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FOREIGN COMPANIES AND U.S. SECURITIES MARKETS IN A TIME OF ECONOMIC TRANSFORMATION

*Richard C. Breeden**

I was very grateful to have the invitation to participate in this program. I had the great pleasure several times as Chairman of the Securities and Exchange Commission ("SEC") to come to Fordham Law School to participate in colloquia on various subjects relating to the evolution of the securities laws and world capital markets. Fordham represents a great resource to the City of New York and, more importantly, to the capital markets of New York, which is of course the pre-eminent capital market in the world. It has been a delight in the past to be with you, and I would only encourage you to continue to play the role that you have played in examining issues like we are discussing today, and to continue to be a force for intellectual examination, as well as for practical understanding, of the workings of markets. You need to continue helping those of us who are in the capital business to find better ways to run markets to serve the economic needs of peoples around the world.

We live in an era of seemingly constant change — in our politics, our technology, and our economic life. Things that once seemed constant and immutable, like the economic success of Germany and Japan or the supremacy of IBM, may be changed quite suddenly. Today there is not any country or company so large or so powerful that it can afford to remain locked in time if it wants to survive and prosper. Flexibility and adaptability have become essential skills for dealing with our world.

Hopefully that fundamental fact will not be lost on the House of Representatives later today when it votes on whether to approve the NAFTA Treaty and create the world's largest free trading zone with a commitment to maintaining an open, competitive, and entrepreneurial economy in North America. If the United States of America ever loses its self-confidence and willingness to face competition from around the world, whoever

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comes and whatever may, if we ever get to the point where we are willing only to seek to guard a shrinking pie and not face competition, then it will be a sad day for our country.

NAFTA, I think, clearly delineates a fault line between those who are willing to face the future with self-confidence and willing to compete vigorously and those who want to cling to the echoes of the past. I can only hope that the momentum that seems to have been running toward passage of NAFTA, which I very strongly believe is the right direction, continues through the critical point, which is when people stop making predictions and start voting.

At the same time that our economy is afloat on a sea of change, there are enduring values and certain fundamental truths that can serve as our compass in navigating the turbulent waters of change. These values often differ sharply between different countries and cultures, even where they share many other beliefs in common. For example, the cultural concept of the collective good (or "*wa*") that was embedded in Japan's constitution in the 7th century, and that remains a key part of Japanese society today, is totally different in orientation from the "inalienable rights" of the individual that are set forth as "self-evident truths" in the American 18th century Declaration of Independence. Notwithstanding such a fundamental difference in outlook on the roles of the individual and society, the United States and Japan have many issues on which we work closely together and see eye to eye on, and many values that we share, as well as areas in which we differ. That, I think, is a good demonstration of the fact that each society must define for itself its values and principles, and these shared values help provide the glue that holds a society together and gives it a sense of shared identity.

If I can telescope what I am going to say today, it is that every major company in the world ought to want to participate in the U.S. capital market or at a minimum to have the capacity to do so. Having the ability to issue securities in the U.S. market is something that every CFO and every CEO around the world ought to want to have, as that flexibility can represent a major corporate asset.

But the issue we are talking about is far more than a question of how many listings we can get this year or next if we tweak the rules this way or that way. It isn't about the profitability of

the New York Stock Exchange, the NASDAQ, or the other American exchanges. Happily that profitability is higher than it has ever been, and hopefully it will stay that way. The issue isn't about how many deals the brokers have to offer this month or next month, and it is not a question of arcane accounting detail. It is not even a question of lawyers loving to torment people with detailed rules and regulations, as we so often do. Rather, this issue of the conditions under which foreign securities may be sold to the retail investing public is an issue of values and fundamental principles. Needless to say, the question of what the governing principles underlying the operation of the market ought to be is terribly important.

Whether we are in academia, in government, in the accounting and legal professions, or in business, in whatever our respective capacities, we all recognize that we live in a world of change, and that we have to be prepared in our organization to accept change. The tough decision is knowing which change to adopt, and when, because while some change may be essential, other change may be counter-productive. Knowing just when to bend, just when to get up and change your chair and move around the room, and when to hold fast to things that you have traditionally done, those are the tough questions. They call for judgment; they call for experience. And, frankly, honest and reasonable people can differ quite strongly about them because they are matters of judgment. There is no cut-and-dry "right" answer.

