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REGULATORY CHALLENGES IN THE DEVELOPMENT OF A GLOBAL SECURITIES MARKET—HARMONISATION OF MANDATORY DISCLOSURE RULES

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Globalisation of the world's securities markets requires an appropriate legal and regulatory response. Territorial oriented regulatory systems must be replaced by a regulatory regime which provides the necessary legal infrastructure to support the development of a truly global securities market. Focussing on mandatory disclosure rules, this paper contends that harmonisation of regulatory standards at an international level is imperative, and in so doing identifies the pitfalls with the regulatory competition theory. International harmonisation of securities regulation has already gathered momentum, and this welcome development will also be considered. Finally, the difficulties inherent in the process of harmonisation will be recognised together with suggestions as to how to overcome them.

I. INTRODUCTION

Securities markets around the world are expanding at a phenomenal rate. Ignoring traditional territorial confines, international offerings and cross-border trading in the secondary markets have increased dramatically. Several factors provided the driving force for such internationalisation. Deregulation of many national economies and in particular the relaxation of foreign exchange controls facilitated the flow of capital across national borders. Demand for foreign capital in developed countries grew due to privatisations and the desire of enterprises to expand the geographical base of their investors. At the same time, political reforms and economic growth in many developing countries encouraged foreign investments into their emerging markets. The rise of institutional investors who are better equipped to tap the international markets and who understand the importance of an internationally diversified portfolio also contributed to increasing internationalisation of investments. Most importantly perhaps, advances in information technology provided the necessary infrastructure for all these to take place.

The increasingly global nature of the securities market places an enormous strain on securities laws and regulations which were largely promulgated in contemplation of self-contained national markets. Traditional territorial based regulatory regimes represent significant obstacles to the development of a truly global market. The creation of a competitive regime for securities regulation has been said to be the regulatory answer to the phenomenon of internationalisation. However, this paper

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argues, in the specific context of mandatory disclosure rules, that the regulatory competition model on its own will not produce optimal standards. Instead, there is a need for the development of common disclosure standards to be used uniformly in all securities markets. It will be contended that international harmonisation of mandatory disclosure rules, and not regulatory competition, is the governing principle that should underpin the essential regulatory response to the globalisation of the securities markets. To illustrate the feasibility as well as difficulties of such a harmonisation project, the various endeavours to bring about international securities regulation will be examined. Finally, there will be a look at how harmonisation of securities disclosure rules can best be achieved in practice.

The focus is on mandatory disclosure rules[1] for several reasons. It may well be that the appropriate regulatory response depends largely on the specific type of regulation with which we are concerned. Areas of securities laws such as regulation of financial intermediaries, clearance and settlement rules, and insider trading laws may call for differentiated responses in the face of the increasing globalisation of the capital markets.[2] Quite clearly, there will be segments of securities regulation which are more in need of and adaptable to international harmonisation than others.[3] Securities disclosure rules, going to the heart of global regulatory needs to ensure efficient and well-informed markets, belong to such a category. Another reason for focussing on disclosure rules is that they are often the main regulatory obstacles connected with multinational offerings and trading in securities. At the same time, this is arguably the area where the greatest progress has been made at harmonisation.[4]

II. Regulatory Impediments to Internationalisation of the Securities Markets

In August 1998, Sony Corporation was issued with a cease and desist order by the U.S. SEC[5] for violation of the periodic reporting obligations required under U.S. securities disclosure laws.[6] In addition, Sony had to pay a one million civil

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1 This refers to the rules of disclosure which issuers must comply with when securities are offered to the public, including prospectus requirements and continuous disclosure obligations.

2 See *e.g.* Edward F. Greene, Daniel A. Braverman & Jennifer M. Schneck, "Concepts of Regulation—The US Model" in Fidelis Oditah, ed., *The Future for the Global Securities Market* (Oxford: Clarendon Press, 1996) 157. The writers argue that while accounting standards is an area where harmonisation is possible, the same cannot be said for the regulation of financial intermediaries because the failure of a broker-dealer can have significant ripple effect through the entire financial system. This paper takes the view that the need for the development of harmonised standards at an international level applies equally to all aspects of securities regulation, albeit to differing extents and with differing degrees of urgency.

3 James H. Cheek, III, "Approaches to Market Regulation" in Fidelis Oditah, ed., *The Future for the Global Securities Market* (Oxford: Clarendon Press, 1996) 243.

4 For example, the International Organisation of Securities Commissions (IOSCO) has developed a set of International Disclosure Standards for cross-border offerings and initial listings by foreign issuers. See also the recent EU Prospectus Directive. For more details, see below under "V. Harmonisation Initiatives".

5 United States Securities and Exchange Commission.

6 The SEC found that Sony had made inadequate disclosures about the nature and extent of its Sony Pictures subsidiary's losses and their impact on consolidated results. For more details, see SEC Division of Corporation Finance, *International Financial Reporting and Disclosure Issues* (May 1, 2001), Part VIII. F. 3, online: Corporation Finance: International Financial Reporting and Disclosure Issues <http://www.sec.gov/divisions/ corpfin/internatl/issues0501.htm>.

penalty. Similar complications arose when Daimler-Benz, previously traded only on the German stock exchanges, sought to list in New York. After protracted discussions, the company's eventual agreement to reconcile its financial statements with the U.S. G.A.A.P.[7] revealed previously hidden losses causing significant bad publicity for the company.[8] These difficulties experienced by Sony and Daimler-Benz illustrate the problems which arise when a company, accustomed to its home country securities regime, desires to effect public offerings in foreign countries with more stringent disclosure rules.[9] At a broader level, such examples evidence the deficiencies of the traditional territorial approach to securities regulation and how it can operate as a hindrance to the efficient flow of capital across national borders.

Under the prevailing national treatment model, each securities regulator enjoys a regulatory monopoly over securities transactions within its national borders.[10] Every issuer seeking to raise capital is required to comply with the disclosure rules of the country where it seeks to make the public offering. This leads to increased costs and inefficiencies because foreign issuers must comply with more than one set of disclosure rules. In the case where the differing regulatory standards are irreconcilable, a cross-jurisdictional issue may be completely precluded.[11] Such fragmentation in regulation seriously hinders cross-border offerings and investments. Furthermore, with physically-located centralised securities exchanges being increasingly superseded by a new world of delocalised electronic and internet trading, it is becoming correspondingly more difficult to identify trading locations, and this undermines the viability of the territorial based regulatory system.[12] Regulation must disengage itself from the territorial confines set up by national legal systems, and become truly international in nature just like the borderless securities business it seeks to regulate. The search for the most effective approach to achieve such international securities regulation becomes crucial.

