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1 --- PROCEEDINGS COMMENCED

2 DOUG HYNDMAN Good morning. It's encouraging to hear the  
3 buzz in the room. I think we are going to have an  
4 exciting day here today.

5 I want to thank all of you for coming out for our  
6 annual Capital Ideas conference. We have a great  
7 group here in the audience, as well as a great group  
8 up here on the stage. This is a little unusual, you  
9 haven't seen us do a set-up like this before, but I  
10 think it is going to be a good opportunity for us to  
11 have a dialogue, not only among the people at the  
12 table but also among all of you in the audience.

13 We have here at the British Columbia Securities  
14 Commission been talking for a number of years about  
15 this concept of principles-based regulation, or  
16 outcomes-based regulation, however you want to  
17 describe it, and we are now moving much more into the  
18 phase of actually trying to do it. And it is a great  
19 opportunity for us to get some colleagues from across  
20 Canada and around the world to talk about the concept  
21 generally, talk about their real-life experiences, and  
22 questions that they have about principles-based  
23 regulation. How do you actually do it? What does it  
24 really mean for somebody who is in the securities  
25 business, who is a participant in the securities  
26 market?

27 You know, one of the things that we have been

1 talking a lot about over the years is making our  
2 markets more competitive, more efficient, making  
3 regulation better and protecting investors. It's  
4 interesting to note a few days ago there was an  
5 international report on competitiveness, in which  
6 Canada dropped a few pegs, and regulation is one of  
7 the factors in determining international  
8 competitiveness. So I think, you know, in this  
9 context we have to think about our regulatory system  
10 and what can it do to promote the competitiveness of  
11 Canada's markets.

12 I guess, for the benefit of a couple of our  
13 guests here today, I noticed on the charts that the  
14 U.S. and the U.K. both dropped a couple of points on  
15 the charts, too, so maybe we are all in this together.  
16 (Laughter).

17 You are going to be hearing us use terms like  
18 "principles" and "outcomes" and "risk", and those  
19 kinds of things this morning and, you know, those  
20 terms tend to get thrown around. They mean different  
21 things to different people. We have put on the  
22 brochure you have there a little description of what  
23 we at the BCSC intend when we use those terms, and I  
24 think it's useful if, as we move along, we can all try  
25 and develop a common vocabulary in this area, so that  
26 when we have a dialogue we are actually talking about  
27 the same things when we are using the same words.

1 And, of course, you know, the ultimate objective of  
2 all of this is to try and help us here in Canada to  
3 develop a shared vision among the regulators, among  
4 people in the industry, about where we are going with  
5 securities regulation, how to make it more effective  
6 in protecting investors, less burdensome for those in  
7 the industry.

8 As I said, the set-up this morning is a little  
9 different than we have ever had at our Capital Ideas  
10 conferences in the past. I am not on the panel this  
11 year, so unlike our past conferences, you are not  
12 going to hear much from me. I am here to listen,  
13 along with the rest of you. I might ask a question or  
14 two if they occur to me as it goes along, but I am  
15 hoping that those of you in the audience will pipe in  
16 at the appropriate time, if you have questions, to  
17 engage in a dialogue with others in the audience and  
18 with those on the panel.

19 We are all hoping to learn. Certainly our  
20 Commission, many of us here today, we are all hoping  
21 to learn from our colleagues and chatting with them.  
22 They are hoping to learn from each other.

23 So I think the real message today is, you know,  
24 this is an important subject, how securities  
25 regulation works and how it can work the best. It is  
26 not a subject that should be just of interest to the  
27 regulators. If anything, it should be of more

1 interest to those of you who are the regulated. If  
2 you want our system to work well, this is a chance to  
3 ask some questions, talk about what it really means,  
4 you know, what makes a difference in your business.

5 One of the complaints I have had over the years  
6 about this concept of principles-based regulation is  
7 that it is too abstract, you know: What are you guys  
8 talking about? What does that mean for my business?  
9 What does it mean for me when I go to work tomorrow  
10 morning? And that's what we are hoping to accomplish  
11 in today's session is to move beyond that, is to get  
12 into a dialogue of: Yes, what does it actually mean?  
13 What does it mean in day-to-day regulation? What does  
14 it mean in carrying on business day-to-day under that  
15 kind of regime? And we are expecting to hear examples  
16 of principles-based regulation in action, what it  
17 actually has meant to the people administering it and  
18 the people on the receiving end.

19 Your feedback on the conference is important to  
20 us. We do this every year. We have some electronic  
21 machines out in the lobby and in the foyer there, so I  
22 would encourage each of you to sign on. It is very  
23 easy. Just give us your feedback as the day goes on  
24 about the conference. That will help us as we develop  
25 similar conferences in future years.

26 Now, for those of you who live in Canada and see  
27 the CBC from time to time, Ian Hanomansing will be a

1 familiar face. Ian is going to be our moderator and  
2 discussion leader today. He is an award-winning  
3 journalist. He has done many of these types of  
4 sessions, moderating discussions, and I am certainly  
5 looking forward to watching him moderate today's  
6 session. So at this point I am just going to hand it  
7 over to Ian.

8 Ian, thank you very much for being with us today  
9 and we are all looking forward to the discussion. So  
10 over to you.

11 IAN HANOMANSING: All right, thank you, and welcome to  
12 everybody.

13 That was a very soft sell, "Those of you who are  
14 from Canada," says Doug, "and see the CBC from time to  
15 time." (Laughter.) Hopefully there are at least, you  
16 know, he just wanted to make sure in case, you know,  
17 there were blank stares and people didn't know who I  
18 was. Hopefully a few of you watch more than time to  
19 time, once in a while.

20 So there are a few things you are going to notice  
21 that are different here today. Obviously, we are all  
22 sitting up here, some of us with our backs to you,  
23 depending on where you are. You will see that you  
24 will be able to see our faces, even if where you are  
25 sitting you are looking at our back as we speak. The  
26 reason it is set up this way is to allow the  
27 participants to have conversations and to challenge

1 each other and to allow the free flow of dialogue up  
2 here. So that is one thing that is different from the  
3 kinds of discussions you have probably seen before.

4 A second thing, and maybe other organizers say  
5 it, but I know the Securities Commission here really  
6 means this, is that the success of the next three  
7 hours or so depends on the kinds of questions and  
8 comments that those of you in the audience have. So  
9 we have, I believe, four people out there with  
10 microphones and they are sitting in the aisles. Some  
11 of them are standing up now. And we want you to jump  
12 in lots of times and ask questions that have to do  
13 with the conversation that we are talking about here.  
14 Feel free to do that and don't be shy about making  
15 yourself known to the people at the microphones.

16 My experience is that usually at the beginning of  
17 sessions like this, people are reluctant to ask  
18 questions. They feel like the first two, or three, or  
19 four questions ought to be perfect and profound, and  
20 so they bide their time. And then with about an hour  
21 left, all of a sudden there is a lineup of people. So  
22 don't hesitate. We are not looking for the perfect  
23 comment right at the beginning.

24 The third thing you are going to see is different  
25 is that unlike a lot of panel discussions we are not  
26 starting with an opening comment from each of the  
27 panellists. We have all sat through, including the

1 participants, panel discussions where each person is  
2 given ten minutes, they take 20, and by the time it is  
3 all done, you know, you just want to shoot yourself,  
4 basically. (Laughter). Hopefully you won't feel that  
5 way, at least until the third hour here. (Laughter).

6 So we are going to begin and we are going to  
7 start with Stephen Bland. The other thing is I won't  
8 go through the impressive resumes of each of the  
9 participants. I know that in the materials you have  
10 you can look at those. But I will say that, Stephen,  
11 you have come here from London. You are the Director  
12 of the Small Firms Division of the Financial Services  
13 Authority of the U.K., and let's begin with you in  
14 telling us why the FSA has decided to take on this  
15 more principles-based approach.

16 STEPHEN BLAND: Oh, thank you, Ian. The main reason is  
17 more flexibility firms, firms are the big winners out  
18 of this initiative. We are not trying to change our  
19 standards, either to raise them or to lower them. We  
20 are still trying to achieve the same outcomes that  
21 Parliament have set for us, but we are trying to  
22 provide firms with more flexibility as to how they  
23 achieve those outcomes by having fewer prescriptive  
24 rules. And that should reduce the burden on the  
25 firms, which is in cost, which is pretty important to  
26 us. It should increase the attractiveness of London  
27 as a competitive financial centre, which is also



1           important to us. But the main thing is that firms  
2           will have more freedom of choice about how they  
3           implement the rules.

4   IAN HANOMANSING: All right. And, Walter Lukken, we will  
5           bring you into the conversation now. You have  
6           travelled to Vancouver from Washington, D.C. You are  
7           the Commissioner of the Commodity Futures Trading  
8           Commission in Washington and were a drafter of the  
9           *Commodity Futures Modernization Act*, and so your view  
10          on this move towards principle-based regimes.

11   WALTER LUKKEN: In Washington we, the Commodity Futures  
12          Trading Commission regulates on-exchange futures  
13          markets in the United States. And back in the late  
14          '90s, globalization and electronic trading really  
15          caused us to rethink how we should approach  
16          regulation. Now, this is mainly due to other  
17          exchanges wanting to come into the United States to  
18          offer their products here, or in the United States,  
19          and we had to re-look at what our exchange regulation  
20          program looked like, and that caused us to rethink  
21          that really they needed more flexibility, the  
22          exchanges did, that electronic trading and  
23          globalization were really forcing us to find a more  
24          tailored, flexible approach to principles-based  
25          regulation. That caused us in 2000 to pass the  
26          *Commodity Futures Modernization Act*, which has  
27          principles-based regulation and it has worked

1           exceedingly well, I think, for us in the United  
2           States.

3   IAN HANOMANSING: All right. Now, Penny Tham, you are  
4           going to be the voice of the industry throughout most  
5           of this. You were the head --

6   PENNY THAM: A lonely voice.

7   IAN HANOMANSING: That's right -- of Group Compliance for  
8           North Asia for ABN AMRO. You have worked in many  
9           places, including Vancouver. You seem to be a  
10          favourite among the staff here. Everywhere you go the  
11          Securities Commission staff gave you a cheery "Hello",  
12          and I know that you worked briefly for the Securities  
13          Commission here in British Columbia. Give us the  
14          industry perspective on this.

15   PENNY THAM: I have to say I think the words that Walter  
16          and Stephen have used, flexibility is very important  
17          for us, being in the industry. I mean, I think our  
18          people pride themselves on being innovators, financial  
19          innovators, and to have the ability to innovate, you  
20          have to have the flexibility. If you are bound by  
21          rigid rules, that's difficult. And also, with all due  
22          respect to my colleagues here at the table, who are  
23          regulators, regulators do not have rules that cover  
24          everything. You know, you can't anticipate where the  
25          markets are going.

26                As a compliance officer, if I only relied on  
27          rules to do my job, I would be in a very difficult

1 position, because the business come to me and say  
2 "We've got this proposition, we'd like to do X, Y, and  
3 Z." And, you know, I'd look in the rulebook, there's  
4 nothing there. So what am I going to use as my guide  
5 to giving advice to the business? And it's  
6 principles.

7 IAN HANOMANSING: So a perspective from the industry but  
8 also a perspective from Hong Kong, from Washington,  
9 D.C., from London. Let's bring it to a Canadian  
10 perspective now and, Bill Rice, you're the Chair and  
11 CEO of the Alberta Securities Commission. To what  
12 extent is this applicable to the Canadian experience?

13 BILL RICE: Well, that's one of the big questions that we  
14 would have, and I would confess to waffle rather badly  
15 on the subject over the course of a number of months.  
16 I would have been quite content with the rule-based  
17 regime as a lawyer, felt comfortable when somebody  
18 told me what the rules were and asked that we  
19 determine how to comply. After becoming a regulator I  
20 wondered why the onus for that level or responsibility  
21 fell on the regulators and why the market and the  
22 participants didn't take a greater level of  
23 responsibility. As a director, I somehow resented the  
24 intrusion of regulators into areas of responsibility I  
25 think fell on boards of directors. And now I wonder  
26 whether we have an environment in this country that  
27 really is receptive to the principle-based program.

1       It would certainly be a desirable place to go, but I  
2       question whether the environment in Canada, with our  
3       history, with our circumstances, really is receptive  
4       to this kind of a program. I wish it would work, but  
5       I am sceptical.

6   IAN HANOMANSING: And when you say "the environment" do you  
7       mean politically, or among businesses?

8   BILL RICE: I question whether there is a level of  
9       sophistication in all areas where it is necessary in  
10      order to make the principle-based system work. I  
11      wonder whether there is a sense of responsibility with  
12      a sufficient percentage of the players in order to  
13      make the system work. I don't think it's a political  
14      issue. I think it's a market issue. I think it's a  
15      professional issue. I think it would require a pretty  
16      substantial change of approach and view in order to  
17      make it work in our environment.

18   IAN HANOMANSING: All right. David Wilson from the Ontario  
19      Securities Commission, what is your view?

20   DAVID WILSON: Well, I am fairly new to the regulatory  
21      world. I'll now start with my excuses, having been in  
22      the business for 11 months. So I am hoping to learn  
23      more today than I contribute to this dialogue.

24           But my early thinking in the last 11 months of  
25      observing and talking about principles-based  
26      regulation with my colleagues and those that are  
27      interested in the subject, is it is a very attractive

1       proposition on paper, for sure. The theory behind it,  
2       the things that have been said already by Stephen and  
3       Walter about how it works in their environments make  
4       it very, very intriguing. So my thinking so far is  
5       that it is a good place to start when you are talking  
6       about a regulatory structure, but it must have a  
7       companion piece, which is very, very rigorous  
8       enforcement compliance and disclosure regimes.  
9       Without the second piece, just principles-based  
10       regulation as a theory and a starting point without  
11       the second piece, I would think is a formula for real  
12       trouble. I would be interested if the people who have  
13       worked with that sort of system agree with me on that.

14   IAN HANOMANSING: Stephen, do you want to jump in?

15   STEPHEN BLAND: Certainly. Enforcement has got to be a  
16       full part of the strategy. It's nothing separate from  
17       whether the supervision happens day by day. But that  
18       very much isn't our case. Most of our enforcement  
19       cases are about breaches of principles and, where  
20       applicable, rules. Some cases are about principles  
21       only. And so far we have not actually lost any cases,  
22       because obviously we get challenged from time to time,  
23       which have been on breaches of principles. That no  
24       doubt will happen. We don't aim to win every single  
25       case. But we have found so far that we are able to  
26       make enforcements stack up with a principles-based  
27       approach.

1 IAN HANOMANSING: Paul Bourque is the Senior Vice President  
2 Member Regulation of the Investment Dealers  
3 Association of Canada. What's your view on this?

4 PAUL BOURQUE: Well, Ian, in principle (laughter), I think  
5 everybody is in favour of principle-based regulation.  
6 And having said that, there are some areas, I think,  
7 that are not amenable to a principle-based regime, and  
8 I would be interested in others' views.

9 There is a category of prudential rules that  
10 regulate financial solvency issues that probably are  
11 not amenable to principle-based rules, and there is a  
12 category of operational rules that firms have to  
13 implement that again probably aren't amenable. But I  
14 think what we are talking about here today are the  
15 rules that regulate the conduct of the firm with the  
16 public and its behaviour in terms of selling its  
17 products, and those relationships are infinite in  
18 their variety, and that relationship and that dynamic  
19 lends itself very well to a principle-based  
20 environment.

21 The big question is how do you make it work? And  
22 I think there is two levels that have to be addressed.  
23 One is the policy level. I think the regulators have  
24 to be in the business of setting principle-based  
25 standards and articulating codes of conduct, and  
26 getting out of the business of writing prescriptive  
27 rules that are then driven down from the top. But

1       that's not the end of the story. I think the  
2       regulators also have to develop the capacity to  
3       operationalize a principle-based environment. And, to  
4       me, that means that the regulators have to become very  
5       much more adept at understanding the risks of the  
6       activities their participants engage in, and in the  
7       risks of the entities that they regulate.

8       IAN HANOMANSING: So I see Stephen nodding his head, and I  
9       would like to bring both you and Walter in at this  
10      point. In terms of your experience and what you have  
11      seen first hand as some of the disadvantages,  
12      pitfalls, perhaps, of this kind of approach.

13     WALTER LUKKEN: Well, we have done principles-based  
14     approach for the exchanges and for the clearinghouses.  
15     We have not done it for the firms for the reasons that  
16     Paul had brought up. You have got to have black-and-  
17     white capital requirements for certain things. And I  
18     think the reason that it works well for exchanges and  
19     clearinghouses is they have strong self-regulatory  
20     structures already in place.

21             And so what we have done instead of being  
22     frontline regulators in those areas, we are able to  
23     step back and become an oversight regulatory function  
24     looking to make sure that their structures are in  
25     place, that they are policing their markets. In some  
26     ways the enforcement is still there, but we are taking  
27     a step back and making them be the frontline

1 regulators and allowing the principles to sort of  
2 guide them in their approaches to enforcement of the  
3 exchange or the SRO for the clearinghouse functions.  
4 But again we have not on enforcement matters, where we  
5 are going after fraudsters and those that are  
6 manipulating the markets, those are black-and-white  
7 issues, we don't really use principles in the  
8 enforcement area or the firm area.