As strongly as I believe in the principles that led me to follow a certain set of policies at the SEC, and as strongly as others may feel on the other side of the issue, the fact of the matter is that we are all trying to find the way that is best for the future. We would all like to see healthy, successful capital markets in the United States and, I think, we would all like to see companies around the world have the lowest possible cost of capital. The question is, what's the best way to achieve that? How do we get from here to there?

While many things are changing in today's global economic competition, one enduring fact is that it takes plenty of money to run a successful company in any country. Companies consume capital voraciously to enhance productivity, to respond to competitive opportunities, and, sometimes, to absorb losses from risk-taking. While the demand for capital is rising sharply

around the world due to many factors, including changes in the geo-political atmosphere, for many companies the availability of traditional sources of capital has changed significantly and has narrowed.

Because of inherent economic efficiencies, credit is increasingly being channeled through open capital markets rather than through an intermediate credit decision by a lender. Indeed, it is, I think, quite striking that on a net basis the last "commercial and industrial" or "C&I" (corporate non-real estate) loan in the United States was made in early 1989. There has not been a single dollar of net C&I lending to the corporate sector in the United States since that time. Not just a lot of our financing, but all of our financing in the aggregate for running major U.S. corporations is now coming through the capital markets.

That is, of course, not to say that banks aren't participating just as actively as they ever did in that area; they're just doing it in a different form, providing credit through the purchase of securities rather than through that traditional vehicle known as the commercial loan. Thus, the "loan department" has become the "capital markets group." This trend has been going on not only in the United States, but almost everywhere around the world.

Indeed, one of the things that is both most striking and most encouraging about the trends in world capital markets has been the rapid growth of the "emerging securities markets" around the world. Here we have seen very rapid growth in the capacity of countries to develop capital market systems and to make the economic benefits of those systems available to companies in their local market as well as having access to global markets.

Even in Germany and Japan (though for very different reasons), the traditional system of relationships is changing between a universal bank in Germany, and the companies in which it holds equity stakes, and the "main bank" in Japan and its relationship to a group of companies within a *keiretsu.* The German banks have been fairly quiet about it, but nonetheless the steps of Deutsche Bank and others to reduce the size of their industrial equity holdings suggests the beginning of a profound change in the capital market systems of Germany.

On the whole, the trend towards the use of securities mar-

kets to finance businesses around the world should be seen as a pretty big plus for U.S. competitiveness, because we happen to have both the largest and by far the most efficient and innovative securities market in the world. The immense liquidity of the U.S. securities market is today absorbing issuances of new securities with a value of more than U.S.$1 trillion per year. Looking at a few of the IPO offering documents, I sometimes wish that the market was absorbing a slightly lower dollar amount because some of the deals appear to be the product of exuberance rather than an analysis. Nonetheless, that's the market at work, and who is to say what securities people ought to be interested in buying so long as there was good disclosure and full information on all sides?

That sum of primary offerings, that U.S.$1 trillion plus in capital being raised in the U.S. market through securities offerings, probably exceeds the sum total of the primary offerings that are taking place in every other market in the world put together. Now, it is true that many markets are very active and successful secondary trading markets. The U.S. markets have plenty of strong competition when it comes to markets for secondary trading. But if you look at the capital markets picture from the perspective of primary offerings and where capital is actually raised by companies for productive purposes on an annual basis, there the U.S. lead — the reason why the U.S. markets are attractive, because of the ready availability of capital — is quite dramatic.

For my own part I would be happy to see our lead in that area narrow, because I think the spread of more efficient and more liquid markets around the world is not a negative for the United States, but rather a positive. Growing foreign securities markets will help to strengthen economies all around the world, and a growing world GDP is very much in the interest of the United States. This is particularly true since our economic future lies in international trade, exports, and the international marketplace.

There are many factors that contribute to this extraordinary liquidity of U.S. securities markets. I won't go through them all, but it might not surprise you terribly to know that in the opinion of this former Chairman of the SEC, the most important factor of all is strong public confidence in the honesty and integrity of the U.S. market.

Public confidence in the market is an essential attribute. People do not participate in markets where they think they are likely to get cheated. Some economists will tell you, "Prices will all reflect this. We can repeal all the laws and the companies can go out, and if they choose to cheat the investors, their stock price will adjust accordingly." I think the factor they have difficulty measuring is the loss of liquidity for everybody — the honest and the dishonest companies. When people decide the game is rigged, they will simply choose to go and play a different game.

