enactment of those laws really didn't have an impact on improving markets. But the enforcement of those laws decreased the cost of equity and I think that points out in a rather precise way the fact that one can't really only look at these concepts in terms of regulatory requirements. So looking at things from the point of view of the retail investor, I think we need to worry about that and we also need to worry about how much emphasis we are placing on disclosure of differences as really being the answer. I am a little bit worried about comparability as an explicit determination because I think it will be likely misunderstood.

**DAVID MARTIN:** That finishes the opening statements.

**EDWARD GREENE:** Could I comment?

**DAVID MARTIN:** I would like you to jump in.

**EDWARD GREENE:** Let me just say three things. First, to Craig's point about reciprocity, that's, I think, fairly straightforward because the Financial Services Action Plan does allow an EU country to make a determination that an issuer can use its home country documentation if it is equivalent to what is required by the Prospectus Directive and since IFRS and U.S. GAAP are going to be the same and the disclosure requirements in the U.S. and EU are based on IOSCO's principles for equity and soon for debt, that's going to be pretty straightforward. I think the - what you said, Elisse - the disclosure is the same, the principles are the same, the question is going to be enforcement, and there I think the focus ought to be to enhancing regulators' powers. IOSCO has been very innovative in trying to put forward two things. One: there is a multijurisdictional approach that regulators have signed up to pledge cooperation and secondly to enhance the powers that regulators have - and that comes up in the area of, can you basically freeze assets on behalf of another regulator, can you take action if there is alleged to be fraud? And that's important to the extent there is cross border activity, that regulators be able to act on behalf of each other going forward. Also, some regulators, which I found to be fascinating, do not have the power to settle the way the SEC does. And therefore, they have limited resources going forward in the context of looking at frauds. So, I share your view, but I think we have to keep in mind that the disclosure documentation with respect to these big companies is the same. There is going to be no difference between GE here and Deutsche Telecom in global markets. So the question is going to be, do we allow people to have access to those securities, to those markets and, if so, what should be the criteria? I think if we focus on regulatory cooperation - and that's why I propose that you have an MOU in place with the home country - at least that gives you, the New York Stock Exchange and perhaps the SEC access to a regulator if you are concerned about a cross-border fraud.

**DAVID MARTIN:** Alan?

**ALAN BELLER:** The hardest issues, I think, involved in mutual recognition relate to comparability. I do worry about the issue Ed raised which is that comparability exercises may well become politicized. Ed's proposal, in a sense to my way of thinking, is a very elegant attempt - and I don't mean that in any negative way at all - a very elegant

attempt to side-step the comparability issue by two things, one, driving to the EU standard of disclosure, which is certainly on the printed page comparable to the SEC system, and secondly, driving to this notion of going to the largest categories of issuers, non-U.S. WKSJ-sized issuers, arguing that the market is that market following, institutional investor following, and analyst following, are as important governors of the quality of disclosure by those kinds of issuers as the regulators are. That certainly is a position which is consistent – it's not congruent, but it is certainly consistent - with the position that was taken by the SEC when it adopted securities offering reform and set up the notion of immediate effectiveness and no review for WKSJs. The other moving part, though, in the matrix that I think allows you to think less hard, or maybe to go less deep below surface thresholds of foreign regulation in thinking about comparability is the universe of investors that you are going to open up a particular regime to. There, Ed's proposal is as he puts it quite bold, because it would go all the way down to retail investors without limitation and it would go down to retail investors without registration. I don't think of registration as particularly a disclosure point because the MJDS is certainly precedent that you can have a registration regime that's based on home country disclosure. You could have a registration regime that's based on EU disclosure and simply make them file an "S-371," which is a cover sheet for whatever their Prospectus Directive disclosure looks like. I guess my question - all that by way of introduction because there is a question coming at the end of that - which is, Ed, how would you feel about a more modest, less bold, but still pretty far reaching disclosure, proposal: home country disclosure, but two, and exactly what Ed has described but either or both of registration for liability purposes, i.e. bring 11 and 12(a)2 into the regime, and/or, two at least for starters, go to a universe of investors that is well below the QIB definition but does not include my mother. Any thoughts about that?