9         STEPHEN BLAND: I have two comments on what Paul  
10 was saying. The first is, I do think you are right  
11 that principles-based works better in the conduct,  
12 whether it be in wholesale or in retail areas.  
13 Though, that said, even on the prudential side, the  
14 sort of capital adequacy rules that have been used for  
15 banks and insurers are dependent more these days on  
16 the internal ratings used by a company. Now, that's  
17 not perfect, but it is a move towards how does the  
18 company address risk. If the regulator is happy with  
19 how the company addresses it, then actually it's the  
20 intent to use its approach within certain limits. So  
21 I think there is some aspect to the prudential, even  
22 though I agree with you it is better on the conduct of  
23 business.

24         The second thing I really strongly do agree with  
25 you is that it does require the staff at the  
26 regulators to be familiar with the markets they are  
27 regulating and to have the knowledge and judgment



1 capabilities to implement principles-based  
2 supervision. Because implementing a purely rules  
3 approach is relatively easy: you have either breached  
4 this rule, or you haven't, et cetera, et cetera. But  
5 when you have got to apply judgments in sort of  
6 uncertain situations, then that requires a lot more  
7 understanding, the ability to ask the second and the  
8 third question, rather than just the first, and that  
9 does mean quite an upping of the ante for our staff.

10 PAUL BOURQUE: I agree that there is a huge challenge here  
11 for the regulators and so the question is how does the  
12 regulator become happy with the internal controls?  
13 How does the regulator even know about them? And that  
14 gets back to Bill's point, who is able or willing to  
15 take responsibility in the marketplace for living  
16 under a principle-based regime? Many are, some  
17 aren't, some are able, some aren't able. How does the  
18 regulator know, how does the regulator discriminate  
19 amongst those under its jurisdiction, those under its  
20 mandate, who is capable, who is ready, who is able and  
21 who isn't?

22 And what we have done at the IDA is develop a  
23 fairly sophisticated risk model that we overlay on all  
24 our firms, and this helps us and informs us in terms  
25 of our regulatory program so that we can say with some  
26 assurance, this firm is low risk and is able and  
27 capable and we don't need to go and see them very

1           often; this firm isn't.

2   IAN HANOMANSING:   Go ahead.

3   PENNY THAM:   Sorry.  I think one of the key things that  
4           Bill mentioned is the concept of responsibility.  It  
5           is very important that the regulators make it very  
6           clear who is responsible.  I think both in Hong Kong  
7           where I work now, in London where I was before, the  
8           regulators are very clear.  Senior management are  
9           responsible for running their business, and that means  
10          all aspects of their business.

11                I look at compliance as it's not just my job, I  
12          just happen to be the compliance officer, but  
13          compliance actually happens to be the job of everybody  
14          in the firm.  You know, the firms manage all sorts of  
15          different risks.  We have got credit risks.  We have  
16          got market risk.  Compliance is just a different kind  
17          of risk.  It's regulatory and reputational risk.  So  
18          if the senior management is responsible for managing  
19          those other risks, why shouldn't they be responsible  
20          for this risk as well?

21                So I think if you make it very clear that you are  
22          responsible for every aspect of your business, that is  
23          very important.  And so it is not going to be, you  
24          know, a responsibility that marginalized and you just  
25          give it to the compliance officer, because that sets  
26          the wrong tone.  So I think responsibility is a very  
27          important concept here.

1 IAN HANOMANSING: Let's go to the floor for a question or  
2 comment.

3 CATHERINE WADE: Hi. My name is Kathy Wade and I am a  
4 practitioner here in British Columbia and a former  
5 regulator. My question relates to I do have a view on  
6 principle-based approach, which is I don't think it is  
7 going to work. But the fundamental question in Canada  
8 is we don't have a national regulator that could  
9 impose principle-based regulation. We would have ten  
10 different regulators doing interpretative on a  
11 principle base, which I think is a deadly combination.

12 IAN HANOMANSING: So but let me ask you, why do you think  
13 it wouldn't work? Is it because of that, or for other  
14 issues?

15 CATHERINE WADE: Well, I think it wouldn't work for a  
16 number of issues, but the first issue is if you can't  
17 get over it without having a national approach to it,  
18 then you are not going to get very far.

19 The second issue is there is so much discretion  
20 left in staff level, when you have a principle-based  
21 approach, that there is absolutely no certainty in the  
22 market that you are not going to get a particular  
23 staffer with a particular point of view that may not  
24 represent the view of every staffer. And you are  
25 going to get shut down or you are going to get delayed  
26 until it is a shutdown situation because of the  
27 tremendous amount of discretion that's left in the

1           staff on the principle-based approach.

2   IAN HANOMANSING: All right, thank you. Let me put the  
3           second point to you, Penny, because you see it from  
4           the perspective of your company.

5   PENNY THAM: Mm-hmm. In terms of the fear that, you know,  
6           you have got regulators that are going to have so much  
7           discretion and you are going to get different points  
8           of view, I think the key thing is that you actually  
9           have to have a dialogue with the regulators.

10           Stephen has already mentioned the challenge that  
11           the regulator has to ensure that staff is up to speed,  
12           you know, that is a challenge. You have to have  
13           people who understand our business, who can have an  
14           open and informed dialogue with us. And I think the  
15           more you do that, it is not going to be on a case-by-  
16           case basis, you know. I don't think that is the way  
17           the regulators work. You do discuss themes. You are  
18           going to be looking at a number of firms. Because  
19           don't forget, I mean, this is, you know, we talked  
20           about the important aspect of the enforcement and the  
21           compliance issue, as David has said. You know, you  
22           are going to be coming and inspecting us. You are  
23           going to be looking at some of the things that we do.  
24           You have the ability to go across the industry.

25           So the staff, at least in the jurisdictions where  
26           I have worked, where it is principles-based  
27           jurisdiction, the regulators have been very keen about

1 reaching out to the industry, about training their own  
2 staff. And I don't think that I have a fear that when  
3 I go to the SFC in Hong Kong and I ask for a view,  
4 that I am going to get one staffer who is going to  
5 make a decision and then it is going to be completely,  
6 you know, they don't work in silos. So I don't think  
7 that is a fear that has been realized in my  
8 experience.

9 IAN HANOMANSING: Have you run into concerns of  
10 arbitrariness or lack of certainty that you have had  
11 to dispel?

12 WALTER LUKKEN: Well, it is interesting, because this was  
13 the thinking of our staff and the industry in the  
14 United States when we went to a principles-based  
15 approach is we are not going to have any guidance once  
16 we go to a principles-based approach. But it has  
17 actually been more evolutionary than revolutionary,  
18 because what happens is the rulebook, and this  
19 happened in FSA as well, the rulebook comes with all  
20 of this. You know, the principles provide the  
21 overlay, the guidance of where we are trying to go.  
22 But the rules that are currently in place are  
23 grandfathered in. They provide certain acceptable  
24 practices that people -- and if they are bad rules,  
25 well, then we will delete them and put good rules in  
26 place. And what happens is change happens on the  
27 margins. People come in with a new idea. "Hey, our

1 situation doesn't fit this model. What about if we  
2 did it this way?" And what happens is people want  
3 certainty, both regulators and industry want certainty  
4 of compliance. They come and it becomes a  
5 collaborative informal process.

6 So instead of the adversarial "you broke the  
7 rule/you didn't break the rule", what happens is we  
8 find much more early intervention between the industry  
9 coming to us saying, "We are thinking about doing it a  
10 little differently. We think it meets the overall  
11 principle. It doesn't quite meet the acceptable  
12 practice. Will you allow us to do it?" And we'll  
13 say, "Well, that makes sense. Yeah, we'll allow you  
14 do it." And so you end up gaining these sort of best  
15 practices underneath this broader framework. So it  
16 hasn't been, you know, the principles and let's throw  
17 out the rulebook. That hasn't been the case at all.  
18 It has actually been much more evolutionary.

19 IAN HANOMANSING: And can you share with us an example of  
20 that process where the industry has come to you and  
21 said, "Okay, let's refine these rules or principles a  
22 little bit"?

23 WALTER LUKKEN: Well, there's, you know, a lot of these  
24 sort of - I am trying to think of a good example - you  
25 know, exchanges wanting some designation to us. And  
26 oftentimes we want clearing organizations and self-  
27 regulatory functions, and now they have the ability to

1 delegate some of those functions away. So they may  
2 have some abilities to do that under our Act to say we  
3 are still meeting our functions, we are still  
4 responsible for self-regulating our markets, but we  
5 are going to allow our SRO in the United States to do  
6 it instead of doing it in-house at the exchange. And  
7 even though that didn't meet our rule, we said, "Well,  
8 that makes sense. You are still providing  
9 responsibility in a self-regulatory function here.  
10 We'll allow you to do that."

11 IAN HANOMANSING: All right. Let's go to the floor again.

12 JANIS SARRA: Hi. My name is Janis Sarra and I am with the  
13 University of British Columbia, Faculty of Law,  
14 National Centre for Business Law.

15 I want to say that I certainly endorse the  
16 comments made by Mr. Wilson and Mr. Bland about  
17 needing to accompany a principle-based approach with  
18 strong enforcement and disclosure. And I wanted to  
19 know from Mr. Bland, because I think we are all trying  
20 to figure out how this actually works on the ground.  
21 So you said you have had some very good success with  
22 principle-based rulings. I am wondering if you could  
23 give us a couple of examples, specifics on how those  
24 judgments have come about.

25 And I think the second thing which I am  
26 interested in is how those decisions get communicated  
27 to market participants, such that they have greater

1           certainty and certainly can change their behaviour  
2           appropriately. Thank you.

3       STEPHEN BLAND: Well, there is a number of things in that.

4           I mean, principles-based on their own is relatively  
5           rare because as Walter says, you have still got the  
6           rulebook, and at the margin you are slimming it down,  
7           et cetera. But you still will always have laws,  
8           particularly in the U.K. case where you are part of  
9           the European Union, so a lot of the rules will be  
10          given to you at European Union level.

11          So a lot of our cases are on both principles and  
12          rules, our enforcement cases. But we have got some  
13          examples which are just principles. The most famous  
14          examples is probably, no disrespect intended to the  
15          firm, but it's the Citigroup case, where there was a  
16          trade in the London market which had an unintended  
17          effect. And we were not accusing the firm of any  
18          malign intention, but nevertheless its lack of systems  
19          controls and due diligence about some of the internal  
20          methods meant that a trade had a certain effect. And  
21          we brought that back to responsibility of senior  
22          management saying, "You should have anticipated what  
23          effect such a transaction would have done" and we  
24          fined them £11 million for breach of, in fact, two  
25          principles. That we just said, no, this is not  
26          acceptable. There weren't any detailed rules that  
27          were broken, but nevertheless the effect they had with



1 the lack of senior management oversight and  
2 forethought was such that it was not acceptable to us.

3 Still quite rare and, as Walter says, there is  
4 always quite often rules around. So principles-only  
5 cases are quite rare. But that is something that the  
6 market has accepted because the market, I think  
7 certainly in London and I think elsewhere, is  
8 accepting that senior management responsibility is  
9 right and indeed desirable. It is how we want to run  
10 our businesses, because the people running the  
11 businesses do know better than the regulators on a  
12 day-to-day basis how to do their business.

13 PAUL BOURQUE: I think the enforcement issue is perhaps the  
14 most important issue in moving to a principle-based  
15 regime that works and satisfies the public that  
16 standards have not been diluted and that, in fact, it  
17 probably should be better.

18 The paradox of enforcement is that we often will  
19 deal with deliberate theft and fraud with prescriptive  
20 rules that assume a voluntary compliance regime, and  
21 that seems quite inconsistent. But, I mean, one of  
22 the good examples is Bre-X, where we had an obvious  
23 deliberate fraud and then a number of industry rule-  
24 making committees were commissioned and staff  
25 committees got to work and a variety of new rules  
26 emerged for those that were already trying to comply.  
27 Whereas, you know, I mean, the real issue was the

1 fraud.

2 So in principle-based regime, how do you, you  
3 know, continue to manage an effective enforcement  
4 effort? And when I look at the way in which our  
5 organization brings forward enforcement matters, it is  
6 nearly always under our general principle of, you  
7 know, engaging in conduct unbecoming, which is  
8 basically people are expected to achieve high ethical  
9 standards and not do anything that is detrimental to  
10 the public interest, that is what it says, and nearly  
11 everything we do is framed like that.

12 Now, when you are dealing with deliberate  
13 misconduct, I think, you know, the criminal processes  
14 already have a very principle-based, fraud is fraud.  
15 But when you are dealing with negligence, which is  
16 what our organization primarily looks at, you know,  
17 failure to supervise and, you know, not knowing  
18 something you probably should have known, it is really  
19 a situation where I think the enforcement effort has  
20 to focus on the more egregious side of the ledger, so  
21 that it is clearer that the activity that you are  
22 sanctioning is indeed offside the principle. And, I  
23 think, that's where I think the enforcement has to be  
24 strategic and focused. There is room, then, in that  
25 enforcement continuum, I think, for in terms of, say,  
26 less egregious conduct, for the enforcement department  
27 or the agency to give notice, some kind of public

1 notice that certain conduct has been detected, that it  
2 is contrary to the public interest and that it has to  
3 stop, and if you do it tomorrow you are going to get  
4 sanctioned. So I think there is a way of dealing with  
5 the enforcement issue in a principle-based  
6 environment.

7 DAVID WILSON: I would just like to add to what Paul said.  
8 He has talked about enforcement. But I think  
9 compliance reviews, as part of a principle-based  
10 regime are really, have to be very important.

11 In a former life of mine I was involved with an  
12 FSA compliance review, Stephen, and it's a principle-  
13 based approach, but the people come in with a huge  
14 amount of expertise and spend a week reviewing and  
15 discussing, so that the compliance reviews are, it  
16 seems to me from being on the receiving end, are an  
17 incredibly important element in making sure the  
18 principles are actually happening on the ground,  
19 inside the regulated entities.

20 STEPHEN BLAND: I agree with you. And I think it also fits  
21 with Paul's earlier point about the risk-based  
22 approach. You can't apply a principles-based, you  
23 know, sort of senior management responsibility if you  
24 don't trust the senior management. And you have got  
25 to assess, do you trust this firm, before you can  
26 actually give them the room to go out and manage their  
27 business responsibly, et cetera.

1           So it is a very important part of being a risk-  
2       based regulator to go in and assess, do you trust this  
3       management, before you can say, right, well, fine, go  
4       off and do, run your business profitably.

5           And we actually try and give incentives for good  
6       management, as well as disincentives for bad  
7       management. So we try and visit firms where we, you  
8       know, can really see that they are trying to do the  
9       right thing less often and reduce our burden on them  
10      of reviews, and so on. That involves taking risk,  
11      because it means we visit them less often and  
12      something may go wrong. But we would rather do that,  
13      have a spectrum of how much we trust people, which  
14      implies how much room we can give to people to  
15      exercise their responsibility.

16   IAN HANOMANSING: And so how does that play out for the  
17      ones that are right of the bottom of that trust index?  
18      How often are you showing up at their door?  
19      (Laughter).

20   STEPHEN BLAND: It will vary on the size of the firm. Part  
21      of being risk-based is that if you are a small firm in  
22      the scheme of things, with limited resources, we are  
23      not going to do very much with you. Now, of course,  
24      if that firm has got consumers they may suffer, and  
25      that is obviously not good. But there are, when I say  
26      only 3,000 of us, actually, that isn't very many when  
27      you consider the size of 29,000 firms that we have to

1 look after in London. And so a risk-based regime does  
2 mean taking risks. But if it is a medium size or a  
3 large size firm and we don't trust them, well, we are  
4 going to be all over them. Because the effect on  
5 those, if they go down, on market confidence, on the  
6 running of efficient markets generally, or on  
7 consumers, is going to be so large that we will have  
8 teams, you know, permanently over chatting with them.  
9 And obviously if the senior management is not up to  
10 it, we will be talking to the Board and saying "We  
11 don't think your senior management are up to it. What  
12 are you going to do?"

13 IAN HANOMANSING: Chatting sounds so civil. (Laughter).

14 STEPHEN BLAND: Yes.

15 IAN HANOMANSING: Let's go to the floor.

16 HUDSON JANISCH: Hi. I would like to go back to the  
17 remarks from Penny Tham with respect to the  
18 relationship between regulation and discretion, and  
19 this a subject that I have worked on for quite some  
20 time and many years. And I am a little bit concerned  
21 with the suggestion that the resolution of this is by  
22 way of a dialogue between individual persons and the  
23 regulator. Because it seems to me there is a real  
24 risk there of a loss of transparency, and a real risk  
25 of a lack of confidence of equal treatment. So I  
26 wonder just what really was meant by that, that this  
27 notion of making everything discretionary in a

1           dialogue, I have really, really are matters that I  
2           think that should be raised and discussed.

3       PENNY THAM: I don't think it is a question of complete  
4           discretion. I mean, that it's the real world. So we  
5           have said here around the table, the regulatory  
6           environments are a blend, you know, of principles and  
7           rules.

8                   And when I say dialogues between regulators and  
9           the regulated, I do mean that, actually. It is not  
10          just one-on-one with my case officer, or whatever.  
11          And certainly if we have got a particular issue,  
12          either it is an issue that maybe is only something  
13          that, you know, our firm is interested in. I would  
14          have to say the regulators that we have dealt with are  
15          very fair. They will say, "Well, why should we give  
16          you, you know, special favour?" if that is the right  
17          word to use. They are trying overall, they are  
18          regulating us the firm, but they are regulating the  
19          market. So of the discussions we have often will be,  
20          you know, what does this mean for the market as a  
21          whole?