From the ruins of the Crash of 1929 and the Great Depression we have managed to build arduously a system (notwithstanding occasional shocks to public confidence) of extraordinary confidence in the fundamental integrity of the U.S. market. That, ladies and gentlemen, has produced one critical thing: participation. People put their 401-Ks in the market, they put their discretionary money in the market, they put their kids' college education in the market, they put their very economic future in the market. The only reason they are willing to do that is because they have some confidence that the game is a fair one. That confidence is what is ultimately at stake in the issues we are discussing today.

I believe that the public confidence we enjoy is in part a direct result of the SEC's system of disclosure. Part of it is also a reflection of market forces for disclosure. It is also a reflection of the SEC's capacity to enforce the disclosure rules vigorously and effectively. Indeed, it is striking that when you look around the world at other securities commissions, almost all of them have the power to write disclosure rules — and there are some beautiful disclosure rules in place in countries around the world. However, I do not believe that any other major securities commission in the world has the power, on its own, to enforce disclosure rules and to seek judicial sanctions against those who disobey the rules. The U.S. success rate in bringing to justice companies that have chosen to ignore the requirements is dramatically better than that of other markets around the world, and that I think contributes to this sense of overall confidence.

During the last four years, there has been a wave of new foreign companies coming to the U.S. market to sell securities. Since October of 1989, when I became Chairman, more than 250 foreign companies have entered the U.S. public markets for the first time. That is an average of two or three new companies

entering the United States for the first time every week. I suspect Richard Kosnik in his presentation will give us an updated total, but in any event the volume of foreign companies entering the U.S. market has been immense, notwithstanding the rhetoric from some quarters to the contrary. In fact, since 1989, foreign issuers have raised over U.S.$100 billion in capital in the U.S. public market. Strikingly, during this period of time, 1989–93, the number of foreign companies listed in London, Tokyo, Paris, *and* Frankfurt all *declined.*

It is interesting that as part of this debate about competitiveness, proponents of abolishing the U.S. disclosure system keep holding up London as an example, saying, "We've got to compete with London." In fact, the number of foreign companies listed in London is often a bit overstated, because many of the foreign companies listed in London are from various former British colonies and dependencies. No matter what our rules might be, it's not very likely that we will have eighty-five South African companies trading in the United States.

Even if you put aside the historic factors that result in numerous companies from former British colonies being listed for trading in the London market, the number of foreign participants in the U.S. market is growing at a vastly greater pace than is true in London or any other major market. That is not opinion, but fact.

Some say that we should jettison those quaint, antiquated, useless, out-dated, obsolete, unproductive, overly burdensome, un-economic, thoughtless rules and requirements of the SEC, and that it's time to get rid of this horse and buggy in the era of global technology. Well, let me respectfully disagree. I don't think that anything about our improved communications or more global trading systems have made honesty and integrity less important. Therefore, this is not the time to get rid of our fundamental commitment to the protection of investors, to the integrity of the market, to honesty in disclosure, or to openness in financial reporting. The United States has an important global role in helping to promote the growth of efficient global capital markets. As part of that role, we should never limit the availability of the U.S. capital market solely to U.S. companies.

By the same token, we *should* establish the principles under which all companies, foreign and domestic, must operate if they

wish to raise funds in the public market. These principles include matters as fundamental as honesty and integrity. To avoid exactly such an approach of even-handed protection of investors, some fear-mongers preach that the U.S. markets are in danger of becoming quaint anachronisms with at best regional significance. That argument is both false and disingenuous. In reality, the *only* thing that could produce that result would be a substantial loss of public confidence in the market that could lead to loss of the market's liquidity. Incidentally, the idea that any market you want to look at in the United States is on the verge of regional obsolescence is pretty silly, whether one is talking about the market for potato chips, computers, or almost anything else you can name. That doesn't mean we can afford to be complacent. Being successful in international competition will still require much hard work to maintain an edge in technology, efficiency, and most important, quality for the investor.