**EDWARD GREENE:** Well, the irony is having created such an efficient market as Rule 144A, companies have full access to capital here and don't need a wider group of investors. If you had registration, you would have to address two things. First, would you have all the consequences of registration applicable to foreign private issuers, such as Sarbanes-Oxley type provisions?

**DAVID MARTIN:** For the moment, the answer to that is "no."

**EDWARD GREENE:** And then secondly, I think in terms of the liability regime, investment banks will say, look, you have no need to, in a sense, go out to take on this liability risk, which is higher than the home country and in the litigation environment of the United States. So I think the problem is, yes it will be available but no it won't be used because, again, the institutional market is so deep and liquid here as you saw with respect to all the IPOs that didn't register but all came here under 144A. So the question is, do you want to really reach out on a pilot program and give U.S. retail investors access to certain foreign securities? Now it may be, I would be not uncomfortable starting with a test that said, experience and knowledge. I am not particularly a great fan of how we approach this issue of eligible investors in private placements in the U.S., which is not to focus on experience but how much money you make. The theory is that if you are rich enough, you can still be stupid, but you can hire professionals to protect you going forward. Why not look to, in a sense, sophistication, experience, knowledge of sector, knowledge of market, to allow people to participate? That's a hard thing for broker dealers to decide. They are going to have to make a determination but they have to some extent with respect to the suitability requirements. So, if you wanted to start that way, I would say, fine, let's open it up to investors who can demonstrate they've got

experience investing in that part of the world or that industry to give them choices, because the reality is today they are investing cross-border in the secondary market. If you look at the holdings of U.S. investors in non-U.S. companies, it has grown dramatically in the last ten years.

**DAVID MARTIN:** Your proposal may work fine for us in recognizing people in this country, but is the EU the place to go to do this? Is the EU going to recognize WKSIs on an automatic effectiveness, automatic go-to-market system?

**EDWARD GREENE:** Well, in fact yes because the interesting thing about the Financial Services Action Plan is for the first time it forced the SEC to negotiate with the EU and the negotiations took place, because if you look at what the rules require, U.S. companies would have to reconcile their financial statements to International Financial Reporting Standards, and that would be an interesting, ironic development. Well, that led to people sitting down at the table and that's what the roadmap is about; they have deferred the requirement of reconciliation. And, secondly, the Financial Services Action Plan does contemplate that countries can make judgments that if the disclosure's equivalent based on the same IOSCO principles, you can use the home country disclosure documents. That's not going to be an issue, because we've, in a sense, solved it with the accounting. Because that's going to be the key issue, once you've solved it for accounting - I can't emphasize enough the disclosure standards in Europe and the U.S. are based on the same IOSCO principles for equity and will be with respect to debt -so, for listing and for offerings, these world-class companies are going to basically have the same disclosure to the market. So the question is two-fold: should we basically rely upon home country review and then, what Alan has suggested, if you also let them offer securities in the U.S. well, why not let them trade securities in U.S. without going through what you have to do today, to get your securities listed on the exchange. If, after all people have access to the German market, the French market, the U.K. market, with respect to these companies, why not let them trade in U.S. without any consequences attaching other than what would attach in the home market. It is controversial, I admit, but I think we are kidding ourselves because we just don't focus on the fact that cross-border activity continues to grow and there are no limitations on U.S. investors buying securities in a cross-border context - it is inefficient to, perhaps, do so but you can.

**ELISSE WALTER:** Ed, does your proposal really contemplate that it's more important in principle than it is in practice? Retail investors don't have very good access to public offerings, because they are limited and they tend to go to other people. And in the end, aren't you in effect quarrelling with the level at which the QIB standard, not perhaps when it was initially developed but where it is today?