III. The Regulatory Alternatives

To understand the various regulatory models that have been proposed, it will be helpful at the outset to clarify certain regulatory concepts. The concept of commonality envisages the development of a uniform set of international regulations.[13] In the particular context of securities disclosure, commonality has as its objective the development of a standardised set of disclosure rules to govern all cross-border offerings. Reciprocity, on the other hand, is based on the mutual recognition of regulatory

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7 U.S. Generally Accepted Accounting Principles.

8 Troy L. Harder, "Searching for a Level Playing Field: The Internationalisation of US Securities Disclosure Rules" (2002) 24 Hous. J. Int'l L. 345 at 362.

9 *Ibid.*

10 Parikshit Dasgupta, "Regulation of Cross-border Share Offerings: Trends towards Multi-jurisdictional Securities Laws" (2003) 3 Global Jurist Advances, Issue 3, Article 1 at 6.

11 For example, U.S. securities law is one of the most stringent in the world and many of its procedures for conducting offerings conflict with market regulations and practices in other foreign markets. See Paul G. Mahoney, "Regulation of International Securities Issues" (1991) 14 Regulation, Number 2, online: Regulation of International Securities Issues <http://www.cato.org/pubs/regulation/reg14n2e.html>.

12 Roberta Romano, "The Need for Competition in International Securities Regulation" (2001) 2 Theor. Inq. L., Number 2, Article 1 at 14.

13 Manning Gilbert Warren III, "Global Harmonisation of Securities Laws: The Achievements of the European Communities" (1990) Harv. Int'l L.J. 185 at 191.

standards.[14] Under a reciprocity arrangement, a country allows a foreign issuer to conduct an offering of securities within its domestic jurisdiction while complying only with the regulations of the issuer's own jurisdiction.[15] The concept therefore involves the acceptance of the securities disclosure rules of another jurisdiction in lieu of one's own. Curious as it may seem, the concept of reciprocity has been utilised to support both the harmonisation approach as well as the regulatory competition approach,[16] two theories often pitted against one another and presented as competing alternatives.[17] The explanation is that the two theories, properly understood, actually overlap.

The theory of regulatory competition postulates that a contest among securities regulators will produce a competitive equilibrium with optimal securities disclosure rules. Advocates of the regulatory competition model rely on essentially a market approach towards regulation where supply and demand influence a country's regulatory choices.[18] Investors in making a choice between competing markets will be sensitive to the quality of the corresponding regulatory regimes. If the market is well-regulated with stringent disclosure rules, the investors will be willing to pay a premium for the securities traded in that market because not only are they less susceptible to risks of fraud and market manipulation, the comprehensive disclosure regime also means that no additional costs needs to be incurred to gather more information about the firms in which they are considering to invest. The higher price which can be expected for securities traded in such well-regulated markets in turn encourages issuers to select such regulatory regimes as this will reduce their cost of capital. Accordingly, investors and issuers of securities will be attracted to the most efficient regulatory environment in which to operate. Conversely, investors will exit from poorly regulated markets if the price discount does not compensate them for the additional risks and costs of information, while issuers will not issue securities in a market if the additional price they receive do not compensate them for the additional disclosure costs.[19] The fear that investors and issuers will exit provide the necessary impetus for the regulatory level to reach a competitive equilibrium.

For the theory to work in practice, there are many underlying assumptions which must be satisfied, the most important of which would probably be the free mobility of market participants in and out of securities markets. But as we have seen,

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[14] Deference is another regulatory concept similar to reciprocity. Like reciprocity, this approach involves the recognition of another jurisdiction's regulatory standards. But unlike reciprocity, there is no element of mutuality. One jurisdiction elects to defer to the standards of another jurisdiction without its standards being accepted in return. See Edward F. Greene, Daniel A. Braverman & Jennifer M. Schneck, *supra* note 2 at 160.

[15] Stephen J. Choi & Andrew T. Guzman, "Portable Reciprocity: Rethinking the International Reach of Securities Regulation" (1998) 71 S. Cal. L. Rev. 903 at 907.

[16] See Marc I. Steinberg & Lee E. Michaels, "Disclosure in Global Securities Offerings: Analysis of Jurisdictional Approaches, Commonality and Reciprocity" (1999) 20 Mich. J. Int'l L. 207 at 236; Uri Geiger, "Harmonisation of Securities Disclosure Rules in the Global Market—A Proposal" (1998) 66 Fordham L. Rev. 1785 at 1793 (treating the concept of reciprocity as a form of harmonisation). Contra Stephen J. Choi & Andrew T. Guzman, *supra* note 15; Paul G. Mahoney, *supra* note 11 at 7 (using reciprocity as a measure to bring about regulatory competition).

[17] See *e.g.* Uri Geiger, "The Case for the Harmonisation of Securities Disclosure Rules in the Global Market" 1997 Colum. Bus. L. Rev. 241 at 257; Roberta Romano, *supra* note 12 at 2.

[18] See James D. Cox, "Regulatory Duopoly in U.S. Securities Markets" (1999) 99 Colum. L. Rev. 1200 at 1230.

[19] Uri Geiger, *supra* note 17 at 270.

regulatory barriers created by the territorial based regulatory system hinder the free movement of issuers across national borders. Typically, theories of regulatory competition have evolved ways to circumvent such problems. The concept of reciprocity is frequently employed to increase issuer mobility as between the countries under the arrangement by removing the problems of duplicate compliance costs or irreconcilable standards. Choi and Guzman extend such a reciprocity approach and describe an arrangement encompassing multiple countries (which they innovatively coined as "portable reciprocity") under which issuers may select the law of any participating country regardless of the physical location of the securities transaction.[20] The authors go further to suggest that the market participants should even have the option of opting out of any regulatory regime and to substitute private contractual protections.[21] In a similar vein, Romano believes that issuers and investors should be given the liberty to choose their regulators independent of firm or investor residence or securities transaction location, and articulates an approach whereby nations agree to recognise a statutory securities domicile as selected by an issuer.[22] It can be said that these approaches reflect the notion of freedom of contract,[23] since they essentially involve allowing market participants to choose the governing laws that regulate the securities issues, just as parties to private contractual agreements will choose the applicable law to govern their contract. The feasibility and desirability of transposing concepts founded upon freedom of contract into the area of securities regulation will be considered later.

In comparison, the theory of harmonisation is much easier to state. Grounded on the concept of commonality, the harmonisation model basically sees as its ultimate objective uniform regulatory standards that apply to all securities markets. Specifically in relation to mandatory disclosure rules, the harmonisation model works towards the creation of a single uniform disclosure document to be accepted internationally for the conducting of securities offerings anywhere in the world. To the extent that such a securities document is to function as an "international passport",[24] the theory clearly calls for mutual recognition of standards as well and hence contains elements of reciprocity. Indeed, some have taken the view that reciprocity itself forms an independent basis for the harmonisation theory.[25] The better view seems to be that both the concepts of commonality and reciprocity are essential ingredients of a proper harmonisation project, with reciprocity playing a crucial role pending the development of comprehensive common standards of regulation.