We also need to be flexible. Just because we have done something for a long time doesn't mean we should continue doing it. Along with everybody else, the SEC has to be willing to roll up its sleeves and find a flexible approach to the needs of an increasingly diverse group of issuers in today's capital markets. Re-examining rules for offerings by small companies, simplifying disclosure rules, demystifying global market making restrictions, facilitating the pooling of savings, accommodating new techniques like structured financing and many others are examples of areas we pursued at the SEC to seek to improve flexibility and reduce unnecessary regulatory costs. In that endeavor I hope our record was a good one.

I know my successor is determined to follow the same approach, to try and find ways to lower the cost, and to remove unnecessary burdens for anyone seeking to enter the U.S. capital market. That commitment, however, to lower burdens that are unnecessary is very different from having a sense of panic that we will suddenly and inexplicably become an irrelevant market if we don't jettison the very core fundamental principles of our system.

Therefore, I would submit, the truth is that the U.S. capital markets are today *the* most successful markets in the world, and *the* model that emerging markets around the world are emulating. We should remember what brought us to the enviable position of having more investors, more liquidity and more foreign

offerings than any other market. The key to that success was a deep-seated, fundamental commitment to providing the investor with the highest possible quality of information and an unshakable commitment to openness and integrity in the market. If anything, more complex and international markets make those principles much *more* important than they have ever been.

In 1992, ninety-four new foreign companies entered the U.S. market for the first time, offering U.S.$32 billion in securities. This year so far there have been seventy-six new foreign entrants, and we have seen around U.S.$40 billion in offerings in the first ten months. As of early November, the securities of 562 foreign companies from forty countries trade in the public markets of the United States, representing every continent except the Antarctic. If John Dingle hadn't been harassing me about my foreign travel, I would have gone to the Antarctic looking for a company to come and list in the U.S. market. In fact, there were a number of people who would have liked to have send me to the Antarctic to stay.

Seriously, no other market has been seeing the growth in numbers of foreign issuers that we have been achieving *every year*. So, I think you have to ask "If you're scoring a touchdown every time your team gets its hands on the ball, is that the time to radically change the rules of the game?" I submit not. You mustn't be complacent, but you must be doing something right or else you wouldn't have achieved the record that's there for all to see.

In early October, Daimler-Benz AG became the first German company to become publicly traded in the United States. That was an event of immense significance, because Daimler-Benz is the largest manufacturer in Europe, and by any measure it is a truly global company of the highest stature. In addition, a German company had never before entered the U.S. public market, and there are more differences between U.S. GAAP and U.S. disclosure rules and those of Germany than with any other country. Indeed, in terms of disclosure and investor protection as visualized in the United States, Germany represents the exact opposite end of the spectrum.

To me, the Daimler-Benz listing seems to demonstrate much of the new thinking that's going on in corporate board rooms around the world with respect to how global companies

ought to approach issues of accounting, disclosure and their sources of capital. It also demonstrates, that some companies are blessed with superb management that is capable of meeting the challenges of our world head-on, especially when equipped with the capital markets' equivalent of airbags and antilock brakes.

There are undoubtedly many reasons why German companies had never sought to raise capital in the U.S. market. With a German savings rate far higher than that of the United States, very strong profits, and a pervasive role of the German banks, most German companies had access to abundant quantities of capital within Germany. Perhaps that helps explain why there are only about 600 publicly traded companies in Germany, about 10% of the number of publicly traded companies in India. More importantly, only sixteen German companies have listed their stock in any market outside Germany, even those markets with no rules.

Though many factors have been involved, in the case of German companies, accounting rules in the United States have unquestionably been viewed in Germany as a significant problem. Accounting rules in Germany give a company wide latitude in how it chooses to portray current earnings or financial conditions. German practices allow companies the ability both to understate and to overstate earnings substantially.

Many German companies took the common position with the SEC, namely, that they'd be happy to list in the United States, contingent on the SEC capitulating to a demand from these companies that they should be completely exempted from all auditing, accounting, and disclosure standards that are applied to the 12,000 publicly traded U.S. companies and to the nearly 600 foreign companies that are publicly traded in the United States. The German argument was that America, and presumably every other country, should allow German companies to go door to door in the United States selling their securities to the general public, based solely on German law and practice. This would be a little bit like saying that an American insurance company ought to be able to go door to door among apartment houses in Munich selling single-premium deferred annuities and obeying only the laws of Wisconsin. I hardly think that would be tolerated there, and it's a strange proposition to be followed here.