**EDWARD GREENE:** Well, the QIB [market] needs to be expanded. That market is, as I said, a public market and the question is to expand it. I don't see why we don't allow the retail chains we have, with Smith Barney and with Dean Witter, whatever, if there are interesting offerings with globally held companies, why shouldn't they be allowed to participate? If you look at what happened with the privatizations when they came in the '90s, to the U.S. there was quite a bit of U.S. interest, I think going forward. Because the real issue is this: is it better to have a chance to participate in a primary offering or do you always force the U.S. side to buy in the secondary market? And that's a question in terms of how deals are priced and so forth going forward. I think if you ask people, they would be interested in having a choice as to where to invest, but right now they don't

have the choice; it's only in the secondary market. I would emphasize again the U.S. kids itself if it thinks it is going to have many, many foreign companies come to register in the U.S. It's not necessary. There will be some sectors. For example, some of the private Chinese companies in the high-tech area have found your market to be the best market for pricing. That will continue but no state-owned Chinese company is going to come to list in the United States. And the same with privatizations in other markets around the world. Russian companies are not going to come to the United States and yet those markets are active and buoyant and the question is do we want our investors to have access. Indian markets are the same way; there is a huge pipeline of IPO's that are coming out of India and very few are going to come to the U.S.

**ALAN BELLER:** Let me just drop a footnote there that confirms that. Actually, everybody reads about the state privatizations in the Chinese companies and, why they won't come to the U.S. The answer as to why they won't come to the U.S. has nothing to do with the U.S. regulatory regime; it has to do with the fact that they don't have to come to the U.S. to list anymore. When I went back to private practice last August, the thing that actually hit me over the head on this point had nothing to do with China; it had to do with the fact that I started talking to a couple of my partners, who were talking about a Latin American issuer in an IPO that was being done in Brazil. It is now, I would say, commonplace for attractive companies coming out of Brazil, they can raise \$4 billion in an IPO, including from the U.S. institutional investor community, \$2 billion or \$3 billion of those with a listing Sao Paulo and nothing else. No listing in New York, no listing in London, no listing anywhere. And that is a world that I'm not sure we've come to grips with in terms of our regulatory framework.

**EDWARD GREENE:** And, what we could do if we didn't think we wanted to open up our primary offerings under the terms I laid out, we could simply make easier access to the secondary market by the mutual recognition proposals we are discussing next week or have these securities be able to trade freely in the United States without any consequences attaching to the companies whose securities trade. So, why shouldn't your company be able to do an offering in Brazil but trade and list in New York, if you are comparable with respect to companies of a certain size that there is disclosure? I mean the point is, why don't we try to make the markets a bit more efficient because it is happening. When we wake up to the fact that our national treatment model is not protecting people from going across border and if there are going to be these developments that Alan suggested, let's try to be a little bit more imaginative to reduce some of the cost that are inherent in the system when you engage in cross-border activities.

**CRAIG BEAZER:** From an EU perspective, do you think that there would be some push back on the WKSJ approach given that the EU would like to be seen as one collective market, albeit there are the 27 Member States. We've encountered certain things from jurisdiction-to-jurisdiction that continue to differ. Would they be receptive and accepting, understanding the comments that were made before and say, if you are going to accept some of our larger issuers, why not accept all of our issuers or some of our medium issuers?

**EDWARD GREENE:** That's a fair point. I think that because we have worked out, in my view, the improvements between International Financial Reporting Standards and U.S. GAAP and there is not going to be a requirement for reconciliation in either market, that we'll be able to achieve that equivalence with respect to any U.S. company following

U.S. rules. I think Europe would accept that but clearly my instinct would be – I would be curious as what Ethiopis would think on that - but my instinct would be that that's not an issue. Because one of the interesting developments I think has been for the first time we have sat down and had some interesting discussions, where we tried to get access for our companies and our financial institutions. The key thing was consolidated supervision, where the SEC really stepped up because Goldman Sachs and Morgan Stanley and Merrill Lynch would've had a very difficult time doing business in Europe, because their holding companies aren't regulated, which is required by the Financial Services Action Plan. So that was the first time there was at a sense of bringing to the table with respect to a very important issue. The SEC handled that very imaginatively, and it's made a real difference. The same with respect to IFRS and U.S. GAAP. Again, there were active and ongoing discussions, handled imaginatively on both sides. I think there is goodwill, there are very good relations that exist between the U.S. and EU -- those two markets, if integrated and become seamless, would be enormous capital pools for investors. I think that what would happen, if we adopted this approach, it would become a regulatory model for other markets as they develop.

