1998 Suncorp-Metway

Bob Nicol Memorial Lecture

“Not Another Regulator !!!”

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10 November 1998

Customs House
Brisbane

As I reflected upon the distinguished career of the late Bob Nicol, I was struck by the way fate had intruded to limit the possibility of more similarities between his successful career as a Queensland accountant turned company director, and that of my grandfather. It was the dock strike of the 1920's which caused my grandparents to abandon their plans to move from Brisbane to allow him to resume his career as an accountant in South America; but instead of continuing in Brisbane, they set out for Sydney - and the rest, as they say, is history. My grandfather became a company secretary, a post the continuing importance of which, for significant business enterprises, cannot be overstated, rather than combining work in a professional firm with a major directorship; but both roles for accountants are valuable contributions to business. I notice that while at school at Brisbane Boys College, Bob became School Captain, Captain of Rugby and Athletics and Vice Captain of Cricket, and also a Cadet Under Officer. Well, we had one thing in common. It is a great honour to be invited to deliver this lecture tonight in memory of a man who served his profession and community so well over a long period.

The title of tonight's lecture can be, and probably has been, criticised as ambiguous, confusing, likely to mislead or deceive. It is all of those things. I should know - I devised it. Let me explore some of the possibilities with you.

"Not another regulator" could be an attempt to argue that the Australian Securities and Investments Commission is not, literally, another regulator because it is the Australian Securities Commission with a new name, and additional functions. While it is strictly true that as from 1 July 1998, the former ASC was re-christened and relaunched by a justifiably proud Treasurer, in implementation of the Wallis Report, both the continuities and the discontinuities, between the old ASC, and the new ASIC, need to be understood.

One must first delve back into ancient history to ask where did the ASC come from ?

During the 1980's, corporate regulation in Australia was conducted variously by each of the State and Territory Corporate Affairs Commissions and the National Companies and Securities Commission, the predecessor to the ASC. National legislation to establish the ASC was passed by the Parliament in 1989. Following a successful Constitutional challenge to that legislation by the States and the Northern Territory in 1990, the

Commonwealth negotiated with the States and NT to find a way that the Commonwealth could legislate for incorporation and regulation of all companies, as well as securities matters.

At a meeting in Alice Springs in June 1990, Heads of Agreement were concluded between the Commonwealth, State and Northern Territory Ministers. The Commonwealth effectively bought corporate regulation, by undertaking to give the States and NT annual indexed grants of money to compensate for the loss of revenue they would sustain by allowing the ASC to be the sole administrator of all companies and securities legislation in place of the then Corporate Affairs Commissions. The formal Corporations Agreement, encompassing the principles of the Heads of Agreement was signed in September last year.

The ASC inherited the difficult task of sorting out many of the spectacular company failures and rip-offs of the eighties. Spedley, Bond, Rothwells, Westmex, Budget, Qintex, and so on. They were known as the “big 16” investigations. And the ASC was criticised for the amount of time it took to bring investigations to a conclusion. In some cases, it was the amount of time that had elapsed between the event and the commencement of an investigation that was the source of the problem. Key witnesses and defendants “forgot” over time, contracted strange and unusual ailments, left the country or died. In other circumstances, there were (and still are) delays in commencement, and conclusion of, trials that are completely beyond our control. The Commission was recently criticised in a letter to The Australian Financial Review about the amount of time it took to obtain a conviction against Katy Boskovitz, former secretary and finance director of Abe Goldberg’s Linter Group. Ms Boskovitz received the longest jail term (five years) in NSW’s history for any female convicted of corporate crime. On that occasion, the Regional Commissioner of our NSW Office, seeing red, saw no other option but to respond publicly in a letter published in the same newspaper. Ms Boskovitz was in fact responsible for at least four years of the delay.

The ASC became recognised as a successful agency, measured in terms of its enforcement results and its credibility as a regulator in the business community. Its success rate in civil and criminal cases was so high that our chief concern was the risk that we had become too selective.

Over the last financial year, we were successful in 90% of our major litigation matters. We have also achieved some prominent and public outcomes in matters involving insider trading, market manipulation and breaches of the continuous disclosure regime.