But having convinced themselves and various ill-informed German government officials of the desirability of this position, they nonetheless proceeded to batter at the doors of the SEC loudly demanding a free pass, which they conveniently dubbed a "system of reciprocity." This, I am afraid to say, received less than the most enthusiastic reception at the SEC. That lack of enthusiasm on our part was not due to anything respecting the particular companies, because the ones who were approaching us were unquestionably fine companies that many investors in the United States would like to consider owning. Clearly, the SEC also had a desire to see those shares available for trading here in the United States.

However, the long-standing approach of the SEC is one of national treatment. Indeed, that is also the approach of the U.S. government to every single area of finance of which I am aware. Whether the issue is the application of Glass-Steagall, interstate banking, insurance law, the Bank Holdings Company Act, the Commodity Exchange Act, or the securities laws, the United States has accorded national treatment to foreign firms participating in the U.S. market. National treatment is also normally the best treatment you can aspire to, since in many countries U.S. and other foreign firms often are forced to operate under restrictions that formally or informally do not apply to the host country competitors. Few if any countries give foreign firms a substantial preference over their domestic companies in the same field.

Thus, in the SEC's traditional view, if Ford and A&T are required to make a particular type of disclosure, such as the disclosure of their results by segment or the liabilities that they may have for retirement benefits, then a foreign company seeking to sell stock to individual investors in Ohio, California, or Florida should be subject to the same requirements — neither better nor worse. By the same token, if a particular area of disclosure is too burdensome for foreign companies, the rules should be modified to give relief to U.S. firms along with their foreign competitors.

This commitment to treating foreign and domestic firms equally was not due to a belief that U.S. GAAP is uniquely insightful or pristinely accurate. U.S. GAAP has many flaws, and I suggested several areas that needed an overhaul — to the consternation of some who opposed reporting the market value of

Treasury bond portfolios. Rather than reflect a belief that U.S. GAAP is a perfect body of wisdom, the SEC's desire was to avoid giving either foreign or domestic companies an advantage in raising capital. In addition, we also believed that high standards of transparency in financial reporting enhanced the efficiency of the overall market.

National treatment is followed not only in finance, but in most matters of international trade. If a German company builds a factory in South Carolina, it cannot do so under the German Clear Air Act; it will be governed by the Clean Air Act of the United States. The employees in that assembly plant in South Carolina would work under U.S. labor law, not that of Germany. Assuming the transfer pricing was accurate and the plant generated net income, that income would be taxed under the Internal Revenue Code of the United States, not under the tax laws of Germany. Thus, it is quite natural in my view that if the same German company wants to finance construction of that plant in South Carolina by selling stock to retired school teachers in Illinois, it ought to be required to do so under U.S. law, and not that of Germany. Incidentally, as all of you know, when British or Japanese executives come to the United States to manage a facility, we make them drive on the right side of the road. Even though at home they do it differently, we believe that national treatment is the only way to maintain highway safety.

Aside from the overall interest of equality and the general application of national treatment, the SEC's requirements for making full disclosure and providing a "reconciliation" of foreign financial statements to U.S. GAAP are designed to achieve several fundamental objectives.

First, the principle I've already mentioned is to avoid prejudicing U.S. companies in their own home market. If the rules for disclosure are fair for Ford Motor Company, they should be fair for Daimler-Benz. And if we're going to reduce burdens from rules that might be too onerous, than we ought to make a change applicable to both domestic and foreign companies. Substantial differentials in disclosure policies, accounting principles or auditing standards could leave U.S. firms at a competitive disadvantage by disclosing more than their competitors, as well as at a significant cost disadvantage.

Second, the policy in the United States has long been to

allow investors to compare companies rationally across industries and irrespective of geography. By requiring all companies to present their results in either the U.S. GAAP format or to provide a reconciliation to U.S. GAAP, the SEC gives the investor the capacity to compare an investment in Intel or Microsoft with an investment in Sony or British Aerospace in a meaningful manner. Of course foreign financial statements reconciled to U.S. GAAP does not make the financial statements exactly comparable to a U.S. company, but the data is available to make meaningful comparisons. That promotes investor understanding and an efficient market. Some assert that information really disclosed in a foreign market in the United States is irrelevant, because the home market (and information available there) drives the price of the stock worldwide. While an interesting argument, that case has really ever been established. In addition, it ignores at least two additional factors. First, some foreign stocks have greater trading volume in the United States than in their home market. In a few cases, the stock isn't even publicly traded in the home country. Second, information that must be disclosed in the United States will also be disclosed in the home market, so that better price discovery can occur in home as well as offshore markets.