Other intermediate regulatory approaches have been advanced. Ruder suggests that the regulatory standards to be imposed may depend on the type of foreign issuer

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20 Stephen J. Choi & Andrew T. Guzman, *supra* note 15 at 907.

21 *Ibid*.

22 Roberta Romano, *supra* note 12 at 6.

23 Choi and Guzman expressly state that their portable reciprocity theory encompasses freedom of contract. See Stephen J. Choi & Andrew T. Guzman, *supra* note 15 at 907.

24 See Douglas W. Arner, "Globalisation of Financial Markets: An International Passport for Securities Offering?" (2001) 35 Int'l Law. 1543 at 1562. The analogy with an international passport is a highly accurate one as the disclosure document effectively allows an issuer to pass the regulatory checkpoint of a securities market situated in any jurisdiction in the world for capital raising and listing.

25 See *e.g*. Marc I. Steinberg & Lee E. Michaels, *supra* note 16 at 236; Uri Geiger, *supra* note 16 at 1793. The writers treat commonality and reciprocity as two independent forms of harmonisation. In particular, Geiger suggests that commonality should be adopted as a superior form of harmonisation to reciprocity.

in question, and that more relaxed disclosure requirements should be applied to well-known and widely followed securities.[26] Another approach argues that reciprocity arrangements or the development of common standards should only apply where the offerings are made to institutional investors and not individual investors who require greater protection.[27] Space constraints preclude a detailed examination of such intermediate approaches. Suffice it to mention that such approaches may lead to incomparability of information and potential market distortions. In particular, the regulatory approach that distinguishes between institutional and individual investors may cause high-quality issuers to ignore individual investors because of the high costs in reaching them, resulting in the possibility of a fraud-ridden penny stock market for individual investors.[28]

IV. Limitations of Regulatory Competition and the Need for Harmonisation

Persuasive arguments have been advanced in favour of the regulatory competition model. Competition between regulators is said to be capable of producing diversity among regulatory systems which can in turn yield creative regulations,[29] as it did in many U.S. states especially in the State of Delaware.[30] The benefits are seemingly not limited to creative legal rules but extend to innovation in financial products and institutional practice as well.[31] Much of the growth in financial derivatives in the U.S. has been attributed to regulatory competition.[32] Importantly, it can be argued that regulatory competition produces superior standards in terms of investor protection when compared to the standards promulgated through international harmonisation efforts because the international organisations responsible for the development of the uniform standards are not subject to political discipline and

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[26] David S. Ruder, "Effective International Supervision of Global Securities Markets" (1991) 14 Hastings Int'l & Comp. L. Rev. 317 at 326. The former chairman of the U.S. SEC argues that there can be a reduction of U.S. disclosure requirements for certain foreign issuers, particularly with regard to "world class securities" that are widely followed, well-known and highly capitalised corporations. The justification for such an approach is that such "world class securities" are already subject to significant analysis and scrutiny worldwide, and hence it is not necessary that full disclosure regulations be applicable to them.

[27] Such an approach is usually applicable in the context of a country with stringent disclosure requirements (such as the U.S.) trying to relax some of its rules in the attempt to achieve greater international harmony in regulatory standards. The approach means that less stringent standards which are more in accord with other countries' can suffice for foreign issuers who are offering their securities to institutional investors, but not for those selling their securities to private individual investors. Rule 144A adopted by the U.S. SEC provides an example of such an approach. The rule permits certain secondary sales by foreign issuers of privately placed securities to large, sophisticated institutions (known as Qualified Institutional Buyers "QBS") without SEC registration.

[28] See Paul G. Mahoney, *supra* note 11.

[29] See J. William Hicks, "Harmonisation of Disclosure Standards for Cross-Border Share Offerings: Approaching an 'International Passport' to Capital Markets?" (2002) 9 Ind. J. Global Legal Stud. 361 at 365.

[30] See Roberta Romano, "Law as a Product: Some Pieces of the Incorporation Puzzle" (1985) 1 J.L. Econ. & Org. 225 at 240.

[31] Parikshit Dasgupta, *supra* note 10 at 7.

[32] Edward Kane, "Regulatory Structures in Future Markets: Jurisdictional Competition between the SEC, the CFTC and Other Agencies" (1984) 4 J. Future Markets 367 at 380.

are potentially susceptible to rent-seeking.[33] Regulatory regimes subject to competition can also be said to be more responsive to the need for policy changes, as the flow of firms and investors in and out of particular regulatory regimes represents a built-in self-correcting mechanism indicating which rules are thought to be more desirable by market participants.[34] In addition, the multiple regulatory standards that result will cater well to the requirement of regulatory diversity which arises because different firms with different characteristics may have different regulatory requirements.[35] The diversified set of regimes can arguably be of benefit to investors as well by offering them more options.[36] With particular regard to Romano's version of regulatory competition or the portable reciprocity model (hereinafter the full-scale regulatory competition model), there is potentially the further benefit of assisting the development of emerging capital markets.[37] Where investors are unwilling to put their money in such markets because of the lack of effective regulation, domestic corporations from these countries can subject themselves to a developed nation's regulatory regime.[38]

These advantages of regulatory competition are undeniably attractive. Yet, many of them rest on critical assumptions that may not be satisfied in the real international securities marketplace. Most of the benefits may arise only if the market approach underpinning regulatory competition works the way it should. This is especially true of the contention that regulatory competition will produce regulatory standards that are superior to those promulgated through international harmonisation projects. It will be shown to the contrary that existing sources of market failure in the international context mean that there is a much better chance that harmonisation will yield optimal standards than leaving the job to market forces. But before looking at that, a related argument commonly utilised against regulatory competition will first be considered.

The "race to the bottom" phenomenon is perhaps the most well known criticism of the regulatory competition model.[39] It is said that regulators in competing for multinational offerings will have an incentive to lower their regulatory standards and offer lax disclosure rules so as to attract foreign issuers into their markets by lowering their compliance costs. The result is a race to the bottom in regulatory standards. The underlying premise that issuers will choose regulators with the slackest standards can however be challenged. We have seen that issuers of securities, notwithstanding the lower compliance costs associated with lax disclosure rules, may still prefer a well-regulated market because the potential higher price which investors are willing

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33 Roberta Romano, *supra* note 12 at 4.

34 *Ibid.* at 7.

35 *Ibid.* at 9.