You look at what China is doing. Shanghai is going to be one of the largest stock exchanges in the world fairly soon. Singapore and Hong Kong are growing. Brazil is another market that's growing as well. Those markets I think will race to measure themselves against the EU and the U.S., so we are not going to have a race to the bottom; we are going to have a move toward optimality, as I mentioned in my talk. So I think if we can get a package together we can enhance regulation with respect to developing markets in a way that will be positive for all of us.

**DAVID MARTIN:** Without delaying too much, could I go back for a moment to the accounting issues you mentioned. Do you see any major risks in the convergence of IFRS and GAAP?

**EDWARD GREENE:** I don't think so. I think there is goodwill on both sides to get that done. I think the more interesting thing there is the suggestion that U.S. companies have a right to report on IFRS as well. And if you think of it, you really ought to try to move towards one accounting system, which is international accounting standards. I think many people are frustrated at U.S. GAAP because of its complexity and so, I think that would be a fascinating experiment - I would be interested in hear what you think, Alan - if you both made the choice and then secondly do you think companies would follow, because that would, in a sense, especially for large companies, give us truly global markets with comparable reporting under an agreed accounting system. It may be idealistic but it's something that one would hope we would move to.

**DAVID MARTIN:** Challenges with the audit standards?

**EDWARD GREENE:** Those are going to be difficult but again, Europe is taking some steps to try to move audit standards closer to the U.S. Now they'll never necessarily get there - there will always be people who will say that we are taking risk - but, the point is in these integrated markets there has been effect of what we do in Europe and vice versa, and we can't forget that. I mean the biggest challenge that Europe has is there is no single regulator; politically, that's not going to happen. And so you've got regulators in Bulgaria, Estonia and elsewhere that you have to deal with on the same level perhaps as the U.K. FSA and so forth. But notwithstanding that, there has been an attempt, though there isn't one regulator, to have standards adopted by legislation or by

directives that would enhance auditing, enhance independence of auditors and move forward. Whether it's going to get to the U.S., probably not, but the question is, is it close enough that we should be comfortable? Then, the issue for me is, well why not rely upon disclosure with respect to differences of risk, as opposed to telling certain U.S. investors you can never invest unless people play by the U.S. rules and that to me is the issue.

**ALAN BELLER:** I sound to myself like I was speaking a little bit out of both sides of my mouth on the accounting question - not the auditing question for the moment. On the one hand, I agree with Ed that we are going in that direction. It's implicit, I think in Ed's proposal, that the SEC get to the end of the roadmap, to the end of the road on the roadmap sooner rather than later. It is implicit in Ed's proposal that the EU do what I think they are going to do by 2009, which is to declare U.S. GAAP and IFRS "equivalent," which is their standard. I think this doesn't work if you don't get there, because comparability, any definition of comparability and disclosure, depends on accepting either one of these sets of auditing principles. The reason I feel like I'm talking a little bit out of both sides of my mouth is I don't think that convergence and comparability are the issues with respect to getting to the end of either of those roads. I think the issue is A) U.S. GAAP, a comprehensive trustworthy set of accounting principles, that gives a true accounting picture of a company to a reasonably sophisticated investor, i.e., one who can read today's financial statements; and B) Is IFRS a comprehensive reasonably trustworthy set of accounting principles that allows a reasonably sophisticated investor to get a picture of a company?

They don't have to be the same picture; they can be different pictures. That's why I'm not as fussed about convergence as I am about the standard that I just articulated. And, on the other hand I agree with Ed - sooner or later we ought to move globally to one set of accounting standards. That sure sounds like convergence over time. I'm not sure it is, in fact. I think it may just be that one withers away and the other survives without ever getting complete convergence. The folks in Norwalk might not necessarily like to hear this, but I think if one withers away, it's more likely to be U.S. GAAP. I say that not because of quality, I say that because market global market cap is going to move inexorably out of the United States over 10 or 20 or 25 years. So, I do think it's an important element. People in the building heard me say this when I was there, so that I'm not embarrassed to say it now - I'd love to see the SEC get to the end of the road and the roadmap before 2009.