By contrast, if the SEC were to adopt a system of home country exemptions, then U.S. investors would be confronted even today with financial statements prepared under at least forty different sets of accounting principles. That approach actually has been tried in the past, and the results are chronicled in the Bible in the story of the Tower of Babel. In short, current policy creates a uniform information bridge that helps let investors compare companies from any country and enhances the transparency and efficiency of markets around the world. The SEC's willingness to insist on the bright sunshine of disclosure helps provide a long term foundation for worldwide market growth based on economic fundamentals. The contrary approach of allowing a race to the bottom in disclosure would promote markets driven more by speculation, since investors and analysts wouldn't have the ability to consider economic fundamentals.

The third, and most important objective is the pursuit of investor protection through transparent financial reporting and full and complete disclosure. That isn't a regulatory nuisance,

but rather it's a fundamental principle that, if you want to use the public's money, you must be prepared to tell the public truthfully how you're doing. While some countries may seek to maximize issuer convenience, the U.S. system at its core is built on an uncompromising dedication to the needs of the investor, not the issuer. In this case, what is at stake is a competitive strategy on the part of the United States to offer investors worldwide the highest quality product.

Indeed, the proposal of one of our securities exchanges to abolish quality standards for information disclosure involves a striking echo of the approach taken by other industries in the United States in the past (including the U.S. automakers in the 1960's and 1970's) of deciding to lower quality standards in the search for higher short term profits. Of course the result of a strategy of planned mediocrity has generally been sharply falling market share as consumers turn to others for higher quality products. In fact, I'm not aware of any industry in any country that has profited in international competition by deliberately lowering the quality of its product. Yet that is exactly what the United States is being urged to do in throwing its disclosure standards out the window. From the perspective of investors, the result would be for the U.S. market to turn away from its current status of unmatched quality of disclosure to a policy of murky disclosure easily matched or exceeded by other markets. That would undercut the competitiveness of our markets, not promote it.

Beyond the issue of mere disclosure is the question of principles and values that may be most important. In a very real sense the U.S. disclosure system embodies our belief in openness and equality, and that belief is one we not only apply to our political system but also to the corporate world as well. America is an open society. It is founded on the principle that is a wonderful disinfectant and that people ought to be prepared to conduct their affairs out in the open where society can judge them. The management of companies that are owned by public shareholders are required to disclose not only the company's financial performance, but also a wealth of detail concerning its plans, operations, risks and prospects. That disclosure is a burden, but we see it as an essential element in the accountability of officers to the people who own the company. The benefits of that accountability in the aggregate far exceed the costs of disclosure.

Beyond mere cost-benefit considerations, however, there is a larger principle at stake in seeking to prevent misuse of power and to promote accountability for performance, and these would not be possible without the openness that is the hallmark of the U.S. system. When it comes to the commitment to an open system, our society is considerably different than many other systems around the world. But, ladies and gentlemen, we cannot be some other society. We have to be true to ourselves.

Here the specific case of Daimler-Benz provides an interesting demonstration of how two very different approaches to these issues reflect the principles that underlie accounting and disclosure policies. Under German accounting policies, companies are allowed great latitude to create so-called "hidden reserves," or what are sometimes known in the accounting world as "provisions." When a company is making high levels of profit, income reported to investors can be reduced by creating generous reserves or provisions for potential future adverse events. Under U.S. GAAP, an adverse event must be probable and estimable in amount before a reserve may be booked. Under German GAAP, a company may book reserves largely without restriction, and German companies do so freely. In the future, if the company is incurring losses or low profits, the company may determine that some or all of its provisions for future adversity are no longer needed, and it can then release its reserves into current income in a manner that masks current losses. At one time, roughly forty percent of the entire balance sheet of Daimler-Benz was represented by the single line item, "provisions."

