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## Discussion Following the Remarks of Mr. Crean and Mr. Mann

Discussion

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DISCUSSION FOLLOWING THE REMARKS OF  
MR. CREAN AND MR. MANN

MR. ROBINSON: Before Henry gets the microphone, I am going to use the president's prerogative to add a little coda to what you have been told by our two extremely able and qualified presenters, namely, that what is going on right now in Ontario is a very interesting example of what Michael was talking about of the continued cooperation between Canada and the U.S. in securities regulation. But it has an even broader implication.

I am a member of a little group of lawyers who has an informal off the record breakfast meeting with the Chairman, David Brown, every few months. Since it is off the record, I cannot tell you what we say there. I can tell you that the SEC did not take the approach with Canada that you enact domestic laws to match Sarbanes-Oxley or we are going to cancel this MJDS, which is the usual reputation that the people give to the SEC. Michael was not like that. Notwithstanding John Fetters and Waiver by Conduct, which I did not agree with. The SEC is saying, Ontario, what you do will help create a model for how other countries that are not as well integrated in securities regulation and markets as Canada will do in their domestic markets. Do not confuse a country adopting a Sarbanes-Oxley type domestic securities regulatory scheme with the application of Sarbanes-Oxley to foreigners. All of those 350 companies are listed on the New York Stock Exchange from Canada, and there are more of them that are all subject to Sarbanes-Oxley right now because they listed there. The question is are countries going to say we are going to have a system of regulation similar so that if you will continue to accord us things like the MJDS that will extend mutual, if not, recognition, cooperation? What David Brown is doing is being looked on as an example. He is between a rock and a hard place because Canadians are saying we should not slavishly copy that American rule. It is too strict. Some securities regulators are saying it is all wrong. Out west in Alberta and Vancouver, they are saying, we have different markets. We are more junior. The costs of companies complying with Sarbanes-Oxley are too great.

Brown knows darn well that a lot of what is in Sarbanes-Oxley is good and should be adopted. You are going to find out within about two months exactly what he is going to do. Let me give you an example. John used to be a victim of this. Sarbanes-Oxley absolutely forbids loans to directors and senior officers of listed companies. All the Canadian banks traditionally for 100 years have remunerated their senior officers by giving them low cost loans, so they can buy their house and buy the bank stock. They are all going

to have to pay those loans back and get remunerated in a different way very soon.

MR. MANN: That was a huge issue in MJDS, because virtually all of the accounting firms had a conflict under the independence rules in the United States. That was something that was accommodated in the MJDS, because, otherwise there would have been no independence for any accounting firm in Canada.

MR. KING: Does the Spitzer operation affect Canadians? In other words, you know what Spitzer's doing in New York State. Curiosity consumes me as to whether Canadians need to be concerned with what is going on down there? Is it just a domestic operation or what is your advice to people on the Spitzer operation?

MR. MANN: You mean, would I advise somebody to write an analyst's report touting the security they were selling?

MR. KING: That is one of your clients.

MR. MANN: I think that anything can have a cross border implication. Until CIBC sold Oppenheimer, I am sure they felt that they were subject to Elliot Spitzer's investigation as they were issuing analyst's reports. I look at Spitzer a little bit differently, because anything can have a cross border implication for Canadians. Spitzer was raising an issue that he felt the SEC was not sufficiently raising. Again, I would argue that that shows the strength of the American regulatory system in that there are a variety of avenues through which issues can percolate.

MR. KING: So, if you had a Canadian Grupman, you would be concerned?

MR. MANN: Sure.

MR. ROBINSON: The TD bank owns TD Waterhouse, which is now moving into advisory. It used to be just a discount broker. They are fully subject to that sort of scrutiny, but it looks like Mr. Spitzer's got enough on his plate looking at Americans without having to go north of the border.

MR. MANN: The opposite applies, as well. Schwab and Ameritrade got in trouble with the Canadian securities regulators last year because they had Internet clients who were based in Canada and they were not registered in Canada. I think this is a proximity issue. The markets are very porous. If you live in Detroit, the Detroit airwaves fill Canada, just as the Vancouver airwaves fill Seattle. There has always been a substantial amount of cross border activity. What is happening now is that it is being scrutinized much more carefully. There is a lot more cooperation in scrutinizing it.

MR. ROBINSON: The Canadian dealers all got in trouble for servicing their snowbird clients. When they go to Arizona and Florida for six months of the year they want to be able to call their Canadian broker and sell their stock in Bombardier before it drops right out of the bottom, but they cannot because that broker is not registered there.

MR. MANN: That is another cooperation point that is worth making, because there was a deal signed right before I left the SEC that allowed snowbirds to still be serviced while they were in the United States.

MR. ROBINSON: That was classic cooperation in the day-to-day details of the interaction of those markets.

MR. CARMODY: Chios Carmody, University of Western Ontario. Found your presentations very interesting and was curious to find out on both sides of the border what is being done about the phenomenon of social accounting. For example, in Britain certain pension funds are now required to disclose certain liabilities or other accounting type impacts that they may receive from, for example, certain risky operations that they undertake abroad. We have the phenomenon most recently in Canada of Talisman Energy in Sudan. What accounting is being done of this and what attempt is being made to incorporate some of these more unconventional measures into conventional accounting?

MR. ROBINSON: Do you want to take that, John? I do not think very much is being done.

MR. CREAN: As far as the banks are concerned, if we want to merge in Canada, we have to supply a public impact type of report, but that is not part of the accounting exercise. I know there have been one or two accountancy firms that have looked at getting into this sort of thing, environmental and so on, but that is not part of the disclosure requirements that one has under GAAP.