22                   So we are certainly, as much as we would like to  
23          get that preferential behaviour, we don't often get  
24          it, you know, because that would give us a leg up and  
25          it is a competitive advantage, no doubt about that.  
26          But we don't get that.

27                   And that is up to the staff, as well, at the

1 regulators, you know, they are people at the end of  
2 the day. And so maybe, you know, you might think they  
3 might be prone to playing favourites. But I have to  
4 say in the overall scheme of things I have not found  
5 that, and we are pushed pretty hard as to why, if we  
6 are asking for any particular kind of relief, why that  
7 is good for the market, and that's what we have got to  
8 address.

9 IAN HANOMANSING: Well, what about, though, and I put this  
10 to you or anyone else who wants to jump in, what about  
11 the other part of the question, the potential lack of  
12 transparency if you are having those kinds of  
13 conversations one-on-one?

14 PENNY THAM: Most of those kind of conversations that we  
15 have one-on-one, to be honest, again translates into  
16 either, you know, the regulator sees that actually  
17 there is a trend because they are having the same kind  
18 of conversations with other people. In which case  
19 usually, you know, it will be a discussion paper. You  
20 know, when I worked in London, the FSA is very good  
21 about that and consulting, and saying, okay, you know,  
22 a number of firms have asked us this, on whatever it  
23 is, so we are going to consult and see if, you know,  
24 we can give guidance to everybody about how the market  
25 should approach a particular topic.

26 Also I think it works the other way around, too.  
27 A lot of times we will find that, you know, we are

1 coming up against a specific issue and we may not be  
2 getting much headway with the regulator that we are  
3 trying to deal with. We will go to our industry  
4 association and see what else, you know, if other  
5 banks, if other firms are coming up with the same  
6 issue and then we will do, you know, a presentation or  
7 at least approach it from a market viewpoint.

8 You are going to, around the margins as Walter  
9 said, you know, there are going to be things where,  
10 yes, there is some discretion involved. But that is  
11 the challenge back to the regulators is, you know, how  
12 you use your discretion and, you know, because you  
13 will be subject to criticism possibly that, you know,  
14 you are giving, showing favouritism. And we get this  
15 in Hong Kong a lot, the small brokerage firms always  
16 accuse the SFC of letting the big guys get away with  
17 whatever they would like.

18 IAN HANOMANSING: I just wonder if the gentleman who asked  
19 the question is satisfied, do you have a follow-up,  
20 or...?

21 HUDSON JANISCH: For the moment, yes.

22 IAN HANOMANSING: Okay, good. Let's go to the floor again  
23 here, another question.

24 WENDY ROYLE: Thanks. I just want to go back to something  
25 that Paul and David mentioned that on the enforcement  
26 side often actions are taken based on a principles  
27 regime, conduct unbecoming or detrimental to the



1 public interest. But by the time an enforcement  
2 action happens, the investors have lost money and  
3 everything's already occurred.

4 If you back up to the compliance side, when you  
5 are in for a compliance review, I think firms find it  
6 difficult under a principles regime because the  
7 regulator may feel that systems are inadequate, the  
8 firm may feel that they are adequate, and without  
9 being able to point to a specific rule to say you need  
10 to have this in place in order to prevent a situation  
11 where investors are going to lose money down the road,  
12 it's very difficult to get movement from firms in the  
13 absence of specific rules. And perhaps Stephen could  
14 tell us a little about how the FSA has dealt with  
15 that.

16 IAN HANOMANSING: Okay, we'll go to Stephen in a second.

17 Paul, you wanted to jump in.

18 PAUL BOURQUE: Yes, I did, and thank you for the question,  
19 it gives me an opportunity to talk a little bit about  
20 how we actually do that.

21 How do we know whether or not the firm is genuine  
22 or, you know, in terms of their responses to the  
23 compliance program? And we have developed a model  
24 that covers all the activities that we're concerned  
25 about in the firm. We have risk categories, risk  
26 types and then specific risks in three major buckets,  
27 external risks, business risks and inherent risks, and

1 we look at all of those. We weight them, score them,  
2 discount them against the risk control environment and  
3 come up with a residual risk score for all our member  
4 firms.

5 So when we go and talk to our member firms, we  
6 have a methodology that we can present to them and say  
7 "Here is what we think of you. We think you are high  
8 risk and here is why." And, you know, that has some  
9 credibility. I mean, they can challenge the  
10 methodology. Most don't. And they, you know, then  
11 you have sort of a platform upon which to have a good  
12 discussion about, well, if you are high risk, here's a  
13 few things we think you can do to reduce your risk.  
14 And, you know, it is really up to the firm whether  
15 they want to do them or not. If they don't want to do  
16 them, they will remain high risk, which means they get  
17 more intensive regulatory coverage. They get an  
18 annual examination on the sales and financial  
19 compliance side. You know, they get more scrutiny.  
20 But, you know, so you try to provide not only a  
21 credible platform to give them your view, but an  
22 incentive to move to a lower risk environment.

23 IAN HANOMANSING: I know this is difficult in a public  
24 setting here, but can you give us without, you know,  
25 names of firms an example of where coming in and  
26 identifying someone as high risk that that has led to  
27 changes?

1 PAUL BOURQUE: It has, and, you know, from time to time it  
2 is not perfect. But what we do with our risk  
3 information is we sit down with our high-risk firms  
4 once a year and we give them what we call a risk trend  
5 report, and it consolidates in ten pages all of the  
6 information we have from the financial risk model, the  
7 sales compliance risk model, and the client complaint  
8 data, which includes the way the firm handles their  
9 complaints and the kinds of complaints that they get.  
10 And we sit down with them. We give them a pictorial  
11 representation of where they stand in terms of the  
12 industry overall, where they stand in terms of their  
13 peer group so they can see how well they are doing.  
14 And it is all relative. These are relative  
15 assessments, because I am not sure how you do an  
16 absolute assessment of risk. But, you know, so you  
17 give them something that hopefully persuades them that  
18 they should move to change practices, hire some more  
19 compliance staff, change the corporate structure,  
20 bring in an independent director. These are  
21 recommendations we have made and sometimes, you know,  
22 the firm implements them and firms move, you know, up  
23 and down in the risk environment.

24 IAN HANOMANSING: Pictorial representation?

25 PAUL BOURQUE: Graphs.

26 IAN HANOMANSING: I was sort of sitting on a stool in the  
27 corner. (Laughter).

1       STEPHEN BLAND: As you say, Paul, you have to do a much  
2                   more detailed analysis. Not just chatting to the  
3                   firms, the word I used earlier. As David said, it is  
4                   coming in, doing some quite intensive analysis,  
5                   looking at perhaps the management information the firm  
6                   itself uses when running its business and trying to  
7                   see what the firm itself is worried about.

8                   In terms of an example, I mean, I am thinking of  
9                   an insurance company that I used to look after and,  
10                  you know, we were presenting our ARROW assessment, as  
11                  we call it, to the board of that company. And they  
12                  said they are interested not only in are they meeting  
13                  the minimum standards but where do they fit in their  
14                  peer group. I said, "Well, we use this sort of  
15                  measure, and this sort of measure, and in amongst my  
16                  group of firms, I tell you, you are bottom on all the  
17                  measures," which had quite an impact on the board.

18                 (Laughter). Because the chief executive had been  
19                 telling them that for ages, that the company was in  
20                 trouble and they needed to do something. And that had  
21                 a real influence in persuading the board to get behind  
22                 the chief executive. And actually it was an example  
23                 where the regulator was out, actually, to help the  
24                 chief executive, we believed was the goody in the  
25                 situation, and was really able to help him get the  
26                 leverage he needed.

27       IAN HANOMANSING: And is ARROW an acronym?

1       STEPHEN BLAND:   Advanced Risk Responsive Operating  
2                    Framework.   Framework spelled with a "W".   (Laughter).  
3                    I think we invented the acronym after we invented the  
4                    name.   Yes.

5       IAN HANOMANSING:   Your acronym rules, at least, are very  
6                    loose.   (Laughter).

7       STEPHEN BLAND:   Principles-based.   (Laughter).

8       IAN HANOMANSING:   To the floor, a question over here, I  
9                    guess.

10       SUSAN ENEFER:   Good morning.   I am here representing the  
11                    investor community and I was very pleased to hear the  
12                    last question that seemed to have an investor focus as  
13                    well.   I am here for B.C. Investment Management  
14                    Corporation.

15                    My question, I guess, relates to one of the lead-  
16                    in quotes from Mr. Bland, "Firms are the big winners".  
17                    And I would like to know how investors can get in on  
18                    this, so I would like to know what's in it for us.

19       STEPHEN BLAND:   I can start on that.   I am sure other will  
20                    join in, as well.

21                    For example, in our sort of complex financial  
22                    histories rules, when issuers are coming to market  
23                    they have to disclose what has happened in their  
24                    financial history.   And we have a set of prescriptive,  
25                    in terms of level playing field consistency, rules on  
26                    what generally you have to disclose to the market.  
27                    But what we have said is obviously that does not cover

1 every situation. Say there has been a takeover or  
2 something, you would have a very complex financial  
3 history. We are not going to bother writing the  
4 rules. All you have to do is agree with your sponsor  
5 bringing the issue to market what is the same outcome,  
6 in terms of level of transparency to the market, that  
7 will be achieved by the method that you propose. So  
8 we don't have detailed rules about complex financial  
9 situations. We just say achieve the same outcome in  
10 the particular situation you are in, and the sponsor  
11 will talk to the issuer and try and achieve that.

12 I don't know if you've got something, Walter,  
13 there.

14 WALTER LUKKEN: I was just going to say, what principles-  
15 based regulation has brought for us is greater  
16 competition. So lower cost for the end users of the  
17 products, which are the ultimate, the investors. So I  
18 am not sure if the firms are the winners, to be  
19 honest. It has become a lower, or, you know, a more  
20 low-cost game for them and I am not sure, you know,  
21 they are making less money on the margins. But it has  
22 brought more competition, more exchanges in the United  
23 States offering different products, being more  
24 competitive, which has been beneficial to the end  
25 users. So I think it has been a good thing.

26 PAUL BOURQUE: I think the investors have and will see some  
27 advantages under a principle-based regime, because it

1 does drive at least the regulator to be more  
2 conversant with the risks the firm presents to its  
3 clients, which is obviously very, very good for the  
4 clients. For example, our financial compliance risk  
5 model is intended to tell us the probability or the  
6 increasing probability of a firm becoming capital  
7 deficient and ultimately, you know, in the worst  
8 scenario becoming insolvent, and then making sure that  
9 the client property is protected. So the better that  
10 a regulator is able to predict those probabilities, I  
11 think the safer investors will be.

12 The principle-based environment also drives you  
13 as a regulator to develop more data and more  
14 databases, and that allows you to look at firms from a  
15 client perspective, from an investor perspective. So  
16 we have done some work recently on understanding how  
17 our firms handle client complaints, and the rate at  
18 which they resolve those complaints. Are they  
19 resolving them in a timely way? Are they dragging  
20 their feet? Because we are telling the clients, go to  
21 the firm, you know, first, as a first step in the  
22 remedies hierarchy. And it would not be very useful  
23 to do that if they ran out the clock. So we have to  
24 know from a client perspective how those firms are  
25 doing. Are they resolving complaints in a timely way?  
26 Are they leaving sufficient time, you know, within the  
27 provincial limitations Acts to then access other

1 remedies through the ombudsman or through the civil  
2 courts?

3 And so if we did not have a client or investor  
4 perspective, we wouldn't have bothered looking at  
5 that. But because we are trying to move to a  
6 principle-based regime, we need to know these things  
7 and we need to know how firms are handling their  
8 client complaints. And I think this is, at the end of  
9 the day, to the advantage of the clients.

10 Now, again we're faced with the overall problem.  
11 This is, as Walter said, this is an incremental  
12 process. We live in a prescriptive rules environment;  
13 we're trying to move to a more principle-based  
14 environment. So we carry the legacy of all of our  
15 rulebooks with us. But I think as we, as regulators,  
16 understand, you know, better what our primary  
17 responsibilities are, we are going to develop and  
18 respond better, I think, to what investors need.

19 IAN HANOMANSING: David and Bill, do you want to jump in at  
20 all in this?

21 BILL RICE: Well, it is interesting that -- I think the  
22 issue of developing confidence and supporting the  
23 integrity of the markets and hence giving the levels  
24 of confidence to the investors is an important one.  
25 As securities regulators we rely to a significant  
26 degree on organizations like Paul's, but interesting  
27 to me when we come to evaluate the job that they are



1       doing, we are inclined to look at what their rules  
2       are, what they articulate, exactly what they do, and  
3       look for evidence that should give us confidence that  
4       they are doing their job and that everyone is being  
5       treated fairly, that the investors should have some  
6       confidence in dealing with their representatives. I  
7       am not sure, given that level of sensitivity and  
8       demand for evidence on the part of the regulators,  
9       that we can ask the individual investors to accept  
10      that there are more general principles being applied,  
11      that they should have faith in the people that are  
12      dealing with their money, that those that run the  
13      organizations that they deal with have the appropriate  
14      principles, that they are being applied.

15             Our instincts seem to be to look for some hard  
16      evidence, something very transparent, and something  
17      that we can put our finger on to give us hard  
18      confidence in the results.

19   IAN HANOMANSING: Are those your instincts, as well?

20   DAVID WILSON: I'll bounce the question to Stephen a bit,  
21      looking for some data. The FSA has been around for  
22      ten years. It was a rather brave experiment when it  
23      was introduced ten years ago, and it was aspired to be  
24      a principles-based regime right from the beginning, I  
25      believe, Stephen. Is there any data that in the City  
26      of London and the U.K. capital markets that investors  
27      have done well by this new regulatory format that was

1 put in place ten years ago? I guess, as Bill said, if  
2 you need some evidence to prove it, have you been able  
3 to gather any in your ten-year experiment over there?

4 STEPHEN BLAND: As I think Penny sort of indicated, it is  
5 not a black and white thing. It isn't sort of  
6 principles or rules. We have got a mixture of the  
7 two. We have got thousands of pages of rules. Let no  
8 one kid you about our rulebook, it's pretty grim,  
9 although we are trying to do something about it.

10 We have been moving, in the last two years,  
11 really to upping the focus on principles. So in that  
12 sense it is quite early days and we wouldn't claim  
13 that we have been operating a pure principles-based  
14 regime for ten years or anything like that.

15 I do think generally our approach has been seen  
16 to be successful in terms of one of the advantages  
17 often quoted for London in these surveys is the  
18 regulatory approach, that it's able to hold up high  
19 standards and give investors confidence, and yet it is  
20 amenable to being easy to do business with for firms  
21 in that environment. That's clearly a balancing act,  
22 and you could, you know, try and protect investors but  
23 really crack down on firms, or you could give firms an  
24 easy life, but of course investors then wouldn't be  
25 protected. So it is a balancing act.

26 So far, I think, if you like, the only empirical  
27 evidence is of people voting with their feet, setting

1 up business, doing business in London, and so far that  
2 has been successful. I won't say that it always will  
3 be successful, but we have been fortunate to date.

4 IAN HANOMANSING: So there has not been a process - and I  
5 don't even know how you do this, but there must be -  
6 to quantify investor confidence as you make this move  
7 towards a principle-based regime?

8 STEPHEN BLAND: No, you can do it in certain areas.  
9 Actually, Paul gave an example of sort of complaints  
10 gathering, where we're relaxing our rules from you  
11 have to do this within 21 days, and this within eight  
12 weeks, et cetera, to promptly, and words like that,  
13 and so on. Which actually means some firms will be  
14 required to do it faster than they used to have to do,  
15 within our sort of 21-day rules, and other firms may  
16 be able to do it slower, if they can convince the  
17 regulator actually this is right for the type of  
18 complaint we are investigating, the type of systems  
19 controls we need to have over that to ensure we pay  
20 out the right amount at the right time. And they  
21 vary, so it isn't one size fits all. As in all areas  
22 you have just got to have a general outcome that you  
23 are trying to achieve and then the detailed way of  
24 getting there, you know, may not be the same for all  
25 firms and thus for all investors.

26 I think people are right to challenge me that  
27 firms are the winners because in a truly competitive

1 market that will get passed on to investors and other  
2 consumers as, you know, normal rates of return come  
3 through. But in the meantime a good firm can, you  
4 know, use its position in the market to make some  
5 profits, and good for it.

6 IAN HANOMANSING: All right. We have a question from this  
7 side of the room.

8 PETER BROWN: Just a comment on the question from over  
9 here. The regulatory climate we deal in, there is a  
10 tendency to think that it only affects the dealers in  
11 it. It also affects the marketplace and it affects,  
12 it has impacts on the investors as well. And there is  
13 a number of cases where unintended consequences of our  
14 regulatory system have limited access, liquidity, have  
15 time delays that have impacted very unfavourably on  
16 the investors. So it is not, these issues don't just  
17 impact on the dealers.

18 We are, my firm is a participant in the Nomad  
19 market, and one of the things that it seems to me in  
20 London on the rule side of the business was that there  
21 was a very deliberate focus on when you have developed  
22 your rules on specific objectives on trying to avoid  
23 the unintended consequences that we have in Canada,  
24 and on proportionality, matching the regulatory  
25 response to the degree of materiality. What we have  
26 in Canada, we had none of the benefit of -- we have  
27 evolved a system of multi regulators over multi years,

1 and what's happened in it is a very box-sticking  
2 system. The regulators, it's very hard to remove a  
3 rule, they are constantly adding rules and there is a  
4 huge desire by the regulatory body, in my opinion, to  
5 hang onto these rules in a rapidly changing market.  
6 And that there has been historically, up until a few  
7 years ago, in a global rapidly changing market, very  
8 little ability or resistance to innovate and to remove  
9 rules.