Though its sales had plummeted in the face of a steep downturn in Germany's economy, for the first half of 1993 Daimler-Benz reported a profit under German GAAP of almost DM200 million, a terrific result given the state of the German economy. However, this reported DM200 million profit came after an undisclosed release of more than DM1.5 billion in provisions into income. Under German GAAP, the story for investors would have ended at the DM200 million profit, though its board members and its largest shareholder, the Deutsche Bank, would have known about the results of the company before adding back the provisions from prior years.

For the same period under U.S. GAAP, the company reported a loss of just under DM1 billion. That fact is clearly shown in a two-page reconciliation to U.S. GAAP, where the ad-

dition of reserves earned in prior periods is simply backed out of the current year's results, along with other changes. Thus, all the investors in Daimler-Benz, but only a favored few in other German companies, are now able to evaluate the company's current performance without the considerable layer of camouflage that other German companies are allowed to use to smooth out their reported earnings. Since the top managers of German banks routinely sit as board members of German companies, the banks have access to far superior financial information than non-insiders. Once Germany enacts legislation outlawing insider trading, having such a disparity of information and being major players in securities trading markets may create considerable exposure for Germany's banks that would be reduced by better public disclosure.

Interestingly, the announcement by Daimler-Benz that it was going to reconcile its financial statements to U.S. GAAP seems to have caused its stock to rise in comparison with other German companies, providing an interesting demonstration of the value the market places on openness and transparency. Indeed, from the announcement by Daimler-Benz that it would list in the United States until the actual secondary offering, Daimler-Benz's stock out-performed the DAX average in Germany by almost 5%, and if you back Daimler-Benz out of the DAX, by even more. That represents billions of dollars in additional market capitalization that may be directly attributable to its willingness to remove the camouflage from its financial results. Daimler-Benz has been subjected to criticism in some quarters for this decision to break the united front of German companies and to "give in" to the SEC. This is both untrue and quite farfetched.

Daimler-Benz approached this issue not as some sort of hockey game between the United States and Germany, but as an important business issue that is directly related to its overall global business strategy. The company perceived that there was substantial economic value to it of having multiple sources of capital in major world markets. Indeed, it followed its announcement that it was going to list its stock in the United States with notice that it was also planning to list its shares in both Singapore and Shanghai.

Just as any prudent company would arrange multiple sources of supply for indispensable raw materials or component parts, Daimler-Benz sees considerable value in assuring that the

company has the capacity to finance its activities in multiple markets around the world. Where the conditions are substantially more attractive in one market than in another, Daimler-Benz wants to have the flexibility to shift rapidly its source of funds to obtain the lowest overall cost. Leaving a company dependent on limited sources of capital or exposed to higher costs of capital than readily available to competitors is a dangerous decision on the part of any management group. Indeed, when you consider the level of German interest rates compared to those in the United States during recent times, some companies seem to be paying a very steep price for staying out of the U.S. market.

Underlying the decision of Daimler-Benz was a fundamental long-term view that a truly global company must not only sell its products around the world, but it also must develop a global ownership base. Daimler-Benz saw the existence of an informed international investor base with confidence in its understanding of the company's financial picture as a significant corporate asset. Here the Chief Financial Officer, Dr. Gerhard Liener, asked an extremely thoughtful question at a New York press conference: "Why shouldn't Daimler-Benz care as much about the quality of information the company provides to its owners as it does about the quality of the products it supplies to its customers?" What he correctly perceived was that in today's world, both a strong global customer base and a strong global ownership base are critical corporate assets.

In changing its information disclosure policies and deciding to subject itself to the discipline of full disclosure to the market, Daimler-Benz made a gutsy decision. That decision was predicated on what management believed was in the long-term interests of its shareholders and its employees. That decision embodied the proposition that it was a global company headquartered in Germany, and that a global company has to be prepared to do business in the major markets of the world. Where that means learning how to do business under someone else's language, someone else's laws, someone else's culture or traditions, then so be it; that is part of the job of being a global company. Certainly this attitude is essential for success in global sales and marketing of products—perhaps best exemplified by the slogan of the Swiss/Swedish conglomerate ABB "We're Local Everywhere."

The U.S. disclosure system is detailed, and complying with it

requires professional fees. However, those costs are a bit exaggerated, and they are greatest on a one-time basis. As Chairman of the SEC, I received quite a few letters from CEOs of companies that came to the U.S. market thanking members of the staff and expressing the view that the company would have taken the step much earlier if it had really understood the process.