One reason is that I think the sooner the SEC does that the sooner it seems to me that it can have an honest place at the table debating IFRS. By honest I mean they are willing to play by those rules and therefore I think non-U.S. companies and regulators will resent less than they do now the SEC taking a view on IFRS. At the moment I think it is a suboptimal position for the Commission to be in. I think if they got to the end of the road in the roadmap, it would be better.

**EDWARD GREENE:** It is interesting that no other market has adopted U.S. GAAP but that's not true with respect to International Financial Reporting Standards. And as other markets develop and become more transparent and liquid, what they will have as accounting principles, I think, they are going to move toward International Financial Reporting Standards, not U.S. GAAP, and that's going to put pressure on us to allow our companies to report on a comparable basis.

**ELISSE WALTER:** Can I swing you back to the auditing standards, because it has always seemed to me that more important than the specific standards that are adopted, assuming that they meet a certain level of quality, is how they are enforced in the broadest sense and whether or not they are really being presented with integrity. And I think those issues are more difficult, we have a longer way to go and are perhaps more important in the end?

**EDWARD GREENE:** But if you look at WKSIs, they are all audited by four accounting firms and that's it. And, in some ways that's a problem we have to address, but if you have got the four accounting firms they are going to apply auditing standards on a fairly global basis going forward. But honestly, the view is there is an absolute lock on auditing by the major firms, because global companies that are in multiple markets have to have credibility and the credibility now is with the big four. So, I'm not so worried about that. I think the harder question would be if you would expand it to other companies, then you begin to have accounting firms that may not be as recognized. But I would not start there; I want to start with companies like GE, but who are not in the U.S. but Europe and elsewhere, and those companies are audited by KPMG or Pricewaterhouse or whatever.

**DAVID MARTIN:** Can we swing back to Craig a minute. You said your company is everywhere. If you were controlling the pen here and recognizing that no one is going to be certain that they are right, would you pick the EU to do this pilot project or are there other jurisdictions that you see as being potentially a better place to start?

**CRAIG BEAZER:** I think the EU obviously presents certain challenges in this regard. Initially I thought maybe you want to look to different jurisdiction. The experience that we've had as a company in Japan has been very similar to what we've had here in the U.S., but I think in terms of a growing market and a bigger market going forward that as we move toward what I think will be convergence between GAAP and IFRS, I think the EU probably is the best market for us to approach, but one question coming from that is taking the point that maybe we will have convergence, do you think similarly with respect to a single regulator may we ever get to that point, with CESR maybe being interposed as the regulator, since it's relied upon so heavily by the EC and the FSA and others. Do you think we'll ever get to that point?

**EDWARD GREENE:** I think that's a challenge because CESR is trying to fill that void and trying to come up with mechanism so you have consistent interpretation of International Financial Reporting Standards because the real issue we have is not just the standards but to the extent that they may be a bit more principle-based, you've got 27 different regulators who are overseeing their application and that is the big concern. And that is also the issue that's been raised by some European companies - if we come to the U.S., is the U.S. going to tell us how to apply? That's why John White has made a distinction between interpretation, which he will not get into, but application which he will. He's been quite clear about that; they will defer to CESR and work with CESR to come up with common interpretation. But we need to have better mechanisms to be sure that we have consistent application because there are, as you said, 27 countries with a wide range of experience. Again, that's why, though, I'm uncomfortable starting with very large companies because they will tend to come from the most mature economies and, and the larger countries in the EU.

**DAVID MARTIN:** For Ed, Elisse or others, there is a back to the future element of this debate. If you go back to the late '80s and read the Commission literature on the rulemaking, it sounded as if they were reading Ed's article today when they spoke about a bilateral relationship with Canada and the Multijurisdictional Disclosure System. What have we learned from that system that we should take forward? What have we learned about that system that we should ignore and fix in the future?

