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Global Markets, Global Regulation

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Global Markets, Global Regulation
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Treasurer,
Commission Presidents,
Ladies & Gentlemen,

I'd like to focus my presentation on two aspects of financial regulation which in France, and no doubt in many Western European countries, have been profoundly affected by the globalisation of markets: I refer to the protection of investors and its relation to issuers, who themselves are directly concerned by globalisation.

I will firstly, briefly review the basis of the current system before globalisation developed to an extent where it could no longer be resisted,

I will then highlight some examples of the changes that national regulators have had to deal with.

I will conclude by showing how international cooperation between regulators has enabled them to reconcile the apparent contradictions between globalisation and national traditions in a civilized manner.

1. In France, as in the US, the regulation of markets has been strongly influenced by the desire to ensure the protection of investors. This is a consequence of, in the first case, the great economic crisis of the 1930s and secondly, in my country of the reform and renewal of the market in the early 1960s. In the first instance, as in the second, the protection of minority shareholders and the protection of small investors played a key role.

However, whereas in the United States, the market economy would blossom to become the world reference, France, like many of the countries of Western Europe, experienced, due to the Second World War, a long period of administered economy. This accustomed public opinion to a protective role for the State (the Welfare State). And because of this, stock market regulation, like company law, was marked by precise and detailed measures, which were motivated by the desire to ensure extensive protection of and perfect equality between investors.

This view of the law and of protective regulation corresponds to a tradition of Christian social philosophy that the philosopher Lacordaire in 1846 defined as follows: "Between the strong and the weak, between the rich and the poor, between the master and the servant, it is freedom which oppresses and the law that liberates".

This view has, of course, also oriented the system of regulation towards an order-driven market where the role of intermediaries was very different from that which prevailed in the markets driven by the market makers. Conditions for trading were hardly any different for different investors. The regulator played an essential role not only as far as the behaviour of the intermediaries was concerned, but also, and it is still largely the case today, in the quality control of the products and the limitation of risk taken by investors. Block trading was strictly limited. Share buy back was prohibited or strictly controlled. Public tenders were regulated with precision and complex methods of payment were prohibited in order to protect investors from the danger of complex products.

2. Liberalization of markets and globalisation, which exploded from about the mid 1980s, placed the regulators of many countries, and particularly those of Western Europe, in the position of having to accept modifications to

their rules and introduce innovations which would put issuers and markets in a position where they could confront competition and avoid relocation.

In reality, the regulators themselves are in competition.

The tradition of the regulator as defender of the consumer, and who is occasionally criticized by the intermediaries for being, a hindrance to innovation, clashes with another tradition, well established in many countries of British culture, that of the regulator referee in a game where the buyer must be aware (caveat emptor). A beautiful quote from Saint-Exupery applies so well to this tradition: "to be free, is to be responsible".

The facilities tendered to issuers and to intermediaries in this type of environment have provoked a thorough review of the consumerist traditions, leaving a greater place for interaction between the intermediaries and the professionals.

So, that in France for example, we have experienced a regulatory revolution during the 1990s which is a direct result of globalisation.

Block-trading was authorized in 1994 and this allowed for an important deal flow, which had been won by Seaq International in London, to be repatriated to Paris.

The difference between aware investors and ordinary investors was established in the texts in a precise way, with obvious consequences in terms of requirements imposed on intermediaries, such as rules for good practice/good conduct and also conditions of innovation and distribution of financial products.

Share buy back was authorized. A number of complex products have been introduced into the regulation of public tenders of purchase or exchange. Not even the language, a particularly sensitive subject in France, has escaped from globalisation - the COB now puts out brochures written in typical financial language that hasn't escaped the influence of English ...

Despite all this, the regulator has endeavored to remain faithful to the founding principles : the protection of investors, and is concerned about the evolution of a system which if we aren't careful could rapidly turn into competitive deregulation or the opposite extreme of regulation that is too finicky.

The issuers, as well as the intermediaries, are pushing for competition between regulators so that the regulators eventually become overwhelmed by the movement and as they are sometimes ill-informed of the situation in which their colleagues in other jurisdictions operate, they are tempted to let things slide.

Amongst the subjects currently in the news in Europe, one example that I'd like to give is that of the problem of access for investors to the primary market. Should we accept practices that tend to favour professional investors in offers? Shouldn't we instead encourage greater participation by retail investors? A recent French report has supported the second solution. But can we do it alone? This question of public tender should be raised at a European level at least.

In the same way, France, like the United States and Great Britain, has a relatively sophisticated system for public tenders and strictly limits the possibilities for defence during a period of tender. Is this attitude tenable if other markets adopt other rules?

A third example is that we are always careful in commercializing to the public investment management products which are invested in derivatives with leverage. Can we maintain this way of doing things alone if this type of product is accessible to individual investors on a cross-border basis?

3. Therefore, and this is my third point, globalisation, which is a factor in competition and progress, could become a factor of confusion if there were insufficient cooperation between regulators.

It is, clearly, the positive outcome which has been at work in Europe since the creation in December 1997 of FESCO. This was followed by the launch last year of the European Commission's action plan for the standardization of European financial markets, whose objective is to create a true level playing field in Europe.

FESCO has recently adopted a unique definition of the concept of "aware investor"; we are also working towards an common definition of the rules of conduct for intermediaries so that the traditional competition between regulators in their own country and the host country's investment services would lose its importance, if they both applied the same rules.

In the same way the Commission's action plan aims at standardizing:

- rules that apply to public tenders ; the draft guidelines which are in the process of being adopted establish the principle of an integral/full tender for 100% of the securities, of a compulsory public tender in case of a takeover, of the integrity of the securities market during a period of tender; it also solves the problem of conflict of competence between the regulatory bodies in the different countries concerned;
- Accounting standards applying to listed companies : by subscribing to the standards of IASC which IOSCO has just recommended should be used;
- Rules applicable to asset management and to investment management products.

I believe that this work to achieve standardization of the European regulations should also be stepped up on a global level.

This is, as far as we are concerned, the ambition of IOSCO which has already produced a remarkable number of principles and recommendations, notable in the domain of financial information for cross-border tenders or for good practice/good conduct of capital management. The Internet constitutes, in this respect, and for us all, an immense opportunity and an immense challenge that the recently formed task force has decided to take-up.

Of course the task is immense.

It should not affect innovation and competition

It should not be inspired by the desire to defend domestic privileges.

It should be lead in good faith and good will by the desire to allow for the international development of safe, trustworthy, efficient and transparent markets. At the same time, this will constitute an efficient instrument for the financing of companies, as well as a management instrument for investment which investors can trust.

The strength of our organization lies in its ability to undertake the task with enthusiasm, in cooperating with bank and insurance regulators as well as with the members of the Forum for Financial Stability.