10 And the other thing that happens over time with  
11 these outdated rules is that the regulators come,  
12 they've almost lost the reason that the rule was put  
13 in place over a 25 or 30-year period, and they start  
14 to enforce it where it wasn't intended.

15 Now, Paul, you and I had one example, where  
16 getting the IDA to give up a rule was you were  
17 desperate to hang onto a rule that didn't apply.

18 So I think that we are bound to have a mix of --  
19 if we are going to make progress, we are going to be  
20 bound to have a mix of prescriptive and performance-  
21 based regulation. But it should be a vast improvement  
22 on what we have. Even today, where we're having this  
23 debate, I can tell you that in Canada there's a great  
24 momentum behind a new set of rules that's coming out  
25 of Ontario called a client relationship model. It was  
26 originally called the fair dealing model. That one  
27 was 97 pages and so complex you would have had to have

1 a Ph.D. to figure out the risk, but that's getting  
2 moderated now. But you are now going to have more, it  
3 looks like, we are going to get mandated with more  
4 types of accounts, information that there's no public  
5 demand for, there is no cost/benefit analysis, even  
6 the Commission admits that the information, the demand  
7 is anecdotal. There is no cost/benefit analysis, and  
8 I can tell you it will cause great misunderstandings  
9 and conflict with the clients. And this is probably  
10 the most prescriptive piece of regulation coming down  
11 the pipe that I have seen in quite a number of years,  
12 and it's happening at a time when we as Canadians post  
13 this target and say maybe we should look at some  
14 performance-based regulation. Thank you.

15 IAN HANOMANSING: All right, thank you. So Paul --

16 (laughter) -- what was this rule?

17 PAUL BOURQUE: Well, I think there's more than one.

18 (Laughter). But the one that I recall most clearly,  
19 and this may not be the one Peter was mentioning, was  
20 our policy with respect to retail account supervision.  
21 And I know we discussed with Peter and his firm, you  
22 know, their particular methodology. One of the things  
23 that Policy 2 has built into it is the ability to be  
24 exempted from it if you are able to demonstrate an  
25 equivalent system that it, you know, that achieves the  
26 same result that our Policy 2 does. So we had, you  
27 know, fairly lengthy discussions with the firm and

1 ultimately granted them an exemption from Policy 2.

2           It is a strategy we could probably use with more  
3 of our rules and, as I say, it's really part of a  
4 transition. Because we have, like Stephen has, a very  
5 thick rulebook. And probably, you know, part of the  
6 transition to a more principle-based environment is  
7 developing the methodologies and the staff  
8 competencies to make the discretionary calls about  
9 exemptions from prescriptive rules.

10           So, you know, I understand certainly the concern.  
11 We think we sort of have a sense of what the right  
12 approach is, but we are, of course, living with the  
13 legacy of a very complex rulebook and, as Peter says,  
14 every rule has its advocate, no matter how old or  
15 outdated it is, someone will rise to its defence.  
16 Often someone in the industry will rise to the defence  
17 of a rule because there is this countervailing  
18 influence from the industry for more prescriptive  
19 rules. I mean, it is a bit of a contradiction, but we  
20 are being asked, you know, from time to time, to  
21 provide more rules. And it will perpetuate, I think,  
22 the rules-based environment because when you provide  
23 detailed rules, the result is you create a demand for  
24 more detailed rules and it becomes perpetuating.

25           So we are looking at, obviously, we are in the  
26 middle of the development of the project that Peter  
27 mentioned, the Client Relationship Model. I don't

1 disagree with his sort of categorization of it as  
2 prescriptive. I think it is a prescriptive-type of  
3 rule.

4 One aspect of it I think has to be prescriptive  
5 because I think it's essentially operational, and  
6 that's the requirements relating to account  
7 performance reporting. I think if a client is going  
8 to be able to compare reporting between firms and they  
9 have to have a common baseline, and that's really,  
10 that's the infrastructure that has to be put in place  
11 to create that common baseline. So those are  
12 operational requirements that I think have to be  
13 prescriptive.

14 On the account opening client relationship side,  
15 obviously that is more, you know, more amenable to  
16 principles-based. We are doing a cost/benefit  
17 analysis. It's underway, it's being done by staff at  
18 the OSC and, you know, and we're doing consultations  
19 with the industry. So we'll see where we end up on  
20 that one.

21 IAN HANOMANSING: Penny, do you yearn for some rules, some  
22 more rules, fewer rules?

23 PENNY THAM: Yearning is probably not the right word.

24 (Laughter). But, you know, I think what Paul's  
25 viewpoint is, that, yeah, you know, we also want  
26 certainty. I mean, as I said, this is not a digital,  
27 I mean, it's not like all rules and all principles.



1 At some point, you know, we the firms, we also want  
2 certainty so we will actually sometimes go to the  
3 regulators and say, you know, could you give us more  
4 guidance, could you actually, you know, make it a  
5 level playing field?

6 I think the key thing again is, you know, I  
7 always come back to the dialogue thing. I think  
8 that's very important, and I don't think anyone should  
9 think should think that, you know, principles-based is  
10 a panacea for anything. It's just a, you know, as  
11 Stephen has said, it just gives us an overarching kind  
12 of framework within which we can operate with  
13 flexibility so we can innovate, which I think is quite  
14 important, certainly for the guys in, you know, my  
15 business. You know, they get paid because they come  
16 up with new things, new ideas. That's what they are  
17 selling to our clients. They are not selling exactly  
18 the same thing that the bank down the street is doing  
19 because that's not where they make money. So, you  
20 know, it is, as I said, but it gives us a really good  
21 framework.

22 And also for some of us who deal across borders.  
23 I mean, here you deal across provincial borders. But  
24 for us, you know, when I'm sitting in Asia, I'm  
25 looking across a number of countries, again, you know,  
26 having a principles-based approach from a compliance  
27 viewpoint really helps us to try to get an

1 understanding of what are the risks in the particular  
2 countries. I don't know what the rules are because I  
3 am not, you know, qualified to speak to that. But at  
4 least I know the right questions to ask of the people  
5 locally. So that from that viewpoint I think it's  
6 quite important to understand that it's not an all or  
7 nothing.

8 IAN HANOMANSING: Yes, so it's a hybrid. It's a hybrid in  
9 part because of this evolution. It's a hybrid also  
10 because there is a need, as you have all said, for  
11 some prescriptive rules, even as you move towards  
12 principles. And also, Walter, there are regulatory  
13 tools, in your experience, that complement this  
14 principles-based approach. Tell us what some of those  
15 are.

16 WALTER LUKKEN: Well, exemptive authority, to begin with.  
17 I mean, part of our job not only is determining what  
18 we do regulate, but what we shouldn't regulate for  
19 public policy reasons. So we found having an  
20 exemptive authority saying even though we might have  
21 jurisdiction over something, we choose not to regulate  
22 it in this point, or in this type of a situation and  
23 here is why. It allows us to focus on areas where  
24 there are risks that we want to more concentrate on.

25 Certainly we talk about staff having good  
26 judgment in this area. Stephen brought this up. This  
27 has been difficult in order to invoke these

1 principles-based rules or regulations. We need good  
2 staff to make good judgments. So how do you retain  
3 staff? What we have done is brought on pay parity,  
4 what we call it, but it is able to pay staff at higher  
5 rates, more market rates, in order to keep and retain  
6 good staff, or get staff from the markets who  
7 understand what's going on. So that is also  
8 important.

9 We have also been given the ability to allow  
10 exchanges and clearinghouses to delegate authorities  
11 to other people, which I think is very useful, too, in  
12 order to promote competition. Instead of an exchange  
13 having to, you know, get the clearinghouse and all the  
14 capital that's required for that, set up a self-  
15 regulatory organization, they are allowed now to  
16 delegate out those functions to others, which is  
17 really, you know, a one-person shop with a computer  
18 might be able to be smart enough to be a competitor in  
19 this marketplace, to plug in and play. So that has  
20 been helpful and all complementary to this principles-  
21 based approach of how you can tailor regulations to  
22 make this a more competitive environment.

23 IAN HANOMANSING: All right. We have another question from  
24 the floor.

25 A PARTICIPANT: This would be more rebuttal to Paul than a  
26 question. (Laughter).

27 IAN HANOMANSING: Maybe you guys should just take this

1 outside. (Laughter).

2 PETER BROWN: You seem to imply that the performance  
3 management was a foregone conclusion for all accounts,  
4 and I certainly hope that's not true. It will  
5 conflict with many of the accounts have their own  
6 accountants, have their own software programs, many of  
7 the accountants don't want -- presumably this a  
8 service that the clients will pay for and a lot of  
9 them won't want it. And secondly, it will be very  
10 dependent on inputs, and where there are things like  
11 tax considerations, delayed fees, the inputs will vary  
12 at the end of the year between what we provide and  
13 what their accountants provide, which is going to  
14 create an awful lot of friction. So it seems to me  
15 that rather dictating to the industry and to the  
16 clients what services we will provide and they will  
17 receive, that if you want to go in this area, it  
18 should be voluntary for the clients because they are  
19 going to pay for it, and the client that doesn't want  
20 it is going to resent it.

21 And so I hope from your earlier statement that  
22 you are not imposing this product on all the clients  
23 and all the dealers, because that is where  
24 prescriptive regulation goes amok.

25 STEPHEN BLAND: Perhaps I can just generalize that what  
26 Paul thinks, as it were, or chooses not to, on to  
27 specifics.

1 PAUL BOURQUE: No, I'm happy to. I just don't want to  
2 (indiscernible - background noise).

3 STEPHEN BLAND: Yes, but on the general, I mean, and taking  
4 on Walter's point, I do think it's really, really  
5 important that before introducing rules the  
6 regulators, well, in our case, first of all we do a  
7 market favour analysis, can the market actually solve  
8 this problem all on its own? Like, for example,  
9 contract certainty in the insurance market, or the  
10 backlog of credit derivative settlements. And both of  
11 those, we just said, look, the market can do this on  
12 its own, not least through its trade associations,  
13 which are important players we haven't spoken about  
14 yet, but we'll have to need to come back to. So  
15 that's the first thing. We just don't want, we've got  
16 quite enough to do, thank you very much, if the market  
17 can sort itself out.

18 If we do need to intervene, then the question is  
19 are we going to intervene high level prescriptive, big  
20 event, or something very small, just tweaking at the  
21 edges. And we'll do cost/benefit analyses of those  
22 various routes.

23 And then the key point is discussion papers,  
24 consulting, and all of the rest of it, and it actually  
25 makes all the industry as a whole, through its trade  
26 associations and through individual people, and indeed  
27 consumers where it affects them, get the chance to

1 comment on it before we actually introduce it. And I  
2 think Walter also said we can also do waivers to  
3 individual rules if necessary for a particular  
4 situation.

5 So there's a whole variety of ways to make sure  
6 that we don't over-prescriptive and we are pretty  
7 accountable in the U.K. and people will complain about  
8 us, quite rightly and reasonably, if they are not  
9 happy.

10 PAUL BOURQUE: Just to close the loop on Peter's comments.

11 Peter, yeah, I mean, these are --

12 A PANEL MEMBER: Good luck closing the loop. (Laughter).

13 PAUL BOURQUE: It won't be done at this meeting.

14 (Laughter). But, yes, I mean, there is discussions  
15 around the kinds of accounts and obviously not every  
16 account is going to be covered by this. And the  
17 inputs and the cost information is a huge issue which  
18 has been identified for us. And then whether or not  
19 it is at the instance of the client or not, you know,  
20 for those accounts where it is required, does it have  
21 to be required or just at the instance of the client?  
22 And that is still under discussion, so I appreciate  
23 the comments.

24 IAN HANOMANSING: So David, I am told that the mutual fund  
25 probe in Ontario is an example of a principles-based  
26 approach here in Canada?

27 DAVID WILSON: Yeah, it's nice to have examples in Canada

1 where there actually was a principles-based outcome  
2 that we can point to. I think that is one for sure,  
3 the mutual fund probe, which most people in the room  
4 are familiar with from a couple of years ago, was led  
5 by Ontario and it was based on market timing, resulted  
6 in firms coughing up \$209 million back to their  
7 investors. So the investors benefited in that case  
8 from a principles-based approach. And the principle  
9 that caused the funds to cough up the \$209 million was  
10 they had an obligation to treat their clients fairly  
11 and they recognized it. They recognized that they had  
12 not in the circumstances that were documented, so they  
13 wrote a cheque for \$209 million on that principle of  
14 treating their clients fairly. So it does happen and  
15 investors do benefit.

16 IAN HANOMANSING: And what's your assessment of its success  
17 and just its existence, and whether that is part of a  
18 trend or people looked at that and thought, okay, this  
19 is something we can expand on, or not expand on.

20 DAVID WILSON: Well, I think it's nice to have empirical  
21 evidence when you're trying to make a case for moving  
22 the dial from a more hybrid, which is what I think we  
23 have in Canada, of principles and rules, to more of a  
24 lean towards the principles. It's nice to have some  
25 data that shows that it can work in an enforcement  
26 case like that and work effectively. So I think it  
27 enriches the debate and gets you to be persuaded to

1           move the dial towards the principles side of the  
2           ledger.

3   IAN HANOMANSING:   And where are we in terms of that process  
4           of moving the dial ahead?

5   BILL RICE:   I think one of the big factors there were  
6           pressures like reputational issues, and if you've got  
7           organizations who are concerned about reputational  
8           issues, the issues are understood, right and wrong  
9           seems to be instinctive to most people, then I think  
10          that approach is very useful.  When you're dealing  
11          with organizations that aren't so concerned about  
12          reputation, then I don't know that the same leverage  
13          is there.

14                I was interested in Stephen's comments about his  
15          reliance to a significant degree on market pressures,  
16          and I think one of our concerns here is whether or not  
17          the market in this country exercises as much strength  
18          as it might in other environments, and if you felt  
19          that the market is incapable of applying the kind of  
20          pressures that I assume you see it capable of in the  
21          U.K., would you have been less inclined to go to the  
22          principles route?

23   STEPHEN BLAND:   I would, still with senior management  
24           responsibility, and that applies whether or not you  
25           are subject to market pressures, you are still going  
26           to be subject to your shareholders, and so on, and  
27           your, you know, first accountability is to them.  So I



1 think it does work, and it's undoubtedly the case that  
2 market pressures are a valuable tool, which probably  
3 means you can soft pedal on some other aspects of the  
4 regime. But I wouldn't overplay its importance.

5 IAN HANOMANSING: And what about senior management's role  
6 generally? That's one of the areas that obviously  
7 this puts a lot of focus and trust in. Paul?

8 PAUL BOURQUE: Well, one of the ways that we have been  
9 trying to influence senior management behaviour is  
10 through this process of sitting down with them once a  
11 year for those that are high risk, with the CEO and  
12 the CFO, and spending about an hour with them and sort  
13 of closing that expectation gap, or perception gap  
14 that often exists between a regulator and the  
15 regulated entities. They may be out there and sort of  
16 in the complexity of the compliance process, which is  
17 quite micro and involves long lists of deficiencies.  
18 Sometimes the overall message can get lost as to where  
19 the firm is and what the regulator thinks of their  
20 particular ability to control their risk.

21 So I have found it, I think we at the IDA feel  
22 that our meetings with the senior executives has been  
23 helpful in persuading and advocating and producing  
24 some behaviour change at the senior levels within the  
25 firm, understanding that there is a compliance process  
26 going on in a parallel track with, as I say,  
27 compliance examiners finding deficiencies, firms

1       responding to the deficiencies. That's all going on  
2       as well.

3               And that really is, I guess, the legacy of our  
4       prescriptive rulebooks because we have the examination  
5       program is driven by the content of the rulebook. So  
6       currently I think we have both. But I think as we  
7       transition to a more principle-based environment, I  
8       think the importance of the sort of meeting with the  
9       senior management, based on some credible risk  
10      analysis, will and should become more important than  
11      the more detailed compliance program that we have  
12      relied on for many, many years.

13   IAN HANOMANSING: Questions from the floor?

14   DON GORDON: Hello. I'm Don Gordon, I am speaking from the  
15      issuer listed company perspective. I work with the  
16      CNQ Stock Exchange and the Canadian Listed Company  
17      Association and do independent consultings.

18              What I have seen from this perspective and from  
19      the perspective of issuers is an increasing trend  
20      towards personal certification, particularly for  
21      financial statements right now, and there is a trend  
22      following the *Sarbanes-Oxley* trend in the U.S. in  
23      Canada to personally certify submissions and  
24      representations are true and correct, and there is  
25      also we are entering into a regime of increased civil  
26      liability for officers and directors, where they'll be  
27      liable for secondary disclosure, or all disclosure

1           that a company distributes.

2           Does the panel see these as aiding and abetting a  
3           principle-based regime, or are these going to force  
4           the market back to a more prescribed regime? And do  
5           they provide additional confidence on the compliance  
6           side when CEOs certify items are correct, or is there  
7           a lack of confidence in that solution?

8   IAN HANOMANSING: Who would like to jump in on that?

9           Somebody better.

10   DAVID WILSON: I'll take the first shot.

11   IAN HANOMANSING: Okay.

12   DAVID WILSON: You have raised what is a specific policy  
13           issue there and asked if it has a principles-based  
14           context, so let me take a shot at that. And the  
15           principle is that the CEO and the CFO should stand  
16           behind the quality of their financial numbers that  
17           they give to the owners of their business. That's the  
18           principle. So how do you ensure that that principle  
19           is effective? Signing a certificate that they are  
20           satisfied the numbers are an accurate reflection of  
21           the financial performance of the company is the  
22           manifestation of that principle. I think that is one  
23           way of putting it in a principle-based setting.

