

AEI

Another Look at

The Second Report of the Committee on

Capital Markets Regulation

By Roel C. Campos
Former Commissioner – SEC
February 14, 2008

Cooley
GODWARD KRONISH **LLP**

WHAT DOES IT MEAN IF U.S. IS GETTING A SMALLER PERCENTAGE OF:

- Total Equity Raised in Global Markets
- Global IPO's
- Global Market Capitalization
- Global Share Trading

IF

- U.S. Markets Have Many IPO's and Deals When Include Domestic Markets
- Private Placements in the U.S. are Going Through the Roof
- Profitability of Wall Street is High
- Foreign Investment in the U.S. is High
- Global Trends Do Not Support Foreign U.S. Listings

U.S. Markets Have Many IPO's and Deals When Include Domestic Markets

IPO Summary Stats					
	2003	2004	2005	2006	2007
No. of Deals	68	216	194	198	234
Total Proceeds (billions)	\$15	\$43	\$34	\$43	\$54
Average Deal Size (millions)	\$224	\$198	\$175	\$217	\$229

It is fair to say that the U.S. is holding its own in the IPO market.

In 2007

NYSE – 40+ listings

NASDAQ – 30+ listings

(Reported in FT 1-3-08)

Private Placements In The U.S. Are Going Through the Roof

- Value of IPO's by Foreign Companies Privately Offered in U.S. 144A Market (\$ billions)

1999	2000	2001	2002	2003	2004	2005	2006	2007
28.3	52.8	16.5	15.5	10.5	45.1	53.0	64.7	47.8 (through Sept.)

- A. Is having a strong private (144A) market for capital a bad thing?
- B. Other countries envious of U.S. private market
- C. Why not look at private and public together as a measure of health?

Profitability of Wall Street Is High

- Has been high until latter half of 2007 when subprime mortgage and credit crisis hit
- Goldman, Morgan Stanley, Lehman Bros. will report record earnings
- Merrill Lynch, Bear Stearns, UBS, Citigroup will report problematic earnings

Foreign Investment In The U.S. Is High

- Estimates foreign ownership at 10% and growing of current market value of publicly traded firms, \$3 trillion as of 2004 (CRS Report for Congress, 3-23-05)
- 6.0 million plus Americans employed by foreign firms
- Excludes recent sovereign fund

Global Trends Simply Mean Fewer Foreign U.S. Listings

- A. Liquidity Exists All Over the World
- B. National Commitments to Build and Support National Markets (China, India, Brazil, London, Singapore, Malaysia)
- C. Many Global IPO's are Privatizations of National Companies
- D. Some Global IPO's Do Not Meet U.S. Standards [should we care?]
- E. U.S. Investment Banks Are Global Companies and Are Often Indifferent Where Close Deals

Stock Exchange Consolidations Continue to Occur

- NYSE & Euronext
- NASDAQ & OMX
- Potential LSE

If it is a U.S. based merged exchange like NYSE/Euronext, does it matter whether listing in U.S. or Europe?

Should the U.S. Expect To Be the Only Place Where Capital is Raised in the World?

- Promoting successful equity cultures around the world has been U.S. policy
- To have successful markets:
 1. Other countries have improved investor protection and integrity
 2. High standards
- U.S. markets are unique and have largest retail investor sector
- Retail investors demand serious sanctions

Recommendations From Committee

I. Shareholder Rights

- A. Agree with most items
- B. Classified boards, staggered boards, poison pills, disfavored
- C. Majority voting supported
- D. Moderate form of shareholder access
 - 1. Need to find a deal between shareholders and companies

II. Regulatory Process

- A. SEC already moving toward principles based, risk-based approach
 - 1. CSE system
 - 2. No reconciliation by foreign companies of IFRS to US GAAP
 - 3. Deregistration made easier
 - 4. IFRS may be optional for domestic companies

III. SOX Has Been Copied Throughout World

- A. 404 is only exception with respect to auditor attestation
- B. 404 fixed last year – SEC management guidance and PCAOB AS-5 replaced AS-2
 - 1. Last group – under \$75m market cap are on last year of exemption
 - 2. May not be good policy to have segregated public companies with most exempted from Sox 404

IV. Private Litigation

- A. Federal & state legislative matter (no SEC fix)
- B. Two most recent cases restrict securities plaintiffs action
 - 1. Tellabs
 - 2. Stoneridge

V. Criminal Sanctions Demanded By Investing Public

VI. False Perception Issue is Huge