36 See Parikshit Dasgupta, *supra* note 10 at 8. This is however a controversial point. Diversified regimes and multiple disclosure standards within a single market may lead to social costs such as a disproportionate impact on investors without diversified portfolios. Potentially, there can also be the creation of confusion among investors. See James D. Cox, *supra* note 18 at 1234; Stephen J. Choi & Andrew T. Guzman, *supra* note 15 at 924.

37 Roberta Romano, *supra* note 12 at 11; see Stephen J. Choi & Andrew T. Guzman, *supra* note 15 at 945.

38 It must however be noted that while it is true that domestic corporations from such countries with emerging capital markets may benefit because of the ability to rely on other regulatory regimes, such a result may conversely mean that the development of a effective regulatory system in such countries is stifled.

39 See *e.g.* Joel P. Trachtman, "International Regulatory Competition, Externalisation and Jurisdiction" (1993) 34 Harv. Int'l L.J. 47.

to pay translates to lower cost of capital. Moreover, there are arguably natural limitations on how much standards can deteriorate as market participants will generally demand a minimum level of regulation.[40] A more likely possibility is that regulatory competition will lead to a spectrum of varying standards.[41] The simple reason for this is that different issuers and investors may have different preferences. High quality issuers and investors willing to pay a premium may select countries that supply strong regulatory standards and stringent disclosure rules, while investors who are less risk-adverse and issuers wanting a relatively inexpensive means to raise capital may be drawn to more lenient regimes.[42]

Although a race to the bottom is therefore unlikely, it does not necessarily follow that regulatory competition will produce a competitive equilibrium of optimal regulatory standards for particular investors and issuers. The market approach does not work in the way it should because of imperfections and inefficiencies in the international securities market, the most significant of which would probably be the lack of mobility of market participants in and out of different jurisdictions. It is true that reciprocity arrangements will address such concerns insofar as issuers may no longer have to bear multiple disclosure costs in seeking to offer securities in more than one country. But other regulatory barriers such as different taxation rules and restrictions on ownership of foreign capital continue to inhibit free movement across markets.[43] In addition, there are arguably certain pull-factors that continue to attract investors to stay home, such as higher monitoring costs for foreign investments and the fact that a home portfolio provides a better match for liabilities and intended consumption streams.[44] The existence of such regulatory and non-regulatory barriers means that domestic regulators can continue to impose inefficient disclosure requirements as long as the costs of such inefficient standards do not exceed the additional costs involved in participating in foreign markets.[45]

The strength of the regulatory model depends on the ability of investors to adjust securities prices through discounting to reflect the differences in mandatory disclosure standards of competing regulatory regimes.[46] But such a discounting process may be inaccurate largely due to imperfect information. Investors may have no access, or it may be prohibitively expensive for them, to obtain information about the foreign regulatory regimes in order to engage in cost-benefit analysis, and this problem is aggravated because changes to regulatory rules can be a fairly regular occurrence. Moreover, under the full-scale regulatory competition model, there is the additional difficulty for investors to even discern the securities regime governing the issuer.[47] To be sure, the existence of informed institutional investors may

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40 See Edward F. Greene, Daniel A. Braverman & Jennifer M. Schneck, *supra* note 2 at 174.

41 See Stephen J. Choi & Andrew T. Guzman, *supra* note 15 at 906. See also James D. Cox, *supra* note 18 at 1201.

42 *Ibid.* See also John C. Coffee, Jr., "Racing Towards the Top?: The Impact of Cross-Listings and Stock Market Competition on International Corporate Governance" 102 Colum. L. Rev. 1757 at 1814.

43 See Uri Geiger, *supra* note 17 at 278.

44 *Ibid.* at 280.

45 *Ibid.*

46 See James D. Cox, *supra* note 18 at 1233.

47 See Roberta Romano, *supra* note 12 at 15. While recognising this problem, Romano suggests that it can be resolved by requiring the disclosure of the governing securities regime by the issuer at the time of offering.

mitigate the problem to the extent that they can exert a significant influence on regulatory choices of issuers because of their large holdings.[48] Even so, it seems overly sanguine to suggest that this alone can cure all problems of information asymmetry.

The international securities market can also be said to suffer from certain structural deficiencies which preclude regulatory competition from producing optimal regulatory standards. Perfect competition requires that there be a large number of competing regulators with comparable size to one another. The truth of the matter however is that the only serious players in the regulatory market now would probably be New York, London and perhaps Frankfurt.[49] These dominant regulators form an oligopoly with the ability to increase disclosure standards above the competitive equilibrium level with no fear of exit by market participants.[50]

At this juncture, it is appropriate to consider the response of Professor Romano to the criticisms of the regulatory competition model. She contends that such criticisms typically focus on the area of mandatory disclosure rules and that this is misguided because there is no need for such mandatory rules in the first place.[51] Such confidence in the existence of a high level of voluntary disclosure may be misplaced. The assumption commonly made is that because greater disclosure will increase the price of a company's securities and reduce its cost of capital, companies will automatically disclose all material information because it is in their interests to do so.[52] Such an assumption fails to take into account the fact that the interests of the corporate managers making the decisions may not be aligned with that of the stakeholders. In particular, there is the problem of managerial opportunism whereby managers may focus on the short run performance of the company and may withhold material information for their own gain.[53] It is also erroneous to suppose that the cost of capital is the only consideration which influences the corporate decision concerning disclosure because non-financial factors like marketing, business competition and firm culture may be critical as well.[54] Another possible reason why voluntary disclosure will not be optimal is due to the positive externalities associated with the disclosed information.[55] Investors and other firms can make use of such information without getting charged. Due to this possibility of free riding, the information will be underproduced.[56]

Professor Romano also challenges the critiques of regulatory competition by arguing that since inter-state regulatory competition in the U.S. has been effective in producing high regulatory standards, one can expect the same result from

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48 *Ibid.* at 3.

49 See James D. Cox, *supra* note 18 at 1232.

50 See Uri Geiger, *supra* note 17 at 282.

51 Roberta Romano, *supra* note 12 at 29.

52 See *e.g.* Louis Loss & Joel Seligman, *Fundamentals of Securities Regulation,* 4th ed. (New York: Aspen Law & Business, 2001) at 33.

53 See Hans Tjio, "The Needs of a Disclosure Based Regime" Singapore Conferences on International Business Law: Current Developments in Financial Regulation and Capital Markets at 153.

54 See Amir N. Licht, "Genie in a Bottle? Assessing Managerial Opportunism in International Securities Transactions" [2000] Colum. Bus. L. Rev. 51 at 71.

55 See Frank H. Easterbrook and Daniel R. Fischel, "Mandatory Disclosure and the Protection of Investors" (1984) 70 Virginia L.R. 669 at 685.