24           And just as a free editorial comment, asking a  
25           CEO and a CFO to certify that the owners of the  
26           business are getting accurate numbers, to me does not  
27           seem like a large wall to ask them to climb.

1 BILL RICE: I think it is opening up a huge other  
2 territory. I'm not sure about its relationship to the  
3 principles debate. It seems to present difficulties  
4 for large companies in that you can't expect the  
5 people at the top to know all the details. And it  
6 certainly presents a problem for the smaller companies  
7 when many of those officers really don't have the time  
8 and resources to certify to the extent that was  
9 required.

10 The effort, I think, is to get people to pay  
11 attention and to get rid of that excuse that "Well, I  
12 didn't know. I was relying on somebody else." And  
13 there is some effort being made to force people to  
14 take responsibility. But I think the problem, and it  
15 relates, I believe, to the whole principles debate, is  
16 where are the time and resources coming from to make  
17 these kinds of decisions and analysis?

18 And whereas I might have started out with a view  
19 that the rules make things overwhelmingly complicated  
20 and difficult for the small issuers, I'm beginning to  
21 think that maybe the rules make it easier and simpler  
22 for the small issuers, and it's very difficult for  
23 many of those small organizations on the issuers side  
24 to deal on a principles basis, whether it's required  
25 through certification or otherwise. They just don't  
26 have the time. And I think they should be taking  
27 responsibility.

1           And, Penny, I know you'd see that that's part of  
2           their job, but for many of those issuers, they are  
3           trying to build their businesses, do the best they can  
4           in their areas of expertise, and to ask them to take  
5           on a whole new level of both responsibility and  
6           expertise, I think, is overwhelming. And what we are  
7           actually seeing now in respect of the introduction of  
8           this certification process is that we are getting  
9           certificates, but the officers don't know what they  
10          are certifying. So it's not doing its job.

11       PENNY THAM: Well, don't you think that's kind of  
12          dangerous, I mean...?

13       BILL RICE: Well, of course. (Laughter). Of course it is.

14       PENNY THAM: I mean, I agree with you in that I don't think  
15          necessarily they need to take on the expertise, but I  
16          absolutely insist that they take on the  
17          responsibility. I mean, that's the kind of  
18          conversation I have with the business guys: You don't  
19          have the expertise? Go get it. Buy it. You know,  
20          that's what, you know, Walter said about in terms of,  
21          you know, spending the money to get your staff up to  
22          speed. You know, spend the money and buy, I don't  
23          know, good advice, whether it be legal, financial,  
24          whatever. Yeah, it is a cost. But that's a cost of  
25          business that you should factor into your business  
26          model. Just saying, "I can't afford it" doesn't mean  
27          that that's the right thing to say.

1 BILL RICE: Well, I think we're trying to balance the  
2 extent of the cost. So is it more expensive to be as  
3 close as possible to be in a position of ticking off  
4 the boxes, or is it more costly to have to sit and  
5 analyze from a principles standpoint what appropriate  
6 conduct is? And I think in certain circumstances it  
7 may be more cost-effective to react to the rules than  
8 it is to react to the principles.

9 WALTER LUKKEN: But I'm not sure the two are mutually  
10 exclusive. I mean, you can give the person the choice  
11 of complying with the rule and taking the safe  
12 harbour, or shift the burden to them if they're going  
13 to do something differently to show that they are  
14 meeting the principle but it's not exactly meeting the  
15 rule. So I almost think you can have your cake and  
16 eat it, too, in that type of a situation.

17 IAN HANOMANSING: So you have two parallel regimes here,  
18 one is the old-fashioned, I guess, you know, thousands  
19 and thousands of pages of prescriptive rules that you  
20 can chew, or maybe fewer than that, I don't know.

21 PENNY THAM: Thousands.

22 IAN HANOMANSING: Or the other alternative is the hybrid of  
23 rules and -- but these two systems have to exist in  
24 parallel for the small firms, is that how that works?

25 WALTER LUKKEN: Well, we don't -- we don't have the similar  
26 regulatory regime for the small firms. This is mainly  
27 talking about exchanges and clearinghouses. But

1 acceptable practices come about for these exchanges,  
2 and they have the ability to take the easy route and  
3 say, well, I'm going to abide by that acceptable  
4 practice. Or if they don't, the burden shifts to them  
5 to say, well, why aren't you going to do this? You  
6 know, give us the evidence of why you need the  
7 principle. And so they have the choice, I mean, they  
8 could expend the resources if they want to, as Penny  
9 has said, or they can take the easier way out and  
10 abide by the rule. So both ways work.

11 IAN HANOMANSING: We're getting very close to the time of  
12 our break. I know we have some questions from the  
13 floor. But I don't know if this is a definitional  
14 thing, but I see in your resume that you are  
15 responsible for, I think it's 19,000 small firms,  
16 maybe bigger than what you're defining as small firms.  
17 But what is their experience in terms of dealing with  
18 this?

19 STEPHEN BLAND: We, I mean, I echo Walter's comments, there  
20 are a variety of ways of dealing with this if you are  
21 a small firm. And opinions are actually mixed among  
22 small firms: Do we want principles-based, more of it,  
23 or do we prefer to stay rules-based because it's  
24 easier, we just go down the checklist and we know  
25 where we are, et cetera.

26 We have actually had long discussions on this  
27 with our advisory panels for small businesses, as an

1 organization with the various trade associations that  
2 represent small firms. We have quite a few of those  
3 specifically in the U.K. In general, there is  
4 cautious welcome for principles-based supervision, but  
5 with this ability to rely on the rules, or indeed the  
6 industry checklist, this industry guidance that we're  
7 trying to get developed, as well as the rules.

8 Our overall stance, though, is actually it should  
9 be welcome to small firms to move to principles-based,  
10 because the choice isn't between starting with nothing  
11 and then having to think more about principles-based.  
12 It's between starting with detailed prescriptive  
13 rules, and there are thousands of pages, and switching  
14 to a role where principles-based is largely based on  
15 what is good business practice. And if you're  
16 thinking about good business practice for your firm,  
17 you're going to be 90 percent of the way there anyway,  
18 et cetera.

19 For these small firms, sometimes they don't know  
20 what good business practice is, and we're not saying,  
21 of course, that we know. But what we do have the  
22 ability to do is go to a large number of these small  
23 firms, observe what works, what is good, what doesn't  
24 work, and then play it back to the community as a  
25 whole as a sort of service to them, if you like, to  
26 help them improve their standards and run their  
27 businesses in good business practice ways. And they



1 will be nearly there in terms of meeting our  
2 requirements if they do just that without having to  
3 think separately about regulation. Just think about  
4 how to run your business well for the benefit of your  
5 clients and you'll be nearly there.

6 IAN HANOMANSING: Bill, does that seem practical to you?

7 BILL RICE: Well, to a degree, and it's hard to pass  
8 judgment on where the principles-based regime crosses  
9 over into the rules-based regime.

10 I think there are some very significant issues  
11 facing, particularly, smaller issuers in trying to  
12 enable them to carry on their businesses in the  
13 securities environment. Many would argue, well, if  
14 you're that small, maybe you shouldn't be in this type  
15 of business, or be raising your capital in this  
16 particular way. But in this country we encourage it,  
17 we have a great many very small organizations, and one  
18 has to wonder where the expertise should come from to  
19 make the judgments. And I wonder whether really the  
20 best expertise lies, in fact, with the regulators,  
21 those that have experience. It's a lot to ask of  
22 people who in our jurisdiction are engineers and  
23 geologists to take on expertise in a territory that  
24 they're totally unfamiliar with. And I think, maybe,  
25 I think it's the case that many of them would be  
26 incapable of establishing their businesses if they  
27 were required to have the kind of expertise that would

1           satisfy a requirement to make the kind of judgments  
2           that are necessary in order to comply with a  
3           principles-based regime. It's just too expensive and  
4           too time-consuming.

5   IAN HANOMANSING: And do you see this as maybe more of an  
6           oil-patch issue and the nature of the companies there,  
7           than what you run into at the OSC?

8   DAVID WILSON: Well, I think we're talking about smaller  
9           company issues and there are smaller companies in  
10          other provinces than Alberta that have the same sort  
11          of challenges. So it's a very valid concern. The  
12          flip side of it is, though, if you're going to accept  
13          money from passive public investors, certain  
14          obligations go along with that, and so it's a  
15          balancing act of getting the expertise to satisfy the  
16          obligations that go with taking passive public money  
17          in.

18   IAN HANOMANSING: Before we take our mid-morning break,  
19          let's go to another question from the floor. Behind  
20          me, I guess.

21   LANG EVANS: Yes. I'd just like to go back to the mutual  
22          fund and market-timing example. I find it interesting  
23          that it's brought forward as an example of the success  
24          of principles in enforcement context and benefit to  
25          investors, all of which I agree with. But I am  
26          wondering about the regulatory response that followed  
27          it, and is that really a principle-based exercise,

1           where more rules are being proposed on the mutual fund  
2           sector, and where they'll be borne, I'm wondering, by  
3           largely compliant firms that weren't censured in the  
4           first place.

5   IAN HANOMANSING:   Paul or David, who would like to jump in  
6           on that?

7   DAVID WILSON:   Well, if you're, I think, referring to a new  
8           regime in Canada requiring an independent review  
9           committee to exist in every mutual fund, a specific  
10          recent policy initiative. Is that what you're  
11          referring to, sir?

12   A PARTICIPANT:   Yes.

13   DAVID WILSON:   And how does that relate to the debate about  
14          principles versus rules? Is that your question?

15   A PARTICIPANT:   Is it a follow-on, is it a reaction to the  
16          market-timing situation?

17   DAVID WILSON:   I think it's a stretch to make a link  
18          between that. I think it's more a reaction to a  
19          perceived gap in the Canadian regulatory system for  
20          mutual fund oversight that's been filled. I wouldn't  
21          make the connection with the mutual fund probe. To  
22          say that the mutual fund timing wouldn't have happened  
23          if this new committee had been in place would be a  
24          stretch.

25   IAN HANOMANSING:   All right. We're going to take a break  
26          right now. I know we have some more questions from  
27          the floor and we'll have even more when we come back.

1       It's going to be a 30-minute break, so hopefully you  
2       can be sitting down and ready to go at 11:00.

3             And I have been asked to remind you to do the  
4       survey, if you haven't already. There are gift  
5       certificates to Harry Rosen, Holt Renfrew, or you can  
6       direct the money to the charity or mutual fund of your  
7       choice, (laughter) and we'll see you here in 30  
8       minutes.

9       --- PROCEEDINGS ADJOURNED FOR MID-MORNING RECESS

10      --- PROCEEDINGS RECONVENED

11      IAN HANOMANSING: We were just in the middle of a spirited  
12      conversation. So we have about an hour to go here.  
13      We are very pleased with how this is working out and  
14      hope you are pleased, as well, and keep the questions  
15      coming. And the first question of the second half  
16      goes to someone who is, of course, very well known to  
17      all of you, but to me the most important thing about  
18      him is his connection to my *alma mater*, Mount Allison  
19      University in New Brunswick. And Purdy Crawford, I  
20      understand, would like to ask a question

21      PURDY CRAWFORD: Thank you. I am glad you got a plug in  
22      for Mount Allison.

23      IAN HANOMANSING: That's right, a fine university.  
24      (Laughter).

25      PURDY CRAWFORD: The two or three issues that I would like  
26      to put to the panel. Some of you know I chaired a  
27      panel on coming up with a blueprint for a single

1 securities regulator for Canada, which we think  
2 integrates rather well, or could integrate rather well  
3 with the developing passport system. But one of the  
4 things we came down pretty strongly in favour of in  
5 our paper was the approach to principles-based  
6 regulation. I suspect, and I would be interested in  
7 your comments, and probably also Doug Hyndman's  
8 comments, that it's not just a matter of the  
9 principles-based, but it's also a matter of the  
10 culture within the regulator and, for that matter,  
11 also within those who are regulated. So I would be  
12 interested in comments on that.

13 We see that a lot of the activity in the capital  
14 markets moving from New York to London. We in our  
15 report had a vision to make the Canadian capital  
16 markets the most competitive in the world. We would  
17 rather like to get in Canada some of that business  
18 that London is getting from the United States and the  
19 implications for principles-based rules in terms of  
20 capital market business.

21 And finally, just a comment. I think the  
22 regulator more and more has to be available to help  
23 small businesses who they are regulating in terms of  
24 their requirements and needs, and et cetera. Thank  
25 you.

26 IAN HANOMANSING: All right. So that will take us a couple  
27 of minutes. We can start in any order you guys want.

1           Who would like to jump in on that?

2   STEPHEN BLAND:   Well, perhaps I'll start, if I may.

3   IAN HANOMANSING:   Sure.

4   STEPHEN BLAND:   Just to disappoint the questioner because  
5           we intend keep whatever business that we've got.  
6           (Laughter). But we intend to do that not, obviously,  
7           in terms of being a refuge for the scoundrel, or  
8           whatever, but in terms of we believe the culture, and  
9           that is the correct word, of London is something we  
10          want to build and maintain.

11                 The one thing I would say is we don't  
12          overestimate ourselves. Regulation is one part of the  
13          package of what makes good businesses run and what  
14          makes centres work. But it is at the end of the day a  
15          small part. There's plenty of other things going on  
16          in any financial centre around the world that are not  
17          to do with regulation. I think that's important to  
18          emphasize that. At this sort of table we might feel  
19          all-important and we're not. We can mess things up  
20          but we can very rarely make things better. It's a  
21          sort of a one-way street.

22                 I think the one thing I would talk about is the  
23          contrast between minimum standards, that's our job  
24          under law, to make sure that firms are operating in  
25          minimum standards and protecting consumers, et cetera,  
26          and about raising industry standards and getting  
27          professionalism. And in a way our job isn't about

1       raising industry standards, it's about making sure  
2       minimum standards are met. But we see it as helpful  
3       to help the industry where it wants to raise  
4       standards, as well. And so it's not a key part of our  
5       job, but we do have the great advantage of looking  
6       over the fences of lots of firms and being able to  
7       play back what has worked and what has not worked.  
8       And I think that is something that the industry values  
9       and we all continue to try and do it, but all the time  
10      rigorously drawing that distinction between our  
11      statutory obligations of minimum standards and  
12      anything we may do on top.

13     IAN HANOMANSING: David and Bill, do you want to jump in at  
14       all on the flow of capital within this theme of this  
15       move towards principle-based approach?

16     BILL RICE: Well, I think that one of the decisions that  
17       maybe has been made, or maybe is still outstanding, is  
18       what Canada wants to offer in respect of its capital  
19       markets. Does it want to offer just another place  
20       that operates significantly the way the U.S. does, or  
21       does it want to be an alternative to the U.S. market?  
22       If it wants to be an alternative to the U.S. market,  
23       rather than simply a companion to it, or a small  
24       brother to it, principle-based regulation may be a  
25       foundation for building an alternative. I am not sure  
26       that that would be the pick, but certainly that would  
27       offer a differentiating feature that we could focus on

1 and try and build an alternative that would attract  
2 those who might otherwise be in the U.S. market but  
3 are looking for a different approach and something  
4 that would be appealing to them in the Canadian  
5 market.

6 DAVID WILSON: I think that the Crawford report hits it  
7 bang on. I have read it carefully, Purdy, and you  
8 talk about a principle-based approach where feasible,  
9 were the words that you used, I think, and I think it  
10 is feasible to shift the culture in Canada if there  
11 were a common bedrock regulator to a more principles-  
12 based approach. And to follow up on Bill's comment,  
13 it would make us different than the U.S., and we are  
14 different. Our capital market, I mean, is different.  
15 We have many more smaller companies in Canada than  
16 they do in the U.S. that access the public markets.

17 So I think to answer your question about could  
18 the regulatory mindset and the regulated mindset shift  
19 to a culture of a principle-based approach if there  
20 was a common platform to act as a catalyst for that  
21 shift, my opinion is that that shift could occur.

22 And just to add one more sort of string to the  
23 bow, the Crawford blueprint points out that it would  
24 create an opportunity to start afresh with a  
25 principle-based approach. It's hard to, as we all  
26 know, Bill and I and Doug, it's hard to move the dial  
27 fast on an existing system. It's been in place for a



1 long time. There's a lot of rules in it. There are  
2 13 different jurisdictions, all who can interpret the  
3 rules slightly differently. It's hard to make a big  
4 change. Under the Crawford blueprint model there  
5 would be a chance to start, in effect, with a blank  
6 piece of paper and make a significant change for the  
7 country.

8 IAN HANOMANSING: So I think one of the first questions,  
9 perhaps the first question, was about a national  
10 regulator, and it was framed in the question that the  
11 absence of that is basically an obstacle, an absolute  
12 obstacle to moving towards this principle-based  
13 system.

14 PAUL BOURQUE: You know, without commenting on the benefits  
15 of a national regulator or not, I think there are  
16 things that can be done within the context of our  
17 discussion here today in creating a more competitive  
18 environment in Canada and from the regulatory  
19 perspective. One of the things we have in Canada is  
20 delegation of regulatory responsibilities to SROs,  
21 which creates a national rule environment, certainly  
22 for dealers. I would, you know, personally encourage  
23 more of that because I think that would strengthen the  
24 consistency of the rule environment, certainly for  
25 dealers, and we discuss this regularly with the  
26 provincial securities commissions.