**EDWARD GREENE:** I'll defer to Elisse; she knows more about that than I do.

**ELISSE WALTER:** Oh, no never. I think that was a noble experiment that didn't go very much of anywhere, as we can all agree. It was intended at the time that we did it to be an experiment, to be expanded over the course of time and that happened neither with respect to the countries nor with respect to the principles embodying it. But it is interesting because it is the only real live example that's out there, albeit with different bells and whistles and much heavier bells and whistles, that really embodies this principle. So, I think there are certainly things to be learned from it both in terms of the fact that it was tried and to go back to what is necessary and what is not necessary. And to me you have to come back to - once again I think I've talked about this before - come back to questions of interpretation and enforcement and also questions of liability, and I do think the liability issues are particularly important in the primary offering context because of the heavy burden of liability in this country. Once we lift those liabilities for foreign companies, there is certainly is a very cogent argument that they should be lifted for American companies as well, which may lead you back to at the drawing board in terms of the liability structure.

**EDWARD GREENE:** But careful, we are not lifting liability; we are saying that home country liability would be applicable, as well as host country fraud rules. And most EU home countries do have liability regimes with respect to offerings, not as rigorous as the U.S. but it's there. So, it's not just the anti-fraud, you would have the home country liability, which U.S. courts could apply. I think with respect to the Canadian experiment, the perception of other countries was the U.S. wanted the Canadian system to be so close to the U.S. that it really was equivalent and there were changes that were put in place to make it work - that, coupled with the fact that they had to be registered and Section 11 liability, it's just not attractive to the U.K. or other countries who were considering it because no other country came forward and said, gee, this is great for Canada, why not put in place for us. To my knowledge, I don't know - you may had discussions on what I'm saying.

**ELISSE WALTER:** No, no, clearly not at the time. I mean even with more flexibility there wasn't a great deal of interest on the part of any other country. There was considerable time and attention spent thinking about the U.K. but it never really got off the ground in any way, shape or form.

**EDWARD GREENE:** I think Elisse has hit the issue and it is liability. And the question is should we say look, just do it the way we did it in Canada and file a registration statement or not. It may be a practical approach, but I don't think that's going to be particularly attractive, so I'm prepared to take an experiment and it may be if we are going to go that way, maybe limit the investors not to everyone but to have some level of sophistication, so that disclosure with respect to differences and risk is something you have some level of confidence in. That's where I think the debate ought to be. We ought to come up with something that's realistic but we have to keep in mind that we have a

very public market today for non-registered offerings. That is going to continue and there is -- because of 144A market, which is - as I said, one of the most remarkable things that you and Linda [Quinn] did was to create, in a sense, what - yes we know it's a private place, but it's a public market; it's marketed and it's approached and it's accessed as if it really were a public market but it is institutional only. Now, my question is can't we expand that. We are halfway there already but why not increase the number of investors who can participate, let's debate there. But we don't require 144A offers to be registered. And the disclosure in the market has really created very sophisticated disclosure. The documents are very comparable to what you see in a public offering. So, maybe just step-stair and go increment decide how you want to expand it, because why deny everyone other than major institutional investors access to some of these attractive offers.

**ELISSE WALTER:** I just want to come back and emphasize a little bit the distinction that you pointed out, which I think is really important, which is a distinction between liability and access to the dispute resolution system, the court system in this country. Because I think to force U.S. investors into a foreign jurisdiction's court system is very much too much of a burden but to draw a distinction between that and liability, I think makes some sense.

**EDWARD GREENE:** One of the issues would be whether if you had this type of system - and Alan and I have talked about this - whether you would say, well we will permit you access but you'd have to consent to be sued in the United States. And Alan reminded me that in the context that, when Rule 144 A was being considered, the staff considered but decided not to recommend that going forward because of the concern it would make the market less attractive. So I did not put that into my proposal. I had initially thought about it, but talking to Alan, he persuaded me that we didn't need it, because you still will have access to courts, because if you are doing an offering, the U.S., our courts will take jurisdiction with respect to that offer but I'd be interested now in Alan's views.

**ALAN BELLER:** I guess, my view on the consent point is that if a security is being offered into this country - let's leave the mutual recognition of foreign broker dealers out of this discussion for just one moment - but if it's a U.S. broker dealer offering these securities to a U.S. investor, jurisdiction over some deep pocket will lie, whatever the substantive law that applies, and that was my particular reason for coming out where I did on the consent. I think it would've been a near fatal element of the 144A proposal, I think that 144A's use would've been much, much less than it has turned out to be. And I think the same thing would happen here, and yet I don't think the practical consequences of it are all that significant.