56 For a rebuttal of this argument based on interfirm externalities and underproduction of public goods, see Roberta Romano, *supra* note 12.

international regulatory competition.[57] Yet, it is submitted that we cannot readily transpose the conclusion at a national level into the international context. This is because there are fundamental differences between the domestic securities market and the international one. In particular, we have seen that the problems of lack of mobility, information asymmetry and oligopoly power are especially striking in our international securities marketplace today. Moreover, the divide between corporate motives and the motivations of underlying stakeholders may arguably be even more pronounced in the context of foreign listing and cross-border trading,[58] such that companies may choose regulatory regimes with less than optimal regulatory standards even if this may dampen the price of their securities. Notably, these aspects of the international market are not considered by Professor Romano.

Quite apart from the inability of regulatory competition to create optimal regulatory standards, certain practical difficulties of implementation threaten the viability of the full-scale regulatory competition model. As mentioned, the model reflects the freedom of contract concept in that market participants can choose their governing regulatory regime. However, the feasibility of such a measure must be highly suspect in view of likely resistance from national regulators. Securities regulation is predominantly public law in nature,[59] and public policy concerns such as investor protection must be adequately addressed. Regulators are unlikely to allow such public policy to be freely circumvented by party choice.

The enforceability of regulatory standards will likewise be called into question. In the event that there is a violation of disclosure standards, the selected regulator is seemingly the appropriate enforcement agency, but such enforcement of a foreign country's standards in the host country carries with it political and international law complications.[60] Finally, the free choice as to the regulatory regime given to market participants may lead to problems of incompatibility between the selected regulations and other bodies of domestic law that govern corporations.[61]

Furthermore, opening up the international securities markets to such full-scale regulatory competition is likely to hinder the development of regulatory regimes of developing countries. Not only will foreign issuers shun the regulators of such emerging markets, even domestic corporations from such developing countries seeking to attract foreign capital may subject themselves to foreign regulations.[62]

Therefore, although competition can potentially be desirable in certain respects, it should not form the basis of future development in international regulation because less than optimal regulatory standards will result. There is a crucial need to promulgate uniform standards through international harmonisation. Specifically, a common

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57 *Ibid.* at 160-161.

58 See Amir N. Licht, *supra* note 54 at 71. Licht lays down the different reasons as to why a corporate managerial decision as to foreign listing and choice of regime may not be a mirror-image of the investors' motivation. For example, political motivations may cause the managers of multinational companies to decide to list on a particular country's exchange, even though the regulatory regime does not provide optimal disclosure rules which protect investors.

59 See Amir N. Licht, "International Diversity in Securities Regulation: Roadblocks on the Way to Convergence" (1998) 20 Cardozo L. Rev. 227.

60 See James D. Cox, *supra* note 18 at 1240.

61 See Stephen J. Choi & Andrew T. Guzman, *supra* note 15 at 935.

62 *Ibid.* at 934.

set of mandatory disclosure standards to be used at a global level will not only facilitate cross-border offerings by removing multiple compliance costs, but can at the same time generate economies of scale and improve comparability of financial reports of issuers from different countries through standardisation of format.[63] Furthermore, the end product of such international harmonisation efforts is likely to be of high standards and can serve as a good yardstick for domestic practices to be benchmarked against.[64]

A smoother process of implementation can also be expected for harmonisation projects. If the full-scale regulatory competition model is regarded as a radical revolution, then harmonisation efforts can be seen as a moderate evolution that builds on existing notions of territorial based regimes. It involves cooperation among national regulators over a period of time to develop common regulatory standards, and in the meantime pending the ideal scenario of complete convergence of standards, to increasingly have in place reciprocal and mutual recognition frameworks between suitable regulatory regimes.[65] Consequently, it is less threatening to national regulators and more capable of acceptance. A harmonisation approach will also cater much more to the needs of emerging markets as regulators from such developing countries can be actively involved in the process of standard setting.

V. Harmonisation Initiatives

This part conducts a survey of the various efforts toward international securities regulation and examines the extent to which harmonisation has been achieved.

A. *At a National Level*

New Zealand has recently put in place new securities legislation which creates a mechanism for the government to make regulations enabling cross-border offers of securities to be made in New Zealand under the laws of another country.[66] These regulations can recognise specific jurisdictions or specific products within an overseas jurisdiction. Additional terms and conditions can be imposed to fill gaps between regulatory regimes, and warning requirements may also be put in place to ensure that

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63 See Uri Geiger, *supra* note 17 at 302.

64 See Koh Yong Guan, "Regulatory Approaches in Global Capital Markets" (Keynote address at the MAS Capital Markets Seminar, 2 May 2002), online: MAS: Policy Statements <http://www.mas.gov.sg/masmcm/bin/pt1Policy_Statements_Speeches_2002.htm>.

65 Such suitable regimes would be those where a substantial convergence of regulatory standards already exist.

66 See Jane Diplock, "Consolidation and Demutualisation—What Strategies should Exchanges Adopt for the Future?" (Speech at 5th Round Table on Capital Market Reform in Asia, Tokyo, 19 November 2003); Norman F. Miller, "Cross-Border Co-ordination of Securities Market Regulation—A New Zealand Perspective" (Speech at APRC Enforcement Directors Meeting, Sri Lanka, 24 January 2003); Jane Diplock, "Developments in New Zealand's Secondary Market Structure and Regulation: New Zealand's Approach to Global Regulatory Advances" (Speech at Fourth Round Table on Capital Market Reform in Asia, Tokyo, 9 April 2002)—online: Securities Commission <http://www.seccom.govt.nz/speeches/index.shtml>. See also *Securities Act (Overseas Companies) Exemption Notice 1997* (N.Z.) and *Securities Act (Overseas Listed Issuers) Exemption Notice 1997* (N.Z.).

local investors are informed that the offer is regulated under overseas law. Appropriate mechanisms for the enforcement of overseas securities laws have also been instituted. Besides recognition, the reforms also provide for application regimes to be created by regulations whereby offers into other countries can be made by New Zealand issuers using New Zealand law, provided agreement with the other jurisdictions are procured. The new legislation prepares the country for the creation of a mutual recognition regime with Australia, the discussions of which are currently underway.

Such developments reflect the commitment of an individual country toward promoting greater reciprocity, and exemplify the means by which a country can prepare itself for greater international harmonisation of securities regulation.