27 Two other things. I think in Canada we, you

1 know, and I may be perhaps patting ourselves on the  
2 back, but I think we have a clear understanding of  
3 what the goals of regulation are and, harkening to  
4 what Stephen said, the goals of regulation are  
5 limited, frankly. I mean, you need good regulation,  
6 but it is simply one piece of a larger picture. As  
7 regulators, I think we understand we need to provide  
8 clear expectations. We need to provide consistent  
9 regulatory processes, and we need to provide  
10 predictable outcomes and, you know, that's our  
11 mandate. We are not here to, you know, entice  
12 sceptical investors back into the market or do things  
13 like that. So I think we have a clear sense of our  
14 role and I think that creates a little more focus on  
15 what we are trying to do.

16 In terms of the use of SROs in Canada, I mean, I  
17 know in the U.K. the SRO model is not used  
18 particularly. I think it is a way of getting higher  
19 standards beyond the legislative minimums. And two of  
20 the things that we have been trying to do is on the  
21 education front we brought in a mandatory course and  
22 examination for our chief financial officers, and we  
23 are in the midst of developing the same format for our  
24 chief compliance officers so we have some objective  
25 criteria to determine, you know, the competencies of  
26 the key people in the firm. But this is just a factor  
27 or an element we have available to us that, I think,

1           you know, indirectly, in any event, leads to a more  
2           competitive and efficient marketplace.

3   IAN HANOMANSING: And can we take the microphone back to  
4           Purdy and the third question about small businesses,  
5           if you can restate that and we'll get an answer to  
6           that, as well.

7   PURDY CRAWFORD: Well, as David Wilson has said, we have  
8           many, many small businesses in Canada that are  
9           regulated through the Ventures Exchange, et cetera.  
10          They are mostly in the dark in the U.S., i.e. they  
11          aren't regulated, those small businesses. I think the  
12          regulator in our structure, regional offices, et  
13          cetera, have to play a role in helping those people  
14          learn to use the system. It is not just a matter of  
15          we are here, come to us, but playing a game of being  
16          helpful to the small businesses that are in the public  
17          markets.

18   IAN HANOMANSING: Stephen, in a concrete way, how has the  
19          FSA done that?

20   STEPHEN BLAND: Well, what we do in my area is really help  
21          in two ways. One is we have a firm contact centre  
22          that just they can phone up at any time and say "How  
23          does this work for us?" et cetera, and we are not  
24          trying to act as consultants, but we are interpreting  
25          the rules, making it easier for them to do business  
26          with us.

27                 And secondly, in terms of increasing standards,

1 as opposed to just a pure compliance to the  
2 regulation, we carry out a large program of what we  
3 call thematic work. We look at areas that we know  
4 that firms are finding difficult. We review a small  
5 sample of what's going on in the industry, learn some  
6 lessons from that and play it back to the industry,  
7 communication of our findings all the time is really  
8 important. And then we work with the trade  
9 associations to make sure that playing back to the  
10 industry really gets communicated and discussed in  
11 very practical ways for small businesses, which  
12 haven't got much time. They just need, there's three  
13 or four areas I'm finding difficult, tell me some key  
14 points on those three or four areas that I might find  
15 useful in running my business.

16 So I would very much agree with the speaker that  
17 helping small businesses we do see as part of our duty  
18 because they have got less time to think about  
19 regulatory issues.

20 IAN HANOMANSING: All right. Let's go back to the floor,  
21 our next question.

22 IAN RUSSELL: My name is Ian Russell, I am with the  
23 industry, Investment Industry Association, and I would  
24 like to make an observation and then ask a question.

25 In listening to this debate it seems to me that  
26 there is an elephant in the room that nobody has  
27 really focused much on except with Purdy, in Purdy's

1 last question, which is to say I would frame the  
2 question that do we really have any choice but to move  
3 towards a more principle-based regime? Especially  
4 when the alternative we are talking about is not  
5 throwing the rulebook out, but actually moving to some  
6 kind of an integrated system where we see an  
7 incremental move to principle-based regulation. And  
8 the reason that I say that is that it is quite evident  
9 that a principle-based regime will accommodate  
10 innovation, change and lower costs quite dramatically.  
11 The classic evidence of that is an AIM market, which  
12 may be a market in the U.K., but it happens to have a  
13 lot of Canadian small companies built there. There is  
14 no reason why Canada could not have built the  
15 equivalent of an AIM market in Canada if we would have  
16 had a more flexible regime than we have now.

17 Another example that nobody is talking about here  
18 is the SEC, which is probably the most prescriptive  
19 regime in the world, but the fact of the matter they  
20 have what is called a no-action letter and that  
21 enables them to dispense with rules in order to  
22 promote innovation. So here we are in a situation in  
23 Canada which has a very small capital market, a crying  
24 out need to be innovative and front and centre, given  
25 our size we have to be more innovative than anywhere  
26 else, and we have a regulatory regime, in my view,  
27 that does not accommodate change and dynamism that is

1 really necessary for our markets.

2 And I just close by saying I am quite pessimistic  
3 about where we are going here because it seems to me  
4 that in the multi-jurisdictional regime that we have,  
5 it requires consensus and there is no consensus here.  
6 There is no consensus, I don't think, on the concept  
7 of moving to principle-based regulation. Maybe I am  
8 being overly simplistic.

9 And secondly, I think it would be difficult to  
10 achieve consensus on the principles themselves. And I  
11 think the losers in all of this will be our markets  
12 and the investing public and our issuing companies.

13 Thanks.

14 IAN HANOMANSING: So should he be pessimistic? (Laughter).

15 BILL RICE: I think the challenge really is where do you  
16 devote your resources? What do you make a priority?  
17 And there seem to be some large challenges to  
18 embracing to a very significant degree, at least in my  
19 view, a principles-based regime. If it's incremental,  
20 that seems to make sense. If there's a melding with  
21 our current system and a gradual evolution into a more  
22 principle-based regime, that would appear to make  
23 sense. How big a priority do you make this in the  
24 whole scheme of things is a difficult call. So I  
25 don't think that pessimism is an appropriate view if  
26 you are looking over the long term, and if you are  
27 generally looking for a bias among the securities

1 regulators. I think we would all be supportive of a  
2 movement to a principle-based regime. The speed with  
3 which you move and the priority which you give it and  
4 the amount of manpower you devote to it, I think is  
5 more the subject of debate.

6 Another comment I would make, and maybe this is  
7 stepping back a little bit, but given our  
8 circumstances in this country, it would be my  
9 observation that it's a lot easier to agree on common  
10 rules than sometimes it is to agree on common  
11 principles. And there is a sense that, well, if we  
12 are all together, then we can have a common set of  
13 principles and move from there.

14 I have found that the debate in most cases where  
15 it gets most difficult is when we are talking about  
16 some basic approaches, and I think I would put them in  
17 the terms of basic principles. And there are  
18 different views and it is a lot harder to bend and  
19 weave and accommodate and compromise on the  
20 principles. And to suggest that somehow that is all  
21 going to be smoothed over or jammed together or  
22 overridden, I think is a big leap to make.

23 But I wouldn't be pessimistic. It depends on how  
24 much speed you want to see and how much dramatic  
25 change. And I am not hearing from those who have been  
26 through the experience that it really is a dramatic  
27 shift. It is not a particularly instantaneous one,

1 but it is a gradual one and it is one that needs  
2 training and re-education and new approaches on the  
3 part of all the players in the marketplace.

4 IAN HANOMANSING: So you said one of the things is, you  
5 know, to judge the speed of which this is going to  
6 happen or not happen depends on the way people place  
7 it as a priority to make these changes. Where does it  
8 fit in your list of priorities?

9 WILLAM RICE: Well, I think that as we consider policy,  
10 there is, in my observation, more and more of an  
11 inclination to try and step back and apply some of the  
12 principles that are fundamental to the principle-based  
13 approach. So I think that in policy making those  
14 attitudes are developing, those questions are being  
15 asked, the approach that one might take in a  
16 principle-based regime, that approach is beginning to  
17 be applied. So I think it is happening, but we can't  
18 dictate it and I think that the whole of the  
19 marketplace has got to buy into it. It requires faith  
20 in people and their motivations. It requires  
21 responsibility to be taken up on the part of all the  
22 players. But I would see it's happening now, but I  
23 would think it's a longer-term project.

24 IAN HANOMANSING: David, what's your sense of that?

25 DAVID WILSON: I think Ian's point about the challenge of  
26 moving towards principle-based regulation in our  
27 fractured Canadian system is a valid observation. If



1       we have got 13 regulators, 13 sets of laws, 13  
2       enforcement departments, 13 compliance groups doing  
3       compliance reviews, for them to all be coordinated in  
4       their approach to the principles that they are out  
5       there checking on when they do compliance reviews, for  
6       example, it's a tall order. I am not saying it's  
7       impossible to move in that direction but, as Bill  
8       said, if there is a move, it will be slow, arduous and  
9       every move in the Canadian system of 13 regulators  
10      requires consensus and consensus takes time to  
11      achieve. So I wouldn't say I'm pessimistic, but I  
12      think we're not going to make a fast evolutionary move  
13      without something more dramatic, such as the Crawford  
14      blueprint, which Purdy referred to earlier.

15   IAN HANOMANSING: You know, you guys are learning this, if  
16      you don't already know, that everything in Canada is  
17      complicated to a factor of 13, right? (Laughter).  
18      And this is no different. As you hear this, you must  
19      be kind of shaking your head in some level, are you?

20   STEPHEN BLAND: No.

21   IAN HANOMANSING: No.

22   STEPHEN BLAND: Not at all, actually, because you are lucky  
23      you only have 13. We have 25 and going up to 27 from  
24      the 1st of January within the European Union.

25   IAN HANOMANSING: Right.

26   STEPHEN BLAND: And, to be honest, we are at one end of the  
27      spectrum on the principles-based approach and, you

1 know, the validity it has. And it is a big step,  
2 whether you take it over a long time, or you do it in  
3 big-step changes, and I think we have doing a mixture  
4 of the two. We have been trying for ten years to move  
5 towards this approach, but in the last year or two we  
6 decided this is the biggest single thing we can do to  
7 help our firms is to make it actually a top priority  
8 for us to move to principles-based supervision in a  
9 step-change. And that we are doing without the rest  
10 of the EU. We are just saying it's about behaviours  
11 as much as the detailed rules that the European  
12 directors lay down for us and so on, about the way we  
13 go about our business. And we can do that on our own  
14 and we will do that on our own.

15 Of course we can try and evangelize the rest of  
16 Europe, absolutely, of course, and we are right, and  
17 no doubt they will teach us areas where we are not  
18 right, et cetera. But nevertheless, you can go on  
19 your own to some extent because it's about behaviours  
20 as much as detailed rules.

21 IAN HANOMANSING: I wonder how that would play out between  
22 Alberta and Ontario here? (Laughter). That's just,  
23 you know, a hypothetical question.

24 What about your experience in Asia? It must be  
25 somewhat similar to Europe.

26 PENNY THAM: Ah, well, there is no Asia Union.

27 IAN HANOMANSING: Yes.

1 PENNY THAM: And that's actually why it is actually quite  
2 difficult and challenging to be a firm like ABN AMRO  
3 that operates in 16 countries in Asia Pacific because  
4 there is no agreement between the different regulatory  
5 regimes. And I go back to a point I made before. So  
6 as a firm, what do we do, you know, how are we going  
7 to behave, and I think that's very important. It is  
8 about behaviour. And the best thing we can do is to  
9 have some fairly clear principles that we as a firm  
10 try to aspire to. And it doesn't matter that in  
11 Indonesia or in Thailand or wherever, you know, we are  
12 looking at something, that there is no rule that says  
13 we have to make this kind of disclosure to a client.  
14 We'll just say, well, that's fine, but we're going to  
15 do it anyways. Because the principles is that these  
16 are the kinds of disclosure that should be made to a  
17 customer.

18 So I think, yeah, I mean, from a regulatory  
19 viewpoint I think, yeah, being Canadian, I do  
20 understand the factor of 13. It is a challenge and I  
21 think to the people at this table who have that to  
22 deal with it is very difficult.

23 And, you know, the European Union has CESR, which  
24 is the Committee of European Securities Regulators,  
25 that's one forum, and you have a forum as well that  
26 you can work through. It's not something that's  
27 necessarily going to happen overnight. Even though in

1 the last two years you've made it a priority, I mean,  
2 it has been ten years of trying to do this.

3 But I think the question over here about but  
4 isn't this inevitable? You know, why are we arguing  
5 about this? That's where it's going. Should we be  
6 arguing about this? Shouldn't we just recognize this  
7 as a reality and then talk about the best way of  
8 getting there?

9 IAN HANOMANSING: So unlike my question, that one's not  
10 rhetorical. (Laughter). Should we be arguing about  
11 this? Is it inevitable? Should we just be figuring  
12 out how to go ahead, as opposed to if and when?

13 MR. BOURQUE: I think that's the question and not at all  
14 minimizing the challenges that Ian articulated in  
15 getting there. But I think there's two fronts we need  
16 to move on. One is more difficult, and that's the  
17 policy front. You know, with the fragmented nature of  
18 regulation in Canada it is difficult to get consensus  
19 on particular regulatory proposal. But on the other  
20 hand, there is the whole sort of operational and  
21 infrastructure front that I think we can move on and I  
22 think that poses less difficulty. It doesn't present  
23 the same jurisdictional and political issues.

24 So here's two examples. One on the policy front,  
25 which is difficult, and that's conflicts of interest  
26 rules. It has been a very tortuous history to that  
27 rule. The rulemaking began in about 1996 and resulted

1 in a number of industry committees and staff  
2 committees and proposals and they went up and down the  
3 ladder of approval. They sort of got sidetracked by  
4 the research analysts' fiasco, but then came back on  
5 track. And so we have sort of come up with different  
6 proposals, some of them extremely prescriptive, some  
7 of them less so, all of them the subject of great  
8 contention and debate. Now we are back sort of at  
9 square one where we are looking at, you know, a five-  
10 line rule that deals with conflicts of interest. And  
11 what could be more amenable to principles than  
12 conflicts of interest?

13 But we are still, I think, we are not finished  
14 that and there is still a debate as to whether or not  
15 we should have, you know, a simply stated conflicts of  
16 interest rule, whether it should be appended with a  
17 long list of particular examples of conflicts: Thou  
18 shalt not, and thou shalt disclose. So we are still  
19 in the middle of that and it has been a long time.  
20 And that just illustrates the challenges of the  
21 policy.

22 On the infrastructure front I think it's a little  
23 different, and I think there is more potential for  
24 creating the infrastructure for a rules-based  
25 environment than, you know, than perhaps on the policy  
26 front. So here's an example of that.

27 Right now we have a registration program which is

1       very, very micro. We have a system in Canada where we  
2       look at 100 percent of all the information on 100  
3       percent of the applications that come in. That is not  
4       a risk-based approach. But we could take a risk-based  
5       approach, and I think that would support a principles-  
6       based environment.

7               So we are putting together a model that would put  
8       in place a risk approach to registration. We need to  
9       get, you know, the provincial commissions to agree  
10      with it, but I think it's easier to get a consensus  
11      and agreement on a project like that, which is really  
12      intended to change the business is actually processed,  
13      as opposed to trying to reach for the high-level  
14      principle and get agreement there.

15   IAN HANOMANSING: Let's go to our next question from the  
16      audience, which is over here.

17   CRISTIE FORD: Hi. My name is Cristie Ford. I'm from the  
18      University of British Columbia, Faculty of Law,  
19      National Centre for Business Law. One of the concerns  
20      that we often hear about standards-based regulation is  
21      that standards-based regulation effectively turns into  
22      self-regulation of industry, that so much regulatory  
23      authority is devolved to the firms that there is a  
24      risk of a race to the bottom with attendant risks to  
25      investors. For myself I am less concerned about that  
26      and I don't see that as necessarily more than a  
27      theoretical risk. But I would be very interested in

1       hearing any or all of the discussants respond to the  
2       opposite worry, which is that standards-based  
3       regulation can result in regulatory overreaching and  
4       the combination of broad standards-based regulation  
5       with the reputational worries that firms have can  
6       actually cause this kind of overreaching and increase  
7       the burden on firms.

8       IAN HANOMANSING: Penny, maybe we start with you.

9       PENNY THAM: Sorry, your concern is that with just  
10       principles that regulators end up over-regulating us?  
11       I didn't quite get the...

12       PENNY THAM: Okay. I think the way I have kind of  
13       addressed that because, you know, in terms of what we  
14       want from regulators, we, as a firm, like principles-  
15       based regulation because as we have said here before  
16       it allows us to be flexible and innovative. What we  
17       want from the regulators is again, because we want  
18       everything, is guidance. So we have talked about the  
19       discussions, you know, we want some certainty.

20               I am not sure, you know, if people -- I am not  
21       sure that people don't understand principles, because  
22       principles should be fairly basic, you know, there  
23       should not be a conflict of interest, you should treat  
24       your customers fairly. Those are not concepts that  
25       should be difficult to understand. The application of  
26       those principles to any particular set of facts, yes,  
27       I agree, sometimes can be a bit difficult. So I don't

1 think people should be, you know, having their  
2 businesses chilled by the fact that they don't  
3 understand the principles. That I don't agree with.