I was actually listening to Elisse and Ed and thinking slightly differently - we do have this odd tension in our system. It's always been harder to deal with in terms of how the Commission treats non-U.S. issuers. The de-registration proposal, I think interestingly, stakes out a particular - it's not a proposal anymore - the final outcome of the de-registration rules stakes out a particular position, which is it's where you are listed that ought to determine the regulatory regime that you operate under, unless you elect some other regulatory regime. And that is consistent with the way the Exchange Act operates, and the way the SEC has administered the Exchange Act and the secondary trading markets. As Ed points out retail investors can buy any old thing in the world they want without triggering either U.S. disclosure requirements or the U.S. Securities Act liability regime. And the question is, why should it be different for a primary offering? And there

is a policy answer to that question, which is if the company's out there raising money, it has a higher standard, arguably, under which it should operate. But secondly, there is an historical reason, which is that Section 5 is out there sitting like the elephant in the room. And Ed's proposal is a very broad stroke at throwing the elephant out of the window. That's a hard thing I think - it may be I just left the job more recently than Ed did and so I'm more worried about it - but I think that's a hard thing for the Commission to do. I agree it's bold and I agree it would kind of get you to a place that's consistent with the secondary trading market but what do you do with the statute? Do you just decide it's a historical anomaly and the Commission has exemptive authority and away we go?

**EDWARD GREENE:** The interesting thing is that, where I now work, I am absolutely agnostic on this issue, because we will raise money globally for our clients. But I've been thinking about the fact that I'm not sure we are taking seriously the fact that these markets are growing and we need to rethink our regulatory approach. Yes, there is the exemptive story and if you do it as we suggested as a pilot program with large companies, it's controversial perhaps but it's a start. But again, it's not going to affect where Citigroup, where Goldman Sachs and Merrill Lynch does business. This doesn't affect us - we'll live with our system if you don't change it or we'll live with it if you do change it. Because we can raise money globally in the U.S. and for clients, but I think it's important that the Commission engage in this debate. What prompted my thinking was that we were starting with secondary market trading and making that more easy - that's a mutual recognition with respect to broker dealer access and exchanges - but we weren't talking about what's the real issue, in my view, access to offerings going on globally today in which U.S. people aren't participating other than institutionally. So, I would link the three together to create for some efficiencies and do a pilot program and then we'll see what happens. Now there's risk here and the risk is the first company that's a fraud, that's come into our country, that hasn't been registered, there will be a Congressional enquiry and the question is do we have the courage to say, there is always going to be some fraud; we can't ferret everything out but we've got a rational system that helps investors because if you accept the literature, people are saying you really need to have diverse portfolios. And U.S. investors probably have less diversity than others at a certain level. So, that's in fact and that's the rationale for Ethiopis Tafara's article. It wasn't necessarily that you didn't have to worry about investor protection but that diversity of portfolio is as important. We needed to facilitate access to foreign securities with respect to U.S. investors and we did that through exchanges having presence in the U.S. and broker dealers being able to do business abroad - doing what - selling only foreign securities. So, I'd go the next step and say, well, - and the Commission has always been worried about this issue with exchanges and that is - well, gee, we are going to let people buy in Germany but what if they are buying in a public offering? Corp Fin has been very, very opposed to the idea of having exchanges have access to the U.S. without registering because the idea was, well, gee -- they can't buy it in the U.S. because it's not registered. But what if they are buying in a registered offering offshore and if some of these offerings may be done on exchanges, how do we protect ourselves? So, it's that kind of thinking that, in a sense, has really dominated how at least Corp Fin has approached this issue. I think it's time to perhaps revisit it.

**ALAN BELLER:** I do think any version of your proposal -- and this goes back to what I said at the beginning -- any version of your proposal forces the Commission, and in fact I think it's both Market Reg and Corp Fin to change their thinking about both foreign exchanges in this country and what U.S. exchanges ought to be allowed to list.

