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## **Introduction Symposium: Can the International Securities Markets Be Regulated**

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# INTRODUCTION

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The Symposium from which the Articles in this Issue evolved was held in New York City on December 2, 1987 and was entitled "Can The Internationalized Securities Markets Be Regulated?" While the program was in a planning stage, the Securities and Exchange Commission ("SEC") issued a massive report on internationalization, which pointed out that although investors have long assumed the risks attendant to investing in a foreign economy, securities markets had become internationalized to an unprecedented degree.<sup>1</sup> Among the causes of accelerated globalization cited by the SEC were the rise of the multinational corporation, the abolition in the United States in the mid-1970s of fixed minimum stock exchange commissions, inflation generated interest rate volatility which led to cross-border capital flows in the 1970s and 1980s and technology advances.<sup>2</sup>

Roger Kubarych, who at the time of our Symposium was the Chief Economist of the New York Stock Exchange, Inc., addresses these and further causes of internationalization in his article "International Regulatory Harmonization: The Economic and Financial Environment." In addition, he raises the interesting question of whether the speed of globalization has jeopardized the stability of the global market.

Many questions concerning the safety of the international financial markets were raised by the world-wide decline in stock prices during the week of October 19, 1987. Despite the differing

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1. Report of Staff of the U.S. Securities and Exchange Commission to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce, *Internationalization of the Securities Markets* I-1 (July 27, 1987).

2. *Id.* at III-7.

structures and operating rules of markets in New York, London, Tokyo and elsewhere, the markets in all financial centers fell in tandem during that week.<sup>3</sup> In the various after-the-crash studies of the market break, the need for improvement in clearance and settlement systems was highlighted as a major necessary reform.<sup>4</sup> Brandon Becker, Associate Director, Office of Self-Regulatory Oversight of the SEC, who was a speaker at our Symposium, submitted an article for this Issue co-authored with Thomas C. Etter, Jr.,<sup>5</sup> entitled "International Clearance and Settlement." The importance and timeliness of this topic is demonstrated by the attention it received in the recommendation made by key financial regulators in May 1988 that clearing and payments systems should become more efficient and handle less money.<sup>6</sup>

Although stock exchanges around the globe clearly are interdependent, they also each have unique traditions and trading methods and are subject to home country regulation. Professor Norman S. Poser of Brooklyn Law School, in his article "Big Bang and the Financial Services Act Seen Through American Eyes," point out that securities regulators can learn much from the market developments and legal experiments in other countries. In particular, Professor Poser compares the unfixing of stock exchange commission rates in the United States in 1975 and the more recent "big bang" unfixing rates in London. In addition, he contrasts specialist and screen trading mechanisms in New York and in London.

The development of a truly international stock market for world class securities, in contrast to interdependent national stock markets in various financial centers, would appear to be a futuristic vision. The problems of creating a national market system in the United States, which include linking and harmonizing the trading on various U.S. stock exchanges and over-the-counter, have been serious and persistent.<sup>7</sup> There is no interna-

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3. See Report by the Division of Market Regulation of the U.S. Securities and Exchange Commission, *The October 1987 Market Break*, ch. 11 (Feb. 1988).

4. See Karmel, *The Rashomon Effect In The After-The-Crash Studies*, 21 Review of Securities Regulation 101 (1988).

5. Attorney, Branch of Clearing Agency Regulation, Office of Securities Processing Oversight of the SEC.

6. *Interim Report of the Working Group on Financial Markets Submitted to the President of the United States* 9 (May 1988).

7. See Seligman, *The Future of the National Market System*, 10 J. Corp. L. 79 (1984).

tional regulator at present which can compel different markets to integrate their trading mechanisms. To the extent linkages between and harmonization of these markets occur, business practicalities and economics, rather than government regulation, will govern the course of events.

Nevertheless, multinational securities offering have been occurring, not only in financings by large multinational companies, but in privatizations of state owned enterprises by European countries. In connection with underwritings, counsel have had to comply with the frequently conflicting practices and regulations of different jurisdictions. Steven D. Boughton, a British solicitor, recounts these problems and how they were solved in several significant offerings in his article entitled "Multinational Securities Offerings."

As further multinational flotations occur in the future, securities regulators have two choices. They can work toward a common prospectus and uniform disclosure and accounting standards or they can apply principles of international comity and accept compliance with foreign country standards to meet home country regulations. Thus far, the challenge of harmonization has proven too daunting for government officials, but the SEC has been formulating proposals to accommodate international offerings in the interim.<sup>8</sup>

The strength and liquidity of the U.S. markets have long been the envy of other financial centers. The combination of federal and state government regulation and self-regulation of the securities markets that prevails in the United States therefore may well serve as a model for other countries as they develop more sophisticated securities regulatory systems. Furthermore, because the U.S. system coordinates and reconciles the viewpoints and jurisdictions of competing regulators, it could become a model for international securities regulation.

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8. See Securities Act Release No. 6779 (June 10, 1988).