4 What I think the concern is, is that when the  
5 regulators come in and they look at a particular  
6 situation, and this is something I've said is, you  
7 know, the one power that regulators have that we don't  
8 have, and it's very important, is 20/20 hindsight, you  
9 know. And I have said to my colleagues here at the  
10 table who are regulators, I think what we would say  
11 is, you know, if you are going to exercise that,  
12 please do that very judiciously, you know. Don't come  
13 in and say, "Well, you should have done X, Y and Z."  
14 You should look at whether people have acted  
15 reasonably in the circumstances, you know, based on  
16 what was going on at the time. Did they make an  
17 effort to try to understand what the issues were?  
18 Were they truly trying to apply the principles? If  
19 they were, then, you know, that should be a different  
20 analysis than people who actually didn't really care  
21 and paid lip service perhaps.

22 So I don't think if we are thinking of over-  
23 regulation in that viewpoint, I think that's a fair  
24 comment and a fair concern, and that's what I would  
25 put back to the regulators at the table, you know,  
26 what do you do when somebody screws up?

27 WALTER LUKKEN: I would just jump in. You know, when we



1       went to a principles-based approach we actually --  
2       before I came out to this conference I talked to a lot  
3       of staff who were around in the rules-based approach  
4       and have now helped implement the principles-based  
5       approach. And I asked them your first point, which  
6       was, was there fear of a race to the bottom? And  
7       there was that fear, but it turned out not to be true.  
8       We didn't have a race to the bottom. In fact in some  
9       ways I think the principles have helped sort of raise  
10      standards in certain areas, which has been refreshing.

11           AS far as being overly burdensome or overreaching  
12      in certain areas, I think, you know, in today's  
13      environment, today's competitive environment,  
14      businesses have choices. And you talk about London  
15      getting 23 out of the last 25 IPOs last year, versus  
16      New York, and that's because those businesses had  
17      choices in regards to regulatory environments. So I  
18      think that's what regulators are facing now, is how do  
19      you meet the public's mission, but do it in a way  
20      that's tailored and not overly burdensome for  
21      business?

22           So that's something we're constantly thinking of,  
23      trying to make sure that our regulations meet the  
24      ultimate public risk that may be in play, but also  
25      that we're not overreaching, that we're not causing  
26      business to go elsewhere because, let's face it, in  
27      the electronic flat world that we have, people can go

1 a lot of different places, including London. And  
2 London is not, you know -- talk about a race to the  
3 bottom, they're one of the best regulated, you know,  
4 countries around. The IMF assesses them and it's  
5 given them the highest standard as far as regulatory  
6 regimes, but they are able to implement their regime  
7 in a way that is least burdensome to the business.

8 IAN HANOMANSING: You were worried when he said "a race to  
9 the bottom", right?

10 STEPHEN BLAND: Yes, absolutely, I thought he was going  
11 straight there. (Laughter).

12 No, it is difficult, and we said just earlier  
13 that regulators, you know, aren't as important as  
14 sometimes we like to think we are sitting around  
15 tables and so on. But over-regulation and under-  
16 regulation are both genuine problems. How do we do  
17 the right amount of regulation? And I think, like  
18 many things in life, it's about incentives, giving us  
19 the right incentive not to do too much, not to do too  
20 little. So, for example, in our set-up we have a  
21 conflict of interest. We are designed to protect  
22 consumers and to have efficient markets. There are  
23 two of our biggest things. Those do point in opposite  
24 directions. You can protect consumers by shutting  
25 down all the financial services industry, making sure  
26 they never lose any money. If you do efficient  
27 markets, competitive, profit-making market, that means

1 occasionally firms are going to fail and it's going to  
2 cost consumers money. So you have got a tension  
3 inside your objectives. You may have a tension on a  
4 day-to-day basis. We want to be "nice" to the  
5 industry, using a loaded word, and we want business to  
6 come to London. We want the fee-payers, because we're  
7 funded by the industry, you know, to think that we're  
8 doing a reasonable job, et cetera. But we're also  
9 accountable to Parliament and to various other bodies  
10 when things go wrong, as things will go wrong. So  
11 it's a fine balance. But I think those incentive  
12 tensions are important, not just for regulators, but  
13 for many other public bodies.

14 IAN HANOMANSING: Maybe the tabloid headline when you get  
15 back to London is "Bland says only way to protect  
16 consumers is shut down financial services industry."  
17 (Laughter). You know, the media, the damn media,  
18 right?

19 Next question from the floor.

20 BRUCE McLEOD: Hello. My name is Bruce McLeod and I  
21 represent both the PDA and the Listed Company  
22 Association and that, collectively, is several  
23 thousand small issuers.

24 Some comments first is when we talk about Canada  
25 versus the U.S. and companion governance, I think  
26 that's the wrong way to approach it. Canada is very  
27 unique in that we are dominated in numbers by very

1 small companies, many of them are exploration  
2 companies and work in the resource side, that do not  
3 have the financial resources to comply with this  
4 seemingly never-endingly new national instruments that  
5 for most of the companies are redundant rules.

6 And what I don't understand is how can the cost  
7 to the issuers, and cost is a big concern, be less for  
8 a bunch of broad-based ideas versus thousands and  
9 thousands of prescriptive rules? I see that being a  
10 very big challenge going forward is the cost of over-  
11 regulation is really causing many of these unique  
12 small Canadian companies in a very well-regulated  
13 environment to have to force to disappear. And a lot  
14 of us do not have the choice for other jurisdictions.

15 IAN HANOMANSING: Who would like to respond to that, David  
16 or Bill or who would like to jump in?

17 BILL RICE: Well, I'm not sure whether the answer is a move  
18 in respect of rules versus principles, but rather I'm  
19 inclined to the view that given the nature of the  
20 market in Canada, given the number of small issuers  
21 that perhaps we really have to recognize that there  
22 are two different kinds of environments in this  
23 country. There are very big established organizations  
24 who can have compliance officers and govern their  
25 internal affairs with a good management structure, and  
26 there are others who simply cannot devote the time or  
27 the money to that. They need rules. They need

1 clarity. They need consistency. But I think they  
2 should be a different set of rules. They should be  
3 simpler. They should be more easy to understand, and  
4 I think we should be prepared to accept that with that  
5 different environment comes a different set of risks.  
6 You know, people understand what the risks are in  
7 dealing with a less regulated or less rule-based  
8 environment, then I think that's perfectly fair, and  
9 investors have their choices to make, as long as  
10 they're fully informed.

11 So I'm a little inclined to think that we've got  
12 to do something about the burden that is falling on  
13 small issuers in this country because they are so  
14 important to our financial and economic environment.  
15 And certainly in our jurisdiction the history is they  
16 have a nice habit of growing into medium size and  
17 large organizations. So we really need them. But I'm  
18 not sure that the answer for them lies with principle-  
19 based versus rule-based. I think we ought to  
20 recognize that maybe we should have two different  
21 regimes.

22 IAN HANOMANSING: Go to the floor again.

23 JED HOPS: Hi, my name is Jed Hops and I advise a lot of  
24 smaller issuers as a securities lawyer. And as a  
25 follow-up to Bruce's question and Bill's last point, I  
26 am curious about the experience of people who are  
27 operating in a more principles-based environment as to

1       whether the burden from a check-the-box approach is  
2       being shifted, particularly for smaller issuers, to  
3       hiring outside consultants to assist them with that  
4       process, and the costs associated with hiring those  
5       outside consultants and then the qualifications of  
6       those outside consultants.

7               So if you are a smaller issuer and you have a  
8       check-the-box approach and you can do that yourself,  
9       as opposed to having to hire outside consultants, the  
10      costs associated with that, and then finally are we  
11      going to set up more regulations for who those outside  
12      consultants are and their qualifications?

13   STEPHEN BLAND:   We can start on our small business in the  
14      U.K.   We have got over 100 compliance consultants that  
15      advise our small businesses and they are not  
16      authorized and regulated.   They offer it in a free  
17      market and people can hire them if they wish to.  
18      There is no compulsion to.   Probably about, choose a  
19      number, about 25 percent of our small firms choose to  
20      use a compliance consultant and they do that as a way  
21      of outsourcing some of their thinking time.

22               I do think in a principles-based world compliance  
23      consultants will have a different role because there  
24      will be fewer detailed rules to advise on, et cetera.  
25      But, on the other hand, senior management is expected  
26      to think about these principles.   That is a burden to  
27      some extent, I agree with Bill, it's not an easy, you

1 know, easy free answer. But the compliance  
2 consultants will actually have a genuine value-added  
3 role in helping them to think through what a  
4 principles might mean for the particular firm, having  
5 seen many other small firms while they are at it.

6 So I think it's a different role. I think also,  
7 although, Penny, you're largely in a principles-based  
8 area already in your compliance role, I think for  
9 compliance in-house, as well, it will be more of a  
10 shift towards principles-based, and it's a different  
11 role for compliance. But senior management is still  
12 going to look and say, "Help me think through this  
13 issue." You talked about signing off returns earlier,  
14 you know, people are still going to say, well, how  
15 have we got to the place where we can be happy that  
16 this is relevant for sign-off, and so on. So I do  
17 think there will be a changed role for compliance  
18 consultants, but I still see a very valid and value-  
19 added role.

20 WALTER LUKKEN: I would just say that we have to be  
21 compliance consultants in some ways. You talked,  
22 Bill, about getting people to call, you know, to  
23 either call up and talk to, and on an informal basis,  
24 staff to find out if they are in compliance with small  
25 business regulations. But, you know, as much as the  
26 culture has to change for the regulator, it's also got  
27 to change for the industry, as well. I mean, you

1       talked about responsibility when you were opening up  
2       your talk, and I think the responsibility somewhat has  
3       to fall on the trade associations and others that are  
4       helping to advise some of these smaller issuers. And  
5       certainly we need to do our part through Internet and  
6       websites and talking to people on an informal basis,  
7       but I also think there's some responsibility has to be  
8       borne by the industry itself to self-educate itself  
9       and to work with the regulator to figure out how to do  
10      this in a simplified way.

11     IAN HANOMANSING: All right. To our next question, over  
12      here, I guess.

13     SANDY JAKAB: Hi, I'm Sandy Jakab with the B.C. Securities  
14      Commission. I work in the policy area here. And I  
15      have heard a number of questions today that touch on  
16      something that I want to ask Stephen and Walter and  
17      Penny particularly about now, and that is the role of  
18      guidance in a system that is principle-based. For the  
19      regulators, how do you give it? How do you decide  
20      when to give it? And for the regulated, how does that  
21      assist or what would you like to see in a guidance  
22      system?

23     PENNY THAM: Maybe I'll let Walter and Stephen go first and  
24      tell how they give guidance, and I'll respond.

25     IAN HANOMANSING: Walter...?

26     WALTER LUKKEN: Well, when we passed our statute that  
27      provided principles, in some ways it sort of overruled



1 all the rules that were in place. And so what we had  
2 had to do was go through a six-month review of our  
3 rulebook and bring over those rules that were relevant  
4 that fit within the principles, and those became  
5 acceptable practices. Our statute also allows us to  
6 have either the industry, ourselves or self-regulatory  
7 organizations come up with best practices or  
8 acceptable practices.

9 So again we're talking about responsibility. We  
10 have responsibility to come up with acceptable  
11 practices, but businesses can come up with them and,  
12 you know, present them to us that we can then adopt as  
13 an acceptable practice.

14 Something that David had mentioned earlier is  
15 compliance audits, you know, and how important that is  
16 in a principles-based regime. That often is a way  
17 that we discover best practices as an organization.  
18 So if we find that somebody has a gold standard of  
19 something through an audit, we are able to sort of  
20 promote that and maybe even codify that or put that in  
21 our acceptable practices as some other way that other  
22 firms will know that's the gold standards, that's what  
23 we need to be aiming for when we try to do these  
24 acceptable practices.

25 IAN HANOMANSING: Stephen...?

26 STEPHEN BLAND: In terms of guidance, that's to do with our  
27 minimum standard, if you like, how does this

1 particular situation meet the rules? And a firm,  
2 particularly if it's a small firm, we will try and  
3 confirm, yes, it does, you know, it's okay, et cetera,  
4 and we will take the risk that if it then turns out  
5 not to be okay, we have confirmed it.

6 For larger firms we tend not to give individual  
7 guidance. We say it's jolly well up to the firm to  
8 think about it. On the other hand, we are not  
9 unreasonable. We don't sort of know the answer and  
10 they can sort of keep guessing until they get to it,  
11 as it were. (Laughter). You have to have an element  
12 of sort of grown-up conversations. (Laughter).

13 What I think is more interesting is in the  
14 principles-based world is guidance by the industry.  
15 We talked about compliance consultants as individual  
16 firms getting advice, but trade associations and  
17 professional bodies have an increased role, we see it,  
18 in the principles-based world in that they can step in  
19 and liaison with our members. They know what, not on  
20 a one size fits for all industry sort of rules going  
21 across the whole industry, but for a particular sector  
22 of an industry, for a particular type of activity,  
23 what actually works and they know best. And that  
24 deals with some of the consistency points, as well,  
25 that were raised in earlier questions.

26 We are just about to move to a system where we  
27 will confirm industry guidance as being consistent

1 with the principles. So it isn't the only way to meet  
2 the principles but it is a way and we are recognizing  
3 it. We have got a bit of legal sort of angels on the  
4 head of a pin about this. We don't actually call it a  
5 safe harbour if you meet this industry guidance, but  
6 we have internally recognized it's a sturdy  
7 breakwater. (Laughter). You can imagine the  
8 discussions that have led to this sort of terminology.

9 So basically that does give an option,  
10 particularly to the small firms. And they follow  
11 industry guidance that has been confirmed by the FSA  
12 as being one way of meeting the principle. And that  
13 is a sort of a get-out-of-jail-free card for those who  
14 choose to go down that route, rather than do some  
15 independent thinking of their own. And as you said  
16 earlier, Walter, either route is perfectly possible.

17 PENNY THAM: And as the party who receives the guidance, I  
18 think that's very important what Stephen has just  
19 said. It's about choice, you know, we have a choice.  
20 And it goes back then to the principles about, okay,  
21 well, that's the guidance, that's what either the  
22 regulator or perhaps an industry body has said is best  
23 practice. But you have to apply it back to your  
24 business. You know, is it the best thing for us in  
25 our particular circumstance? You know, are we a  
26 smaller firm? Are we, you know, it's a bigger firm  
27 and we have other kinds of controls that are in place.

1 But it gives us at least, I think of it as just  
2 another piece of information that we have as a firm to  
3 decide what is appropriate controls for our firm based  
4 on our particular situation.

5 You know, we will be challenged. I mean, the  
6 other people that have a very important role to play  
7 other than compliance in a firm is the audit  
8 department. And the audit guys will come along and  
9 say, "Well, you know, the regulators just issued this  
10 guidance that says, you know, here's some, you know,  
11 best practice that should be followed. Why are we not  
12 following that?" And you have to be able to say,  
13 "Well, yeah, we thought about it and here's why." I  
14 mean, if you are not able to say that, well, they are  
15 going to, that's -- they kind of rub their hands and  
16 go, "Yes, high-risk audit finding." (Laughter). And  
17 you really do not want to get high-risk audit  
18 findings, in our firm anyways, because, you know, it  
19 gets trapped and then it goes, you know, it's part of  
20 your smart objectives that you do performance time.

21 So that's how we would handle guidance. And the  
22 key is it's guidance, and so you do have a choice.  
23 But it should be an informed decision that you  
24 ultimately make as to whether you comply with it or  
25 not.

26 PAUL BOURQUE: We are in the process of rewriting our  
27 rulebook, God help us, and we have come up with a

1 structure to replace the current Byzantine labyrinth  
2 of regulations and policies and other things with a  
3 structure that will have a policy, a rule, hopefully  
4 state it simply on a principle basis in plain  
5 language. We will then have a policy that will  
6 elaborate on the rule. Both of those things will be  
7 mandatory, and we will then have a third piece which  
8 we'll call guidance, and which will not be mandatory,  
9 which will be optional.

10 Now, what the challenge is that you don't simply  
11 want to replace the previous prescriptive rulebook  
12 with some brief principles that are then supplemented  
13 and annotated by 20 pages of guidance and, you know,  
14 sort of defeat the purpose and, at the same moment,  
15 take away the responsibility from the firm to manage  
16 their own business.

17 PENNY THAM: And that's a good example, because, you know,  
18 in London you have that as well in the FSA, I mean,  
19 immediate after N2, when the new *Financial Services*  
20 *and Markets Act* came in place, I mean, we had that.  
21 We have, you know, we had the principles. Then we had  
22 a couple of rules. But then in some cases fairly  
23 detailed guidance, and that was one of the things that  
24 we complained to the FSA about was, well, you know,  
25 these have now become rules again and you've, you  
26 know, it's become very difficult. We were trying to  
27 get away from this but you have, you know, just kind

1 of gone full circle. That was, you know, two-and-a-  
2 half years ago, so I am sure things have moved on  
3 since I left London, but...

4 STEPHEN BLAND: Well, moving on, but I do think we want to  
5 get the guidance issued more by the trade associations  
6 and the professional bodies than by the regulator.  
7 And we will give individual guidance, particularly to  
8 smaller firms to help them out, but we do want to be  
9 standing back and letting the market come up with how  
10 it's going to work.

11 IAN HANOMANSING: But what happened in this particular  
12 case? You know, you were saying that you identified  
13 that basically you had what were *de facto* rules, many,  
14 many rules, what ended up happening to those?

