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Plenary 2

**Misconduct across Jurisdictions – The Enforcement
Challenge**

10. Speech by Mr. Michel Prada

Chairman of the Commission des Opérations de Bourse of France

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IOSCO – ISTANBUL

PANEL 2

**“MISCONDUCT ACROSS JURISDICTIONS,
THE ENFORCEMENT CHALLENGE”.**

Ladies and Gentlemen,

Before we start our panel, let me say how lucky I feel for having had for the 7th and unfortunately last time the opportunity to attend this Annual Conference of IOSCO this year here in Istanbul.

This is a fascinating experience and I have no words, after yesterday’s evening fabulous productions, to express my admiration and congratulations to our Turk hosts.

I hope you will forgive us if the kind of show we will deliver in a few minutes will not exactly meet yesterday’s standards and I thank you for your participation in this presentation of the less harmonious issue of the enforcement challenge at the time of globalisation.

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Let me first introduce the four speakers who have joined us this morning :

- Mrs Andrea CORCORAN, Director of the Office of International Affairs at the US Commodities Futures Trading Commission;
- Mr Andrew PROCTER, Director of Enforcement at the Financial Services Authority, in the United Kingdom;
- Mr Donald GERSHUNY, General Counsel at MERRILL LYNCH in the United Kingdom; and
- Mr Patrick STEPHAN, General Counsel and Executive Director for International Projects at EURONEXT – PARIS.

In today's financial world, due to internationalization, globalization and openness of the capital markets, a significant portion of securities transactions and sales of financial products are carried out cross-border.

This system presents without any doubt many advantages both for the issuers, which may have a better access to capital markets, and for the investors themselves, who are able to diversify their investments and their portfolios.

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However, this evolution has also created some new challenges for securities Regulators, that were not as acute about twenty years ago when stock exchanges relied mainly on a “domestic” clientele.

These new challenges, which have been identified by the Regulators, need to be overcome in order for the Stock Markets to continue to play their role in the economies’ development.

Generally speaking, the globalization of markets has created two series of risks :

- Systemic risks;

- The development of cross-border securities and futures violations.

Indeed, Securities Regulators have seen in recent years that more and more wrongdoers tend to commit their frauds from foreign jurisdictions, and through complex circuits, in order to avoid the investigation and enforcement powers of their domestic regulators, the police forces, the Tribunals, and the action of “Law Enforcement Authorities” (Regulators, Police, Public Prosecutors) that can fully act inside the borders of their jurisdictions, but are more limited as soon as an “international” element is involved in the process.

Different rules and principles apply when their action takes place outside the strict limits of their borders, due to the principle of national sovereignty.

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The Regulators have therefore, since the beginning of the Eighties, alerted their governments and Parliaments about this new trend, in order for them to take the appropriate measures against these new forms of violations.

They have asked for new cooperation and exchange of information agreements, so that the borders would no more be a major obstacle to their action.

In the same way that Judiciary Authorities have signed the MLATs, or Mutual Legal Assistance Treaties, Regulators have put in place mechanisms to exchange information, in order to better investigate and enforce the securities and futures laws and regulations.

This cooperation process has been developing, due to the commitment of IOSCO, which has issued no less than 16 resolutions and recommendations in that field during the last 10 to 15 years.

Standing Committee 4 of the Technical Committee and Working Party 4 of the Emerging Markets Committee have worked efficiently and the commitment of their members have given existence to the beginning of a network of enforcement officers.

Cooperation mechanisms have also been developed with the Law Enforcement Authorities.

However, Regulators are still confronted with both technical and political issues.

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Technically, it appears that, despite our efforts and commitment, some obstacles still remain, both from a legal and from a practical point of view.

Some Authorities cannot actually cooperate, either because they are not willing to do so, because of laws which strictly prohibit or restrict their ability to do so, or because they are technically not in a position to deliver on time the information needed.

The confidentiality problem is often presented as a way to deny the requests made.

The existence of the so-called « off shore » centers, and I must say that I would rather refer to non-cooperative jurisdictions, is also a constant preoccupation of people involved in enforcement and cooperation, as well as the trusts, which may be a problem in relation with the client identification.

Other Authorities are subject to strict rules, for example in the area of data protection, that actually prohibit or limit the transmission of information.

Banking secrecy rules are also a major obstacle to cooperation.

Finally, some jurisdictions have different rules when they investigate a “domestic” case or when it is an investigation carried out on behalf of another Authority.

Cooperation is therefore a major “political” issue.

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It is debated in many fora, such as the Financial Stability Forum, the Financial Action Task Force and, of course, IOSCO.

It is in fact essential to secure confidence in the markets, which is at the very basis of their development and efficiency.

This 2002 meeting in Istanbul will, hopefully, remain in the future as the meeting when a great step forward has been made in the area of cooperation by our organization.

Indeed, after the different crises that the financial world has seen since about 1997, and the events that have taken place in September of last year, IOSCO's Technical Committee has set up a Special Team, that I had the privilege to chair, with a view to consider what kind of significant improvement we could give to cooperation between Regulators, as an answer to these challenges.

On the occasion of our first meeting, we have considered that the best, although ambitious, way to go forward would be to draft a multilateral MOU, that, as a final goal, would be signed by all IOSCO members, who are willing and able to commit themselves to the standards of cooperation which have already been adopted by the Organization.

After our Istanbul meetings, and without anticipating on our debates of today and tomorrow, I assume that our President's Committee will endorse our proposals and support the inclusive process which will develop in the future months and years.

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This would of course be an unprecedented initiative and a major step forward made by the Organization

To conclude this brief introduction, I should of course mention that regulators cannot and should not do all the works by themselves.

Market participants are at the very basis of a sound, transparent and fair market system.

Therefore, it is of paramount importance that market intermediaries, through their codes of conducts, internal controls and procedures, provide the first and strategic line of defense against the wrongdoers, and our two friends of the industry, who have accepted to participate in the debate, will give us their views on this point.

To start our debate, I shall now give the floor to the Regulators and, of course, Ladies first, Andrea....