B. *At a Bilateral Level*

To facilitate cross-border securities transactions between the U.S. and Canada, the U.S.-Canadian Multi-Jurisdictional Disclosure System (M.J.D.S.) was created to permit U.S. and Canadian issuers to conduct public offerings in both countries on the basis of their home disclosure standards.[67] The agreement was based on the premise that there is a high degree of convergence in the two countries' disclosure, accounting and enforcement standards.[68]

The M.J.D.S. experience is instructive. First, the prolonged period of negotiation and modification of existing rules even between two countries with strongly connected economies clearly highlights the difficulty associated with any harmonisation project.[69] Second, the M.J.D.S. illustrates the limits of the reciprocal approach, and in particular that reciprocity is probably only workable where there is considerable proximity in regulations and where large volumes of cross-border issues are contemplated between the participating countries. It is noteworthy that in the process of creating the M.J.D.S., the Canadian authorities made compromises and adopted new disclosure rules that were substantially equal to those of the U.S.[70] As such, while formally based on reciprocity, there also took place significant convergence in regulatory standards before the project was possible. This suggests that for harmonisation to work, reciprocity needs to be supported by a focus on commonality of standards as well. Reciprocity under the M.J.D.S. is also incomplete in the sense that there was still a limited need to reconcile differing standards when conducting a cross-border offer in the other country. The financial statements of the U.S. issuer must be reconciled with the Canadian G.A.A.P. or with the International Accounting

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67 See Edward F. Greene, Daniel A. Braverman & Jennifer M. Schneck, *supra* note 2 at 164. The M.J.D.S. is comprised of two different sets of rules working together. The Canadian M.J.D.S. permits U.S. issuers who meet specified eligibility requirements to conduct public offerings in Canada, on the basis of disclosure documents prepared in accordance with U.S. disclosure rules, while the U.S. M.J.D.S. allows Canadian issuers who meet certain criteria to satisfy SEC registration requirements by complying with the disclosure rules of the Canadian authorities. The respective regulatory authorities will only review the disclosure documents of the issuer from the other country to the extent necessary to ensure compliance with the specific requirements of the M.J.D.S. See Douglas W. Arner, *supra* note 24 at 1550.

68 See Marc I. Steinberg & Lee E. Michaels, *supra* note 16 at 252.

69 The development of the M.J.D.S. took six years.

70 See Uri Geiger, *supra* note 16 at 1792.

Standards (I.A.S.), while the Canadian issuer must make sure that the standards are in accordance with either the U.S. or Canadian G.A.A.P. but not the I.A.S.[71]

C. *At a Regional Level*

The European Union (E.U.) Harmonisation Plan employs the dual principle of minimum standards and mutual recognition.[72] Directives articulate the minimum regulatory standards, including minimum disclosure rules, which must be adopted by the regulators of each member state.[73] Each member state is free to supplement these minimum standards with additional disclosure requirements it perceives as necessary for the needs of its markets.[74] The mutual recognition aspect of the E.U. Plan requires each member state to recognise disclosure documents which fulfil the minimum standards and which are approved by the regulatory authority of another member state.[75] Accordingly, the E.U. Plan embraces, to a certain extent, both the concepts of commonality and reciprocity, crucial ingredients of an appropriate harmonisation project.

Having said that, there are nevertheless several deficiencies with the E.U. approach. The liberty given to individual states to impose more stringent requirements over and above that of the minimum standards can potentially destroy the objective of ensuring greater uniformity of standards. More seriously, it can bring about a situation where issuers seek approval of their disclosure documents in a laxer regulatory regime and subsequently relies on the Mutual Recognition Directive to obtain listing in other member states, leading to regulatory arbitrage within the E.U.[76] In addition, although the directives are binding on each member state, member states can choose their own form and method of implementation of these standards into their national laws, possibly leading to even greater disparity in standards.[77] Also, the absence of a central institutional mechanism for the coordination and enforcement of the provisions casts further doubts on the effectiveness of the Plan.[78]

The latest development is however welcome. This comes in the form of the adoption of the new Prospectus Directive, which is essentially a disclosure document operating as a single passport to allow an issuer to offer its securities in any of the

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71 See Douglas W. Arner, *supra* note 24 at 1551.

72 See Howell E. Jackson, "Regulatory Competition in International Securities Markets: Evidence from Europe in 1999—Part 1" (2001) 56 Bus. Law. 653 at 661.

73 These directives include the Admissions Directive (1979), the Listing Particulars Directive (1980), the Mutual Recognition Directive (1987), and the Public Offer Prospectus Directive (1989). See Marc I. Steinberg & Lee E. Michaels, *supra* note 16 at 256.

74 See J. William Hicks, *supra* note 29 at 367.

75 See Uri Geiger, *supra* note 16 at 1789.

76 *Ibid.* at 1790. This is similar to the argument that opening up securities markets to regulatory competition will lead to a race to the bottom in terms of regulatory standards. To the extent that such an argument has been doubted earlier, it must also be said that a race to the bottom may not necessarily eventuate in the context of the EU Plan. However, a generally sub-optimal level of regulatory standards will probably result.

77 See Andreas J. Roquette, "New Developments relating to the internationalisation of the Capital Markets: A Comparison of Legislative Reforms in the United States, the European Community and Germany" (1994) 14 U. Pa. J. Int'l Bus. L. 565 at 597.

78 *Ibid.* at 598.

member states.[79] Such a prospectus, once approved by a member state, will have to be accepted across the EU without any further conditions or procedures.[80] This marks an impressive step towards greater harmonisation of securities disclosure rules at a regional level.[81]

D. *At an International Level*

International momentum in harmonisation of securities regulation has been building up. The principal vehicle driving such developments has been the International Organisation of Securities Commissions (IOSCO), the leading worldwide institution for coordinating cooperation among national regulators with the main goal of establishing internationally agreed uniform high standards of regulation.[82] In 1998, the membership of the IOSCO adopted a core set of non-financial statement disclosure requirements known as the International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers (I.D.S.),[83] which would allow issuers to rely on a single disclosure document as an "international passport" to capital raising and listing in more than one jurisdiction at a time.[84] The I.D.S. was in turn to be implemented by the membership through domestic legislation, and it has garnered support from some key national regulators, including the U.S. SEC which has adopted it in relation to foreign issuers as part of U.S. federal securities laws.[85]

The essence of the IOSCO's vision of an international passport is that an issuer seeking a cross-border share offering will only have to prepare a single prospectus reflecting the I.D.S. which after being reviewed by a regulator of a country involved in the multinational offering, will thereafter be recognised by all other securities regimes in which the issuer subsequently seeks to sell its shares. Happily, the IOSCO proposal seemingly contains the seeds of true harmonisation. It involves an explicit manifestation of the concept of commonality with the promulgation of the common disclosure standards, as well as a tacit endorsement of the reciprocity concept through the mutual recognition of the disclosure standards by national regulators.

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79 For more information, see the Prospectus Directive, online: EUROPA—Internal Market—Financial Services—Prospectus Directive <http://europa.eu.int/comm/internal_market/en/finances/mobil/prospectus_en.htm>.

80 See Parikshit Dasgupta, *supra* note 10 at 13. See also "EU allows single prospectus for share and bond issues" *The Straits Times* (6 November 2002).

