[Law and Business Review of the Americas](https://scholar.smu.edu/lbra)

Volume 8 | Number 4 Article 7

2002

Regulation and Supervision in the Context of a Global Financial Environment

Andrew Sheng

Regulation and Supervision in the Context of a Global Financial Environment

*Andrew Sheng**

First of all, I would like to thank our hosts, Dr. Dogan Cansizlar and his colleagues at the Capital Markets Board of Turkey, for their warm and outstanding hospitality. Every day, we are treated to an escalating level of interaction with the Turkish culture, indeed global culture, because Istanbul stands at the crossroads of Asia, Africa, and Europe. I only realized this strategic importance when I visited the Grand Bazaar, which must be the mother of all global markets, since for several millennia it was the marketplace for goods from all over the world.

This morning, Minister of State Kemal Dervish said that globalization was irreversible, and Technical Committee Chairman David Brown quoted Charles Dickens in depicting the last year of global events as "the best of times [and] ... the worst of times."[1] Ms. Tipsuda, speaking on behalf of the Acting Chair of the Emerging Markets Committee, also highlighted the danger of marginalization of smaller markets, which have to deal with larger and larger global players.[2] The theme, Globalization: Opportunities and Challenges, reflects the contrasting aspects of global business. There are huge opportunities and benefits arising from the convergence of products, services, and standards globally. However, if we do not handle globalization correctly, there will be polarization, as liquidity begets liquidity and the small become smaller.

Because of time constraints, I shall be quick and blunt on some of the polar issues that globalization poses. The events of September 11th, Enron, and the accounting aftermath demonstrate clearly to me that we are witnessing the cold and ruthless logic of markets, which can be summed up as Murphy's Law: *What can go wrong will go wrong.*

Allow me to sum up very quickly how globalization affects the key market issues and participants differently—what I call the four I's and an R—information, investors, intermediaries, issuers, and regulators.

The first I is information. We all know that accurate, relevant, and timely information is a market fundamental. Enron's problems demonstrated vividly that we must move very quickly to high quality international accounting standards and international auditing standards. But it seems to me that what must be everyone's top priority is a clear set of international disclosure standards for listed companies. Without such standards,

---

* Speech at the 27th IOSCO Annual Conference, Istanbul, May 22, 2002. Mr. Andrew Sheng is the Chairman, Securities & Futures Commission, Hong Kong.

1. Minister of State Kemal Dervish, Speech at the 27th IOSCO Annual Conference (May 22, 2002); Chairman David Brown, Speech at the 27th IOSCO Annual Conference (May 22, 2002) (quoting CHARLES DICKENS, A TALE OF TWO CITIES 11 (Courage Books 1992) (1859)).
2. Ms. Tipsuda, Speech at the 27th IOSCO Annual Conference (May 22, 2002).

there will be plenty of information arbitrage between markets, where companies can exploit differences in disclosure requirements. Of course, the major markets are working on these issues, but I hope the International Organization of Securities Commissions (IOSCO) will be able to push this to the top of our agenda.

The second I is investor. Globalization has offered the investor an unprecedented global choice of products and services. The major downside is that the investor can easily be cheated by intermediaries operating out of markets that are unregulated and outside the reach of domestic regulators.

The third I is intermediaries. Globalization offers the efficient intermediary global reach. Through the internet and technology, intermediaries can span across jurisdictions and offer products and services to new customers. This has caused consolidation, alliances, and mergers of intermediaries across different product or functional lines, giving rise to the emergence of huge complex financial institutions. The size, power, complexity, and sometimes opacity of these institutions make the task of regulation very difficult indeed.

The fourth I is issuer. Again, globalization offers huge opportunities because the eligible issuer can now tap global fundraising. Of course, currently, only a few select companies are eligible for cross-border fund raising, but the trend is obvious.

In short, globalization brings huge up sides to investors, intermediaries, and issuers. So where is the downside? The simple answer is that the regulators essentially face the frontline downside risks. Regulators face the toughest assignment in globalization because if anything goes wrong, they are the first to be blamed. As Murphy's Law demonstrates, things will go wrong. To cope, we now need to understand very rapidly the internet-speed of changes in technology, the markets, and global issues.