15 STEPHEN BLAND: Well, we're getting rid of those as fast as  
16 we can.

17 PENNY THAM: Through the Financial Promotion Rules,  
18 actually (indiscernible - overlapping speakers).

19 STEPHEN BLAND: Yes, through the consultation paper coming  
20 out next month to scrap 90 percent of those rules.  
21 I'm glad you chose that example. (Laughter).

22 IAN HANOMANSING: I wondered what that kicking was under  
23 the table. (Laughter).

24 PENNY THAM: Signalling going on.

25 STEPHEN BLAND: Yeah, exactly. No, it is a process, as  
26 Bill said, I mean, you can't sort of unbuild Rome in a  
27 day.

1 PENNY THAM: Yes.

2 STEPHEN BLAND: Just as you can't build it in a day. But,  
3 you know, our heart's in there. We are treating it as a  
4 priority because we do actually think it's going to  
5 seriously benefit firms.

6 IAN HANOMANSING: Okay. And to our next question now.  
7 We're over here.

8 IAN RUSSELL: Just a supplemental to my earlier question.  
9 I think the way we came out on talking about  
10 principle-based regulation in the context of the  
11 earlier remarks I made was it depends on the priority  
12 that one should attach to it. And my only observation  
13 on that would be to say that I think a prescriptive  
14 regime has two problems to it. One is this heavy  
15 regulatory burden, and it's legitimate to ask how much  
16 that burden would be alleviated to moving to  
17 principles because, as you say, and I think the  
18 gentleman over here was talking about alternatives  
19 that may simply add cost, the same cost to the client.  
20 But on the other hand, there are some approaches such  
21 as relying more heavily on trade associations that  
22 could alleviate costs.

23 So in terms of the burden, I think that moving  
24 towards a principle-based regime at least gives you  
25 some scope to reduce the burden. But what I am most  
26 concerned about, I think, is this law of unintended  
27 consequences that we have. And being very involved in

1 the markets for a long time, I have run into many,  
2 many examples of this, and I just wanted to highlight  
3 one or two just to indicate to you the priority it is.

4 The first one is the Maple Bond market in Canada,  
5 which is the equivalent of the Yankee market, and  
6 that's foreign issuers issuing into Canada in Canadian  
7 dollar denominated securities. Over the course of the  
8 last 18 months it has been a very popular vehicle for  
9 large investment-grade credits, European credits to  
10 come into Canada and raise capital. The problem has  
11 been that that market growth has been stunted, even  
12 though there has been the potential for large growth  
13 because of the attractiveness of the Canadian dollar  
14 and the removal of the foreign property rule, that  
15 market has been stunted, quite frankly, because of  
16 regulations, private placement regulations that  
17 collide with the Maple market and the issuers in that  
18 market who are large investment grade credits such  
19 France Telecom. That's a disadvantage to  
20 institutional investors who can't diversify as much as  
21 they would want, and also to retail investors.

22 A second one are rules that now impede the  
23 brokerage industry. These are rules around  
24 incorporation, limited registration that prevent our  
25 industry from restructuring in an efficient way to  
26 serve their client base.

27 And a third one is the one that Peter Brown



1       talked about this morning, which was the client  
2       relationship model. It's still in a nascent stage,  
3       but the risk here is that if we are not careful, we  
4       could be pushing the mass market investor who has  
5       moved into the capital markets in the last couple of  
6       years to move back into the banks. And the loss of  
7       that retail participation in our equity markets and in  
8       our debt markets would be detrimental to Canada.

9               So I would say respectfully that I think we have  
10       to recognize that as our markets are dynamic and  
11       changing, we are going to continually run into these  
12       unintended consequences and in the system we have, it  
13       becomes very difficult and challenging to make the  
14       necessary changes to promote the innovations we need  
15       in our markets. Thanks.

16   IAN HANOMANSING: All right, thank you. We are coming into  
17       our last seven or eight minutes. So what I want to do  
18       here is just warn all of you that now I think I'm  
19       going to come to you and ask for kind of a closing  
20       minute or so about either advice to Canada in terms of  
21       how to move towards this, or reaction to the  
22       discussion so far. So we have time for maybe two or  
23       three more questions from the floor and I am not sure  
24       if we have any right now. Over here, yes?

25   HUDSON JANISCH: Hi, it's Hudson Janisch again. I'm  
26       wondering if I could go back, even at this very late  
27       stage in the proceedings, to the fundamental question

1 of really what is involved in principles-based  
2 securities regulation. And I was very struck that in  
3 a speech at University of British Columbia a couple of  
4 years ago our host, Doug Hyndman, said that it  
5 involved a move away from the treadmill of rules. And  
6 I think that's been -- we've been very much -- that's  
7 been very evident in our discussion today. But he  
8 then said, and this is what I find very striking, and  
9 I would be delighted to hear from the panel on it.  
10 He's referring to the new *Securities Act*. He said "We  
11 intend to get market participants to think about what  
12 is right and wrong, not what they can or cannot do  
13 under the rules." Now, that to my mind is a really  
14 big shift, of shifting the responsibility of right and  
15 wrong directly onto the market participants. So I'd  
16 really like to hear from the panel as to whether they  
17 think that's really what market principled-based  
18 securities regulation is really going to be all about.

19 IAN HANOMANSING: Who would like to start?

20 PAUL BOURQUE: I'd like to hear what Penny has to say about  
21 that. She has to make those calls every day.

22 IAN HANOMANSING: Okay.

23 PENNY THAM: I think actually that is the right move. It  
24 should be, and we've already said this around this  
25 table, it's about behaviour. And we should take  
26 responsibility about what is right and wrong. You  
27 know, at the end of the day it is actually good

1 business practice. You know, it is about making money  
2 and we shouldn't kid ourselves, we are here to make  
3 money. But at the end of the day, I honestly believe  
4 that a management who sets the right culture within  
5 their firm, who takes responsibility and who looks at  
6 regulatory and reputational risk as just another risk  
7 that they have to deal with in running a successful  
8 business, actually runs a better business. So I think  
9 that is maybe a fundamental shift, but I think it's  
10 the right way to go.

11 IAN HANOMANSING: Well put and eloquent, and that will  
12 serve as your closing comment. (Laughter).

13 A PANEL MEMBER: A free pass.

14 IAN HANOMANSING: Yes. So I'm going to give you the gift  
15 certificate.

16 PENNY THAM: Thank you.

17 IAN HANOMANSING: Actually I don't have the power to do  
18 that. All these people are mad now. They're saying,  
19 "I filled out that damn survey and I'm not going to  
20 win." So let's go around the table in part answer to  
21 the question and also as your closing comment.  
22 Stephen...?

23 STEPHEN BLAND: Well, in response to the previous one, if  
24 you'd been going around asking that, I would have said  
25 I have got nothing to add to what Penny has said.

26 IAN HANOMANSING: Okay.

27 STEPHEN BLAND: I'm not sure that would have given me a

1 free pass. It is senior management's responsibility.  
2 That is how firms run. And we, for our limited part,  
3 regulators are helping them to do that: still setting  
4 some ground rules, giving them the freedom and the  
5 flexibility to do that in a way that has least cost  
6 for their business in achieving the same outcomes.  
7 That is a direction FSA has been going for many, many  
8 years but we are going through a step-change now, as  
9 we are convinced it's the biggest difference we can  
10 make as regulators to how firms operate in our  
11 environment and that's how consumers and investors are  
12 protected at the end of the day. So it's a big prize,  
13 but I wouldn't underestimate the difficulty, various  
14 things that we have mentioned here: enforcement,  
15 small businesses, and so on. It is difficult, but  
16 it's a prize definitely worth going for.

17 IAN HANOMANSING: All right. And, David, last comments?

18 DAVID WILSON: Well, one last comment. I came to this  
19 conference with a quote from Groucho Marx I want to  
20 slip in here at the end. (Laughter). Groucho said  
21 when asked about principles, he said, "Well, these are  
22 my principles and if you don't like them, well, I have  
23 some others." (Laughter). That's not my real wrap-  
24 up, though. (Laughter).

25 I have learned a lot. As I said at the  
26 beginning, I hope to learn some things today as well  
27 as contribute to the discussion, and I have learned a

1 lot. I think that the tone of what we have heard  
2 today is that there is -- the principles-based  
3 approach to regulation is very compelling. It's a  
4 compelling case, but it has conditions and challenges.  
5 And the conditions which I did mention at the  
6 beginning and they are still, I'm convinced, are the  
7 *sine qua non* of it all, is compliance, enforcement and  
8 disclosure. And they are challenging to bring those  
9 conditions into the principle-based regime, which is  
10 very compelling, as I say, and I think we have heard  
11 how challenging it can be in the Canadian environment  
12 with our fractured regulatory system. It makes it --  
13 it's challenging at the best of times, I'm sure,  
14 Stephen, but in our environment it would be even more  
15 challenging. So that's a challenge. It's not  
16 impossible. But it's a challenge we all should take  
17 on board.

18 IAN HANOMANSING: Paul...?

19 PAUL BOURQUE: The benefits of a principle-based regime are  
20 pretty clear, and among the others that have been  
21 argued here and advanced are that, you know, the whole  
22 top-down prescriptive rule-making process really  
23 diverts our attention from the merits of a particular  
24 policy, we end up arguing about the cost. It also  
25 diverts the attention of the firm away from making  
26 decision about right and wrong as the questioner said,  
27 but about, you know, really focused on supervising

1 different systems.

2 And so the arguments are there. I think most  
3 people are in favour. The question, I guess, for  
4 regulators is how they are going to change their  
5 behaviour to operate in a principles-based  
6 environment. I personally think regulators have to  
7 move to creating a capacity and a focus on  
8 articulating principles, as opposed to prescriptive  
9 rules, identifying performances measures and outcomes  
10 for those principles, so that you can describe in a  
11 little more detail where you want someone to get to,  
12 and then they may have a little better idea of how to  
13 get there within their particular business context.

14 And finally, building the capacity in the  
15 regulator to understand who they are dealing with so  
16 that you can actually operate effectively in a rules-  
17 based environment. Who is in the firm? What are  
18 their internal controls? How good is the risk control  
19 environment? What is the compliance behaviour within  
20 the firm? And so you really need to build a risk-  
21 based regulatory system to underlay and provide the  
22 infrastructure for the rules-based environment.

23 IAN HANOMANSING: Walter...?

24 WALTER LUKKEN: I'd start out by saying it's not a silver  
25 bullet, the principles-based approach. I mean, as  
26 much as we're talking about it today, it's not going  
27 to solve all the problems of the system here. You

1 know, certainly it's a tool. It's a tool that  
2 requires people to utilize. Like a hammer, you can  
3 build a house with it, but you can also smash your  
4 thumb with it. So you've got to remember that it's  
5 all about training of the people, providing good  
6 judgment, empowering the employees of the regulators  
7 to make good decisions, but also involving the  
8 business to make good decisions and be involved in  
9 what's going on. So I think that's very important.

10 And I also think one of the comments, is this  
11 inevitable? I think it is. I mean, and it's not the  
12 principles-based approach is inevitable, but that we  
13 have to be more tailored in how we do our business.  
14 We have to reflect the marketplace and not change the  
15 behaviour of the marketplace in what we do. So a  
16 principles-based approach is one tool that helps us to  
17 do that job.

18 IAN HANOMANSING: And, Bill, let's finish with the voice  
19 from the West.

20 MR. RICE: Well, I think we need some help as regulators.  
21 Maybe the regulators have to take the lead and hold  
22 our noses through the process. But I think that the  
23 participants in the markets have to do a lot more.  
24 I've been astonished at the number of things we as  
25 regulators are asked to do and asked to fix, and I  
26 think that a great many more people have to take  
27 responsibility for doing and fixing and managing.

1           I think the other thing that we have to be  
2 cautious about is reacting to crises, and panic seems  
3 to hit and people look to the regulators, "What did  
4 you do? What didn't you do? And what are you going  
5 to do in future?" And it is very hard as a regulator  
6 to say, "Nothing. Calm down. This kind of thing will  
7 happen, but the principles are still there. We have  
8 faith in the people that operate in our business  
9 environment. Let them work through it. Let the  
10 market deal with it." That's a hard thing to answer  
11 when people are panicked and they're worried and all  
12 of the problems are exaggerated.

13 IAN HANOMANSING: Well, there's been a lot of brainpower  
14 around this table, a lot of humour and candour, and I  
15 know from the people who talked to me during the  
16 break, a lot of people appreciated what they heard.  
17 And I think that, Doug, the BCSC deserves kudos for  
18 the job you guys have done in putting this together.  
19 (Applause).

20 DOUG HYNDMAN: Well, Ian, thank you very much for a superb  
21 job in moderating the session, and I want to thank  
22 each and every one of our panellists for just a  
23 terrific session. I heard the same things you did  
24 during the break. I think everyone in the audience  
25 got a lot out of today's session. I know I personally  
26 got a lot out of it. I said at the beginning that I  
27 expected to learn some things and I did. I wasn't



1 just saying that, and I was glad that I did learn a  
2 lot.

3 I am sure everybody here has a list of things  
4 that they took out of the session today. I kind of  
5 jotted down a few themes that I thought were  
6 particularly relevant. You know, the importance of  
7 flexibility and competitiveness, particularly for  
8 Canada, if we want our markets to be competitive  
9 internationally, we need a regulatory system that  
10 supports that, that supports flexibility, that is  
11 conscious of the costs and, you know, some anxiety  
12 about, you know, would moving to a more principles-  
13 based system really reduce the costs or will that  
14 impose different kinds of costs? Are there potential,  
15 unintended consequences? And I think that reflects  
16 the importance of people in the regulated community  
17 staying involved, providing feedback and comments to  
18 regulators as our system evolves.

19 There was a lot of discussion about the  
20 importance of good enforcement, good solid enforcement  
21 and compliance processes. I actually think those are  
22 important whether you have got rules, principles,  
23 whatever. I think that is an important part of  
24 regulation. It gets talked about more as you move to  
25 a principles-based environment but, frankly, detailed  
26 rules aren't any good if you don't enforce them,  
27 either. And I think that will be an increasing focus

1 as we move forward in regulation.

2 When you talk about enforcement, I think that  
3 brings you back to, you know, who is responsible. And  
4 it's this theme of senior management responsibility we  
5 heard a lot about. You know, if you are the CEO of a  
6 regulated firm or a public company, it's your  
7 responsibility to ensure compliance. That's part of  
8 doing good business.

9 On the flip side, I think regulators have a  
10 responsibility not to trap people, not to overreach,  
11 to provide appropriate guidance so that people can  
12 reasonably interpret the principles and not be  
13 surprised by novel interpretations coming along and  
14 what I've heard described as "gotcha" regulation.  
15 That's not the business we should be in. We should be  
16 in a dialogue and providing notice. But we do need to  
17 enforce the rules and the principles for them to be  
18 effective.

19 And I guess the third theme that I heard was sort  
20 of a general level of anxiety, not surprising in  
21 Canada and particularly in British Columbia, about the  
22 effect on small firms and I think particularly small  
23 issuers. You know, they need guidance. If we are  
24 going to move in this direction, they need to  
25 understand what the principles mean, how to comply  
26 with them. They are going to need assistance. They  
27 are going to need their questions answered. They need

1 appropriate notice about where we're going. They need  
2 a standard of reasonableness applied in the compliance  
3 and enforcement processes. And, frankly, those things  
4 actually apply whether you're large or small, those  
5 same needs apply to anyone who is in the regulated  
6 world.

7 I guess just as a concluding thought, and I  
8 picked this up from a number of the participants. I  
9 think Stephen probably said it most directly. But  
10 something that we have learned here at the BCSC over  
11 the last five years or so is probably that how you  
12 administer a set of rules or a set of regulatory  
13 requirements is even more important than what the  
14 requirements are. You know, we can go and change our  
15 rules. We can abolish detailed rules and adopt high-  
16 level principles, but if we don't change our  
17 regulatory culture and apply a principle-based focus  
18 and outcomes-based focus to how we regulate, then the  
19 changes in the rules won't make any difference. And,  
20 in fact, you can get ahead of the changes in the rules  
21 by changing your regulatory culture and changing how  
22 you regulate. And I think I heard a lot today that  
23 kind of reinforces that thought in my mind.

24 So just one other thought. You know, when I  
25 chair hearing panels occasionally at the Commission, I  
26 always enjoy somebody coming along and citing one of  
27 my former decisions back to me. (Laughter). So I was

1 also pleased to have Hudson Janisch cite one of my  
2 former speeches back to me. And as you read that  
3 passage, I thought, "I still think that," which is  
4 always nice. Sometimes your views change, but that's  
5 absolutely what we are trying to do is get people in  
6 the market to think about what is right and wrong; not  
7 what they can or can't get away with.

8 So let me just conclude. I want to again thank  
9 Ian, and I want to thank all of our panellists. I  
10 think this has been a terrific day.

11 We have been doing some things differently today.  
12 We are going to do lunch a little bit differently. We  
13 have boxed lunches outside that you can pick up and if  
14 you feel compelled go back to your desk and check your  
15 e-mail while you eat it, or you can stay and continue  
16 the dialogue with other participants here. And don't  
17 forget to fill out the survey.

18 IAN HANOMANSING: All right.

19 DOUG HYNDMAN: Thank you very much.

20 IAN HANOMANSING: Thank you. (Applause).

21 --- PROCEEDINGS CONCLUDED

22 I hereby certify the foregoing to be a true  
23 and accurate transcript of the proceedings  
24 herein, transcribed from taped proceedings,  
25 to the best of my skill and ability.  
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Pat Neumann