Ironically, the vigor of our debate in the United States about lessening the burdens for foreign registrants may have the unfortunate side effect of reinforcing the impression in other countries that feel that the barriers are really bigger than they actually happen to be. Indeed, the level of understanding in many countries among non-registrants concerning the requirements for being publicly listed in the United States is extremely low.

For foreign companies that might be thinking about listing in the United States, let me offer two observations. One, it is easier today to offer securities in the U.S. market than it has ever been. The regulatory attitude of the SEC is one of immense flexibility. They will work actively with companies to find the easiest possible means of accommodating differences in accounting and disclosure standards between the registrant's home country practices and the United States. In addition, the staff will provide extremely rapid turn around times on documents to enable foreign registrants to meet their offering timetable.

Second, the system isn't going to get much easier. If you are waiting for the towel to be thrown in, if you are waiting for the rules to be abolished, you may be waiting for a very long time. While it is strictly a personal opinion, I don't think the United States is ever going to turn its back on the fundamental principles of investor protection that have brought us the market that we enjoy today.

In debating how to build a better and better market, we cannot forget that there must be an underlying core of principles to guide the market's evolution. Honesty, integrity, and fair dealing with investors are morally right, and they are principles of good business too. Here the traditional SEC approach to disclosure is tough, and it is meant to be, because public confidence in the market is easy to lose and very difficult to restore. Without investors, there wouldn't have been the U.S.$1.1 trillion in primary offerings during 1993, and many companies would have

had smaller and slower growth as a result. Without openness and truth, and a strong determination to providing full disclosure to the market as a whole rather than to a select few, the risk of investing would be far higher than it is already, and many investors wouldn't be willing to participate in the market.

The proposal of the New York Stock Exchange ("NYSE") to give a "free pass" exempting all so-called "world class" companies from all U.S. disclosure, accounting and auditing standards was not a good idea in the first place. It was an understandable attempt to respond to the problem of perceived excessive cost for registrants, and it is important for the United States to address any and all negative perceptions about our market—especially, when they aren't true. Certainly the NYSE, NASD (which strongly opposed the NYSE proposal), and other groups should actively discuss how our system can be improved to benefit issuers and investors.

Though we should not be reluctant to discuss the overall issue, the type of high-profile, high-pressure campaign that has been waged in favor of the free pass proposal was and is a serious mistake. It was (and is) a mistake because the proposal itself is a lousy one. It goes too far, and would represent a cure that would be vastly worse than the disease, if in fact we have any disease at all. We have created a high quality environment for investors, and they have made the U.S. market the most liquid in the world. The free pass proposal would drive a wrecking ball through the foundations of the disclosure system, with immense negative consequences for the openness and efficiency of the market.

The pressure campaign for the free pass proposal was (and is) also a mistake because it has an effect, and that effect is counterproductive. Foreign issuers need to understand that the current process is more flexible and less costly than they may have understood. However, the rhetoric in favor of the free pass would make many people believe the current system is very difficult to navigate. Furthermore, why should a company incur the costs and provide the disclosure required by the current process if there is a significant chance that the free pass plan will be adopted? Many companies that might otherwise elect to list could defer that decision in hopes of gaining the free pass.

Over the long run, greater harmonization of accounting

standards would be beneficial. Reducing the circle disparities in natural practice should be a high priority, but only where this can be done within a framework of transparency.

Happily, companies don't have to wait until the promised day when all the world's accountants get together and agree on what accounting principles ought to be. That great day might occur just after all the world's lawyers get together and agree on a single tax law, a single antitrust law, and a uniform legal code for other issues.

Since that day might be a long time coming, we are fortunate that there is not any need to sit back and wait until that glorious day occurs. If Daimler-Benz can build an information bridge and provide it to investors so that they can make the cross-over between German accounting and U.S. GAAP, then any company in the world can do it too. Though not without cost, the benefits of following a global approach to capital acquisition for any company are immense. This is the best means of assuring a wide range of financing alternatives, the lowest overall cost of capital, and the best protection against market interruptions. In today's world, none of us can create certainty, but we can build financing flexibility and a long-term base of investors through a global approach to capital. But to be successful, that strategy has to require a dedication to providing the highest possible quality of information to the owners of the company and to providing true long-term shareholder value.

Thank you very much.