But the public and the regulatory community must also appreciate the limitations. Allow me to dissect the constraints and issues within the context of the three key objectives of securities regulation enunciated by IOSCO:

- Protecting investors;
- Ensuring fair, efficient, and transparent markets; and
- Reducing systemic risks.[3]

In the protection of investors, we must appreciate first and foremost that domestic regulatory powers stop at the border. We have global markets but local laws. We cannot protect domestic investors when they invest abroad unless we have appropriate memorandums of understanding with the relevant regulator. We cannot protect investors on our own. To do so, we must adopt what Chairman Fernando Teixiera dos Santos suggested this morning, which is that regulators must co-operate very closely in order to achieve IOSCO objectives. He was also absolutely right in saying that regulators alone cannot handle many of these global issues, so that regulators must co-operate with other authorities and market participants, both domestic and cross-border, in order to resolve global issues.[4]

3. IOSCO, *Objectives and Principles of Securities Regulation*, *at* http://www.iosco.org/docs-public/1998-objectives-document02.html (last visited Sept. 23, 2002).
4. Chairman Fernando Teixiera dos Santos, Speech at the 27th IOSCO Annual Conference (May 22, 2002).

This is where I must commend Michel Prada and his team, as well as the whole of IOSCO, in agreeing to adopt a landmark multilateral Memorandum of Understanding so that regulators can work together and share information to plug some of the regulatory gaps that we all face in our work on cross-border issues.[5]

I must confess that I see the greatest challenge in the protection of investors lies in investor education. We must impress on investors that while they are offered great opportunities in the range of global products and services, they must understand the risks, especially the counter-party and legal risks they assume outside their own jurisdiction. This is an area where greater cooperation in IOSCO in investor education will pay the highest dividends.

The second IOSCO objective is to ensure fair, efficient, and transparent markets.[6] This is where all domestic regulators face two very complex and difficult issues. The first is the inherent conflict of interest between our domestic or sovereign obligations and global objectives. From a credit risk, product range, and service quality point of view, there is no better choice for the domestic investor than for his domestic regulator to allow in the top twenty global financial services providers. From a globalization point of view, this may be the right way to go. But then, from a sovereign perspective, all domestic regulators have a primary obligation to protect the safety and soundness of their domestic intermediaries.

Indeed, one of the greatest concerns arising from globalization is how smaller markets and the smaller domestic intermediaries survive the competitive challenge of these global service providers, who have superior technology, capital, and quality of service. Globalization will erode domestic franchises, and many inefficient domestic intermediaries will fail, with some cost to employment and domestic financial stability. This is indeed the creative destruction of global markets. I do not have the answers, but I can clearly see that the proper sequencing of the convergence to globalization for the markets that are not yet fully open to global market forces is the greatest challenge today for financial regulators.

The second conflict is how to maintain fair, efficient, and transparent markets when there may be unregulated intermediaries operating out of unregulated and uncooperative jurisdictions. Even for regulated entities, as Ms. Tipsuda has eloquently pointed out, regulators in small jurisdictions have to deal with intermediaries that are larger than their jurisdiction's gross domestic product.[7]

As some of us discovered during the Asian crisis, a medium-sized intermediary, such as a hedge fund, may find itself an elephant in the pond, when it operates in a market whose liquidity shrinks in turbulent times. These elephants, whether benign or belligerent, can do considerable damage to smaller players in smaller markets because markets with a few large players that dominate liquidity no longer provide level-playing fields. Nor is it a transparent market if the players do not have to conform to reporting

5. Press Release, IOSCO, IOSCO Announces the Endorsement of the First Multilateral MOU for Securities Regulators (May 2002), *at* www.iosco.org/press/presscomm020524.html (last visited Oct. 5, 2002).
6. IOSCO, *Objectives and Principles of Securities Regulation*, *at* http://www.iosco.org/docs-public/1998-objectives-document02.html (last visited Sept. 23, 2002).
7. Ms. Tipsuda, Speech at the 27th IOSCO Annual Conference (May 22, 2002).

requirements if they operate out of unregulated and uncooperative jurisdictions. Moreover, regulators often have no jurisdiction or full appreciation of what goes on in the unregulated over the counter market.

Finally, let us address the third IOSCO objective of reducing systemic risks.[8] The events of September 11 point out starkly the criticality of legal finality, operational robustness, and proper contingency planning. Prior to September 11, we were concerned with the systemic risks if one of the largest of our market participants were to fail. Post September 11, it is horrible to imagine, but we can no longer rule out the possibility that terrorist attacks or other unimaginable events could lead to the total failure of one of the top ten or twenty global markets. This is no longer a non-zero risk.

Hence, I commend the efforts of the IOSCO Chairs' Committee, the CPSS/IOSCO task forces, and the Financial Stability Forum in thinking through these immensely important but complex issues. These are issues upon which panels such as this one can contribute significantly to the understanding of both the opportunities and challenges that globalization has brought to our markets and our responsibilities as regulators.

8. IOSCO, *Objectives and Principles of Securities Regulation*, *at* http://www.iosco.org/docs-public/1998-objectives-document02.html (last visited Sept. 23, 2002).