81 Some commentators also predict that a European Securities and Exchange Commission (ESEC) will be set up in the near future. See Gerard Hertig & Ruben Lee "Four Predictions about the Futures of EU Securities Regulation" (2003) 3 J.C.L.S. 359.

82 For more information on the IOSCO, see the IOSCO website at <http://www.iosco.org>.

83 The IDS was prepared by the Technical Committee of the IOSCO, which consists of sixteen securities agencies of the larger and more developed markets in the world. See A.A. Sommer, Jr., "IOSCO: Its Mission and Achievement" (1996) 17 Nw. J. Int'l L. & Bus. 15. For details of the IDS, see "International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers, Report of the Technical Committee" September 1998, online: IOSCO—Documents Library <http://www.iosco.org/library/index.cfm?whereami=pubdocs> [IDS Report].

84 "IOSCO Announces the Release of Four Documents of Vital Interests to Securities Regulators and Market Participants" *IOSCO Press Release* (May 1998), online: IOSCO Press Releases <http://www.iosco.org/news>.

85 See J. William Hicks, *supra* note 29 at 369.

Having said that, on closer examination there remain important drawbacks which may limit the effectiveness of the IOSCO proposal in achieving international harmonisation of securities disclosure rules. The I.D.S. is only to be used for multinational offerings, and the scope of the common standards does not apply to purely domestic issues.[86] Duplicative disclosure costs must hence still be borne by issuers in having to comply with different standards for domestic and foreign markets.[87] From the perspective of investors, there are problems of non-comparability of information presented by foreign and domestic firms.[88] The friction costs that result can continue to act as regulatory impediments to cross-border securities activities. Another problem arises from the degree of flexibility permitted in the implementation of the common standards.[89] Substantial modification of the I.D.S. upon its implementation through domestic legislation can be expected, as the IOSCO proposal specifically states that each securities document is subject to host country review or approval process and contemplates that supplementary disclosure may sometimes be necessary for issuers from certain industries or for certain unusual forms of securities instruments.[90] With such qualifications, one must surely doubt the extent of uniformity in standards that can actually be attained in practice.

The IOSCO further suffers from the absence of a single arbiter for resolving disputes relating to the interpretation and enforcement of the common standards.[91] This can prove especially problematic because the test for deciding whether a particular piece of information needs to be disclosed under the IDS is that of materiality, a concept inherently vague and capable of diverse constructions.[92]

Arguably, the process of developing the common standards can also be criticised for not involving a sufficiently large number of participating countries. Out of the more than hundred ordinary members of the IOSCO,[93] only sixteen agencies from the more developed markets were responsible for the standard setting.[94] There is the danger that common standards promulgated in such an exclusive way may fail to take into account the peculiarities and the different stages of development of emerging markets in developing countries, making the standards potentially unsuitable or even incapable of application in these markets.

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86 See I.D.S. Report, *supra* note 83 at 3. Singapore is the only country that uses the IOSCO standards for domestic issues. See the Schedules to the *Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2002* (2004 Rev. Ed. Sing.). Note that the IOSCO standards are subject to modifications by the Listing Rules of the Singapore Exchange. See *SGX Listing Manual* Rules 602 and 606.

87 See Uri Geiger, *supra* note 16 at 1797.

88 *Ibid.* at 1798.

89 See J. William Hicks, *supra* note 29 at 372.

90 The I.D.S. Report states that companies engaged in specialised industries such as banking, insurance and mining may have to provide additional disclosure in certain countries. Similarly, it is acknowledged that additional information may need to be disclosed in respect of equity instruments like depositary receipts and voting trust certificates.

91 See J. William Hicks, *supra* note 29 at 374.

92 See Parikshit Dasgupta, *supra* note 10 at 17.

93 The IOSCO has a total of 104 ordinary members.

94 See A.A. Sommer, Jr., *supra* note 83.

VI. Difficulties and the Way Forward

While harmonisation has been demonstrated to be the essential regulatory response to the increasingly internationalised securities markets, it must be appreciated that there exist significant roadblocks in the path towards achieving the ideal scenario of uniform and optimal disclosure standards recognised multilaterally at an international level. Broadly, these difficulties can be identified at three levels. First, the promulgation and adoption of uniform global standards may be impossible in the first place due to the tremendous divergence which exists among national systems, including differences in market and regulatory structures, differing stages of development and maturity of the markets, discrepancies in goals and objectives of securities regulators, history and cultural diversity as well as perhaps most significantly political differences.[95] Second, even if the development and implementation of common global standards is achievable, these standards are unlikely to be optimal because leaving standard setting to regulatory agencies could mean problems of lack of incentive, potential rent-seeking, and information deficiencies as to market requirements.[96] Third, even if optimal standards can be developed at the outset, they are unlikely to be responsive to changing market conditions, potentially becoming over-rigid and impeding innovation.[97]

These are real and serious concerns, but the difficulties are by no means insurmountable. A recognition of the sources of divergence among national systems must not be allowed to obscure the fact that notwithstanding such diversity, there generally does exist a substantial convergence of national securities laws particularly in the area of mandatory disclosure rules, arising due to various reasons such as the almost universal investor protection concern and the tendency for foreign securities regulations to be borrowed and enacted as local law.[98] While it is true that the feasibility of the M.J.D.S. can be largely attributed to the proximity in legal and political structures between the U.S. and Canada, and the E.U. Harmonisation Plan has made progress largely because it is operative within an existing framework of political integration, the development of uniform disclosure standards for cross-border offerings by the IOSCO does give hope that harmonisation on an international scale is possible. Of course, we have seen that the IOSCO initiatives can nevertheless be criticised. Improvements must be made.

It is of utmost importance that an institutional mechanism be set in place not only for the promulgation of unified standards, but also to (i) monitor the implementation and enforcement of those standards by national regulators, (ii) resolve disputes as to interpretation, and (iii) make changes and adapt the regulations to changing economic and market conditions.[99] One commentator has given such an international

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95 See Jane C. Kang, "The Regulation of Global Futures Markets: Is Harmonisation Possible or even desirable?" (1996) 17 NW. J. Int'l L. & Bus 242 at 269.

96 See Roberta Romano, *supra* note 12 at 4.

97 See Andrew M. Whittaker, "Tackling Systemic Risk on Markets: Barings and Beyond" in Fidelis Oditah, ed., *The Future for the Global Securities Market* (Oxford: Clarendon Press, 1996) 257 at 261.

98 See Mark Gillen & Pittman Potter, "The Convergence of Securities Laws and Implications for Developing Securities Markets" (1998) 24 N.C. J. Int'l L. & Com. Reg. 83. (The article outlines and explains the many similarities which exist among national securities laws.)

