

INTERNATIONAL SECURITIES LAW SYMPOSIUM

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Developments in International Securities Law Enforcement and Regulation

The internationalization of the world's securities markets no longer is a new phenomenon. Advances in computer and telecommunications technology have made it possible to participate in a country's securities markets from almost anywhere in the world. Companies increasingly rely on securities markets for capital formation, and access to foreign markets has helped to expand the investor base. Additionally, investors now have more markets to choose from, and new investment products now make cross-border investment a widely available option. The increase in capital raising through securitization also has enhanced the prominence of the financial services sector in the world's economies. Increasingly, broker-dealers, underwriters, investment advisers, investment companies, and

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stock exchanges or electronic trading systems seek to become active participants in the U.S. markets, just as their U.S. counterparts seek access to foreign markets.

The U.S. securities markets, which have been subject to a comprehensive regulatory scheme for more than sixty years, have been among the most dynamic in terms of acting as a catalyst for and assimilating to internationalization. Throughout that period, the markets have evolved, as has the regulation of those markets by the U.S. Securities and Exchange Commission (SEC or Commission), the major regulator of those markets. While the SEC has confronted many of the issues being considered for the first time, new issues arise and old ones resurface that may require adjustments and new approaches to the regulatory scheme. Because any action by the SEC may impact another foreign market or regulator, it must proceed on a coordinated and responsive international basis.

The instantaneous movement of capital and transactions across U.S. borders create challenges and obstacles to regulation of those globalized markets. One of the most significant developments in the regulation of globalized securities markets has been the need to obtain foreign-based information and documents. Increasingly, an investigation may be stifled because information or documents are offshore, and no one in the United States controls them. For example, if a boiler room operator in another country defrauds investors in the United States by means of the telephone and mails, the SEC's ability to investigate the activities in the foreign country would be limited by its ability to obtain information and documents from persons it is able to assert jurisdiction over in the United States, or its ability to obtain the assistance of its foreign counterparts.

The four articles that follow detail how internationalization of the U.S. securities markets has challenged conventional wisdom about markets and many aspects of domestic securities regulation. The articles describe domestic and international developments that have given rise to legal and regulatory issues and illustrate the SEC's response to those developments. Common themes arise, such as the importance of protecting investors and of eliminating and avoiding unnecessary regulatory burdens on market participants. Especially evident is the importance of forging new and maintaining old relationships with foreign counterparts.

The authors hope that these articles provide useful insight into many of the issues arising from the globalization of securities markets and the SEC's and its foreign counterparts' responses to those issues.