I have some difficulty conceptually with that from two aspects. First of all, the main charge for accountants is to comment on the integrity of the financial statements of the firm they are auditing. They do not go into the second order. The third order impacts on customers of the firm or people who might be influenced by the activities of customers of the firm. That is an incredibly difficult extension, made more difficult by the fact that an awful lot of this stuff is inherently not easily amenable to measurement. So, I would find it a little bit difficult. I mean, let me flip it a little bit.

Our regulator in Canada, the Office of Superintendent of Financial Institution, has suggested that for good practice Canadian banks ought to collect information and judgments on the caliber of governance in the firms that they lend money to. As I said to the regulator, what criteria do we use for that? If I am lending money to a privately owned company, which is managed by a 70 year old owner who is very much in charge and has had a wonderful track record, what do I write down on my internal memorandum about the quality of his governance?

There is a real difficulty with this, because bank records are becoming more and more subject to subpoena and scrutiny. What we have here, and we have not really touched on it much during the sessions, is that we have a real problem of capturing the limits we should put on regulation. There are real

costs to increased regulation. Particularly when the objectives of that regulation are ill-conceived so you cannot do any good cost benefit, certainly not in the public eye, of the worth of these regulations. I understand the point and I have sympathy with it, but I also have a little bit of horror of how you actually put that in force. I come back to the use of markets. If a company exploiting a market abroad is selling its securities at home, certainly the commentators on the stock of that company can comment. There are some real disadvantages to having operations abroad for a variety of reasons. I come from the Bank of Nova Scotia.

MR. MANN: There was a move in the United States to see if there could be some legislation written that would require that kind of disclosure. It was motivated initially by Sudan. I think the view that ultimately was taken was that it already required as part of management's discussion and analysis to put in any discussion of material risks or to describe how the management views its business when there are issues that are material to the firm.

In a way, the social issues such as Sudan are no different today than in 1975, when there was a call for there to be more environmental disclosure. The framework exists already within the law to have the information provided. Management needs to be focused on that as they are considering how they describe the company. As new social issues arise, it is not because it is a social issue. It is because it is a material risk. It is because it could affect the investment in the firm. It could affect the way the firm is considered.

If you were doing business in South Africa during the period of Apartheid, it was something that needed to be disclosed because you could be subject to embargo in other countries. That would create material risks. From an investor's standpoint, it is giving the information that is useful for investors. I think getting at it that way has been chosen, rather than having affirmative obligations, which would be, as John says, quite soft.

MR. HAGE: Mr. Mann, you focused in your comments on the burdens that Canadian securities firms, Canadian firms, have in the United States in terms of issuing securities or regulating their trade. Are there any areas in Canadian law where American companies would have a more strict level of scrutiny?

MR. MANN: I think it is just sort of the anomaly of the market that there are almost no American companies listed in Canada, just the trading market is really in the United States. I have to confess, I am not aware of any.

MR. ROBINSON: I can help a bit on that. They may not list there, but they certainly issue securities there. They suffer all kinds of nuisances of having 13 Securities Commissions for the provinces and the territories. There have been great efforts made to resolve that problem one way or another. It looks like within a year we are going to get a solution. I am not sure which one it is going to be. Ontario has put out a model Uniform

Securities Law, hoping everybody will pass the same law. Then the Canadian Securities Administrators, which all work together, are trying to have a central place where they can say file your materials, then they would be reviewed by that central place and comments fed in from the other jurisdictions. Since it is a provincial jurisdiction, the Feds are lurking around on the fringes threatening to impose a Federal Securities Commission, which they would not ever try to do, because it would be another Constitutional crisis. They have got enough problems up there with the Constitution.

MR. HAGE: I just had some difficulty following the logic of one of Mr. Mann's examples. Maybe I misunderstood. I can understand why Canadian companies or U.K. companies registered in the United States or trading in the United States would be subject to American Law. The example you gave was General Motors and its countless firms around the world being subject to review in the United States. General Motors is going abroad to make money. It is there to encourage or increase the profits of General Motors. Once it goes abroad, which is its decision, why should it be subject or why should accountants from Uzbekistan be brought back to the United States and questioned?

MR. MANN: I actually just tried to use it as an extreme example showing that even with an American company, the accountants could be brought in. When General Motors puts out its consolidated balance sheet, it includes all those 150 countries that are consolidated into its balance sheet. So, even in their Korean company, everything comes back to their American shareholders. The work that is done by the team is far flung. There is no question General Motors is subject to the jurisdiction of the United States. It was just that its accountants that are doing that work that are providing it then to Deloitte & Touche in Detroit for consolidation are also subject to it.

MR. CREAN: This is standard in Canada. When Bank of Nova Scotia publishes its consolidated financial statements, we had a series of chartered accountancy firms in the States, the U.K., and in 40-some odd countries.

MR. ROBINSON: Argentina?

MR. CREAN: No longer. They prepare statements and our two sets of shareholder auditing firms rely upon the statements that float up from each of these subsidiaries, in giving their statement of their opinion as to the validity of the statements. It is perfectly normal. It is not an operation of extraterritoriality.

MR. ROBINSON: In Michael's example, the value of the Uzbekistan subsidiary is reflected in the statements based upon which the securities are sold and traded in the United States. Why the heck should they not have to account for how they did the statements?

MR. HAGE: My point was bringing them back for cross-examination in the United States. Is that normal?

MR. MANN: I was overstating it. I said they would have to be available to answer questions.

MR. ROBINSON: Henry, I think we are going to break up a little early. If we could all put our hands together for this panel.