**EDWARD GREENE:** Absolutely right. And increasingly we are going to have consolidation of exchanges and with electronic trading we are going to basically – in a sense technology is going to allow you to trade anywhere around the world.

**ALAN BELLER:** Right. You are talking about Citi, I'm going to ask you to put your Citi hat on for purposes of this question, which is if you were to do something like this -- and let's say Citi is the book-running lead in a big non-U.S. WKSJ U.S. offering under the new regime -- will Citi in fact tap its retail network and sell securities in this offering, or will this be another party to which no one comes?

**EDWARD GREENE:** First, none of us here speaks for our institution; I speak for myself. But, I think what would happen would be that one would start slowly and we would basically look at criteria with respect to these investors. Most retail firms basically categorize their clients with respect to sophistication -- what they can invest in. I mean, the fascinating thing was, ironically, how few people were eligible to invest in Google when it came public. Now, it strikes me that when you act that way, you are really, in a sense, protecting people who don't necessarily need to be protected against themselves. But I think we would go cautiously. My guess is there are lots of people who would like to invest generally. The interesting thing is that if other products begin to develop -- we are talking about individual securities but what about exchange traded funds; those are going to develop in Europe, as well, to give you exposure to indices or to composites say, same issue comes up -- so, as we begin to develop more sophisticated products that give you exposure to diversity, shouldn't we at least have a little more flexibility as to what you can do if you would like to diversify your portfolio.

**DAVID MARTIN:** So, I'd like ask you one last question, to put you on the spot and sort of wrap it up around this. I mean, if I'm at the Commission hearing all this from you, I wonder why I won't put all my energies in fixing the accounting situation -- pushing for continued convergence on auditing standards, worrying about mutual recognition for brokers and exchanges and leave this gnarly offering issue alone until I see how the other things come out. Why should the Commission be working harder on this particular point?

**EDWARD GREENE:** Well, because I think it's intellectually what is part of the package. I think you can't address one without addressing the other, because ironically all you are going to be doing there is basically facilitating cross-border trading. And you say, well, that's fine, relying on the disclosure, but you are not, in a sense, addressing the real question, which is what's the difference between cross-border access versus a primary market access. You have got to debate that issue; you may decide it's not worth doing or that you will give up certain protection such as registration but it's part of the same project. I do find it kind of ironic that's what we are focusing on and we are going to facilitate this cross-border trading and what are we telling retail investors -- oh, that's okay because you can rely on disclosure and everything else but you can't rely on disclosure if you want to buy directly. So, I just think that's -- you know, shelf-registration, when we did it, almost never made it because if people weighed in and said this is terrible, diligence is going to fall away, it's going to transform how our markets, it's going to lead the domination of certain investment banks. I mean [John] Shad was lobbied to thunder before the rules finally went effective and we had the courage to go forward. And it was an absolute profound change in the capital markets and it has spread throughout the world and now is the time, in my view, for the Commission to put these

issues and at least have a debate and a dialogue -- maybe not do it, but let's have a wider debate than we've had today.

**DAVID MARTIN:** Anybody else want to get a word in edgewise on the panel? Well, why don't I see if we can close in style first by thanking Ed very much not only for the work that went into your paper but also to subjecting yourself to our infuriating questions today. You are great to be with us, and I appreciate it and the Society appreciates it. And I would also like to thank my co-panelists Elisse Walter and Craig Beazer and Alan Beller for being with us today. Great minds, thinking with Ed, and it was wonderful to be here.

Another thanks to the Corporation Finance committee that helped to design this program - Mickey Beach, Paul Belvin, Bill Morley, Peter Romeo, Dick Rowe, Elisse Walter and Justin Klein - thank you very much for your hard work. I want to remind you that this program will be posted in the Society's virtual museum and archive. I've been told that Ed's paper has already been visited by quite a few people, and when the transcript is ready, we'll put this program up.

As was mentioned earlier, every year we have our Annual Meeting at about the same time as the SEC's birthday, and this is the seventy-third one. We would like to invite everybody in the audience and everybody outside the doors waiting for us to join us in celebrating the SEC's birthday with an ice cream social. Thank you very much.