99 See Uri Geiger, *supra* note 16 at 1800.

organisation the apposite label of a Global Coordinator.[100] It must be emphasised, as the name of the organisation suggests, that the proposal does not envisage the creation of a global regulator, as political resistance from domestic governments and regulators will preclude such a possibility, and in any event such a global regulator is not going to be able to function effectively and efficiently under the different market structures.[101] What is contemplated is the coming together of different domestic regulatory agencies to form such a Global Coordinator, operating within the current international market structure and not as part of the creation of a single securities market.[102] As there is no ceding of governmental or regulatory authority, this in turn translates to lessened political resistance. With wide participation from different national regulators, the different needs and issues facing the different markets can be brought to the fore, and any incompatibility between regulatory objectives can be discussed and reconciled. While this may sound optimistic, it will seem on the other hand too unduly defeatist to say that any harmonisation endeavour is doomed to failure because of the difficulties of reaching a consensus as to common standards. Drawing a parallel with international trade, such a Global Coordinator can be seen as the equivalent of the World Trade Organisation. The IOSCO, with its wide membership of national regulators, is well poised to transform itself to adopt such a role.

Even if uniform regulatory standards can be achieved, we are still confronted with the issue as to the quality of such standards. The concern is that regulatory agencies lack the profit motive of private entities and the lack of incentive may result in ineffective performance. Such a contention however loses much of its cogency when we consider the track record of government agencies like the U.S. SEC.[103] It is also said that under the harmonisation approach, regulatory agencies lack adequate information about the markets in promulgating uniform standards. This is premised on a contrast drawn with the regulatory competition model where the market participants are supposed to provide the regulators with information as to what the market demands. We have already seen that such an assumption of a perfect market with perfect information is seriously flawed. This does not however absolve us from having to deal with the problem of information deficiencies. The point to note is that a Global Coordinator is likely to be better informed of the global market conditions than national regulators operating individually.[104] In relation to the fear of rent-seeking behaviour, the danger cannot be ignored. But it must be remembered that a Global Coordinator is arguably less likely to be influenced because of its large size and its status as an independent organisation with no links to any specific clientele of any individual nation.[105]

As is the case for any kind of rule setting, there is the danger of obsolescence when market conditions under which the regulatory standards were promulgated are no longer the same. Flexibility must be injected into the decision-making, monitoring,

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100 *Ibid.*

101 *Ibid.*

102 See Uri Geiger, *supra* note 17 at 299.

103 It may be argued that the U.S. SEC is subject to some kind of competition from banking and insurance regulators. However, the Monetary Authority of Singapore (MAS) provides a good example of a governmental agency which is an integrated regulator for the securities, banking and insurance sectors. This has not reduced its effectiveness and efficiency in regulation.

104 See Uri Geiger, *supra* note 16 at 1826.

105 *Ibid.* at 1828.

and dispute resolution mechanisms of the Global Coordinator to ensure that such stagnation is prevented.[106]

Therefore, it would seem that the goal of harmonisation of securities disclosure rules, notwithstanding the significant difficulties involved, is attainable in practice. Two qualifications must however be made. First, harmonisation is not risk-free, and there is the danger that inefficient harmonised standards may result.[107] Since such standards are to be recognised at an international level, the negative impact on the world's securities markets cannot be overstated. In this regard, it is of crucial importance that developing countries be actively involved in the promulgation of the unified standards in order to guard against the risk that regulators from a selection of the most sophisticated economies may devise standards which are not capable of easy implementation elsewhere.[108] Secondly, the harmonisation process will entail substantial transition costs, both for market participants as well as regulators.[109] However, if we engage in a cost-benefit analysis, the benefits of harmonisation clearly outweigh the costs because such costs will only be incurred during the one-time transition period from the current system to a harmonised regime.[110]

VII. Conclusion

The world's securities markets are undergoing an unprecedented period of change and growth. The number of multinational offerings is consistently rising and issuers are truly reaching a global investor base. Cross border trading volumes continue to increase at an amazing rate. The law must keep pace with such developments. Only with a sound legal framework to support such internationalisation can we have a truly global securities market.

By focussing on mandatory securities disclosure rules, this paper has presented the case for harmonisation as the overriding theme that should underlie the legal and regulatory response to the globalisation of the securities markets. As the securities business which the law seeks to govern and regulate cuts across national borders and breaks free from traditional territorial restrictions, so too must the law adapt and modernise by coming up with an increasingly integrated regulatory regime with uniform and harmonised standards that apply at an international level. In particular, securities disclosure rules must be harmonised to facilitate the cross-border flow of capital and to ensure optimal regulatory standards which cannot be achieved by competition between regulatory regimes.

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106 For more details, see Uri Geiger, *ibid.* at 1829.

107 See Uri Geiger, *supra* note 17 at 317.

108 See Howard Davies, "Is the Global Regulatory System fit for purpose in the 21st Century?" (Address by Chairman of Financial Services Authority U.K. at the MAS Lecture, 20 May 2003), online: MAS: Policy Statements <http://www.mas.gov.sg/masmcm/bin/pt1Policy_Statements_Speeches_2003.htm>.

109 Investors and professionals such as lawyers and accountants may incur costs which arise due to the need to learn new rules, and such costs are especially high if they have relied upon old rules and had taken actions with long-term consequences. Issuers may also bear greater costs in having to prepare disclosure documents in accordance with new standards. This will prove particularly onerous for issuers from markets which traditionally imposed less stringent requirements than the uniform standards that are promulgated. Lastly, regulators will have to invest a great deal of resources and capital to develop the common standards. For details, see Uri Geiger, *supra* note 16 at 1832.

110 *Ibid.*

The various efforts at promulgating uniform standards must therefore continue, and there is a pressing need for the development of an institutional mechanism like the Global Coordinator to facilitate and monitor the implementation and enforcement of standards. Regulators from emerging securities markets in the developing countries must be given the chance to play a part in the harmonisation process to ensure that universally viable regulations are developed. The uniform disclosure rules should not be restricted to multinational issues, but must be extended to cover domestic issues within a single country as well. Due to the many difficulties we have seen, the prospect of comprehensive uniform regulatory standards and disclosure rules which are recognised at a global level may not be capable of fruition in the very near future. In particular, we must accept that the vision of an international passport for securities offering may not be a reality any time soon. In the meantime, reciprocity must come in to fill the gap left open by commonality. The number of mutual recognition regimes must increase to reduce regulatory barriers in order to facilitate cross-border offerings and trading, pending full convergence of securities disclosure standards. In essence, while all-encompassing harmonised disclosure standards to be used by all countries is the ultimate objective, a realistic goal in the short term is the increased mobility of issuers and investors across national markets which are governed by regulatory regimes operating with an increasingly common set of regulatory rules.