



## Corporate Board Elections and Internal Controls



European Corporate Governance Institute

27th September 2005  
Federal Reserve Bank of New York

A free all-day conference co-sponsored by the American Law Institute and the European Corporate Governance Institute

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### Summing up by Lance Liebman, William S. Beinecke Professor of Law, Columbia University, Director of the American Law Institute

Marco, that was great. I've deleted from my list the points that Marco just made, so I only have eight brief points to make, and then the ninth will be the location of the reception where we can continue the conversation. I'll just mention some issues that I go away thinking need attention and on which I was stimulated and I'm sure many of you were stimulated today.

One is the question that in the United States we call federalism; it was discussed more last year when these two organizations held a meeting in Brussels than this year. But, in the United States, the issues of national government versus Delaware and other states, we heard a lot about that; not directly addressed that way in the European context, of course, with the Union and the Member States. Those are very serious questions, and if we look ahead to the day when there are internationally cooperative regulatory systems, that will be another level of government. So, where we want governmental roles to be performed remains a very large and evolving and, indeed, I think, fast-changing set of questions.

Second, principles and rules; we learned a lot about that today. I think my colleague, Professor Coffee, was exactly right that, in a litigious country, people are desperate for some safe-harbor rules. The advantages of principles are very great, and obviously it goes back and forth, it depends on the situation, but I thought that was explored very well today.

Third, Marco did say this, but I'll mention it. The whole point of transparency is a major overriding theme. All of us believe in markets and believe that investors should take risks, but that they should have as much information as we can supply, and that's a theme that was going through the whole day.

Fourth, which came basically from Roberta Ramo – this question, I can't figure out quite the right word for it yet, but perhaps the dignity of board members. We heard about the difficulty of attracting board members if we make it too challenging a position. The responsibilities – think of being a director of Allianz and merely being responsible for that trillion-dollar company with the possibilities of error and malfeasance anywhere in the world. I don't think I said this last year, but there's a famous story about the great figure who was the head of Coca-Cola and a graduate of my college, Yale University, who was meeting with some students and one of them said to him, "You know, anywhere around the world a mouse can get into a vat of Coca-Cola or some other terrible thing can occur. How do you sleep at night with the awareness of the around-the-world potential of disaster?" And he said, "I sleep like a baby. I get up every two hours and cry." That is there, and here we want these directors, and I am also a director of a serious international company, and it's a challenge. All the time that we're relying on specific rules and principles and the wonderful work of the auditors, whom we all hope are seeing everything and telling us everything. It's also the reputation very much of the directors and their ability to work together as a group, whether they are representing interests or not; collegiality or at least collective enterprise, and that got good attention today.

The two specific subjects of our panels, voting and internal controls, both pointed out very well that, as of today, Europe and the United States are different business worlds and there are specific ways in which that means some of these issues are going to be addressed differently. These Nobel Peace Prize-winning diplomats notwithstanding, this does not mean full convergence and we learned a lot about that today. When we start getting more serious about China and Japan and

Indonesia and Brazil, you tell me how long it's going to be until convergence. It's not an argument against communication, discussion, negotiation, and advance warning, but it's not convergence, and it's not convergence between Europe and the United States, notwithstanding that many aspects of these capitalist regimes are the same.

The voting systems – we've learned, I think, a great deal about how the different corporate structures of these two continents give us, at least for the moment, different approaches, two different views about shareholder voting. Also, while Marco simplified and said he heard that the U.S. is going to majority voting – what I heard this morning was, we don't know what that word means, and we don't know specifically what structure or group of structures are going to implement any such thing and whether it's going to make any difference whatsoever. I think about my pension managed by TIAA-CREF and what they're doing on my behalf in terms of participating in corporate governance, and it's not a simple matter. Similarly, on internal controls, if you have the differences in the structure of the largest companies in the two continents, then the approach to internal controls is going to be different, as it so far has been. I thought there was much more gain today from hearing about differences between European and American approaches than a kind of simpleminded sense of heading towards convergence.

Seven, the politics – and Mr. Delsaux talked about this very well only about half an hour ago – the U.S. reacted to scandals. There's now the sense, you could even hear it from Alan Beller, that maybe we went too far, maybe we're spending too much. There's certainly some sense of pulling back some things or slowing up some things. The European situation being quite a different political historical moment; issues that we heard in the first panel about moving towards capitalism or raising continued questions that we've all been hearing about for decades, about worker representation and keeping efficiency, at least in Norway, maybe nowhere else. The politics is different and entirely appropriately and understandably so.

And finally, and these will inevitably have to be my last words for this meeting – if we do this every year, I'll say it every year – the question of other countries in the world, and Japan, a country where very interesting things are occurring. Right now it's very much investigating questions about what its corporate structure ought to be in the next period, going about that in a very careful and sophisticated way, just the way Japan has been doing explorations like that since the Meiji Restoration and engages in that process about these issues as they apply in the Japanese business culture today. China is not quite at that stage yet, but it's been worth a lot of our attention. But one can raise questions about Brazil, about Africa and South America. All of us who are at this stage in these processes have responsibilities to see what kind of communication we should be engaged in with people in these other countries. So, what a surprise, there's a lot of work left to be done.

Let me thank everybody on all the panels, let me thank everybody who spoke, and I thought the two major speakers were both absolutely terrific today. Mr. McDonough doesn't hear me say it, but Mr. Schaub does – I thought they were both outstanding. Let me, of course, for about the tenth time, thank the Federal Reserve Bank for taking good care of us. On this question, I've said from the beginning of scheduling this meeting, we were not going to engage in a culinary competition with Brussels. Brussels is one of the best eating cities in the world. On the other hand, I don't think I'd thought of this in 30 years – the first time I ever went on a panel in the country of Belgium, in 1974, somebody said to me, "Belgium is French quality, German quantity." I think we've done pretty well on quantity today, and I'm sure we'll continue to do so at the reception. Thank you all very much.