One of the most significant concerned a breach of the continuous disclosure rules by Crown Ltd, which operates the Crown entertainment complex and casino in Melbourne. Crown has given ASIC an enforceable undertaking to report quarterly to the market for the next 3 years and to implement a detailed internal compliance program. That was intended to be and will be a significant impost on that company, to enable it to re-build market confidence in its disclosures, and the regulator has noticed recent press comment to the effect that unofficial briefings to selected analysts in the casino sector in particular, have dried up.

Also on disclosure, ASIC took steps to prohibit Davids Limited from using the transaction specific (or short form) prospectus provisions of the Law for a period of 12 months, because we believe that Davids has, on three occasions in the past 12 months, not complied with the continuous disclosure provisions of the Law. Short form prospectuses are permitted where there is a regime of continuous disclosure of material information, by the company issuing the prospectus, to the market. The use of a short form prospectus is a privilege, given by Parliament, reserved only for those companies who keep the market fully informed. Where companies do not satisfy the rules of continuous disclosure, Parliament expects that we will consider taking that privilege away.

On other enforcement matters, insider trading cases have, historically, been difficult to prove, partly because of the high threshold tests in the Corporations Law. We are aware of the perception in the market that the regulator does little if anything about insider trading and because of this, we have concentrated on improving our investigative methods. And we have recorded some successes. For example:

- a public relations consultant pleaded guilty to insider trading several years ago;

- a former Coca Cola Amatil executive who was based overseas traded in the company's shares on ASX ahead of a major profit announcement. Following a referral from ASX and at ASIC's instigation, in December 1997 he paid back the profits of the trades in a civil settlement; and
- a former West Australian stockbroker procured others to purchase shares in a company at a time when he was in possession of undisclosed price sensitive information; he was convicted and fined on ten counts of insider trading.

Two other prominent matters are awaiting hearings by the Courts.

We have also investigated cases of alleged *market manipulation*. Michael Shearer was sentenced to 18 months gaol after trading a large number of shares in a mining company using fictitious names in the hope that the trading would cause the share price to increase and allow him to profit. And after some lengthy delays and a NSW North Coast holiday, Russell Goward pleaded guilty to a charge of issuing a false statement in relation to his company Westmex Limited and was sentenced to 2 years gaol, bringing to a end one of the last of ASIC's "big 16" investigations.

Our reputation for handling corporate information is world class, and we are well regarded too for our contribution to market regulation in areas such as derivatives, electronic markets, managed investments and so forth.

ASIC commenced on 1 July this year - what are the additional responsibilities acquired as the legacy of Wallis?

Essentially ASIC has the jurisdiction of the former ASC, together with all the consumer protection and market integrity aspects of the finance sector, including insurance, superannuation and banking. That does not mean we handle all the myriad of individual consumer complaints; rather we monitor the way in which these complaints are handled by companies and by dispute resolution schemes. We will of course get involved in major and systemic issues, when they arise.

We were given a twin agency, the Australian Prudential Regulation Authority. ASIC sees APRA's role as relating to the ability of financial institutions to honour all of their commitments when they fall due. We expect that APRA will focus mostly on the overall viability of those institutions. ASIC's role, on the other hand, concerns the relationship between the institutions and individual consumers. ASIC looks after consumers as individual customers, ensuring they receive proper disclosure, are dealt with fairly by qualified people, and continue to receive useful information about their investments. APRA looks after the health of the institution so that the community can be confident in its ability to meet its obligations to customers collectively.

The next stage of implementation of the Wallis recommendations is likely to be the inclusion of the State-based financial institutions - building societies, credit unions and friendly societies - sometime next year.

ASIC does intend to make a difference; to make a positive change to consumer attitudes to the finance sector, but making customers love their banks is not our role. Fortunately. Our job is to ensure that they can trust them in their individual dealings.

"Not another regulator" could also be the lament of those in the financial community in particular, who now face the prospect of dealing with more regulators, rather than fewer. Does the creation of ASIC and APRA actually mean an increase in regulators ? In absolute terms, certainly not. Even in Stage 1 of Wallis, there are no more regulators, but the roles are distributed differently.

I hear someone asking, please explain. To do so, I must introduce "Wallis".

In November 1995, the then Deputy Opposition Leader and now Federal Treasurer, Peter Costello announced that there was to be an inquiry into the Australian financial system. At the time, he suggested that there was room for rationalisation of regulation by function, rather than institutions. He referred to the separate and distinct regulatory functions of prudential supervision and consumer protection.

This, as far as I could see, was the first suggestion that there should be introduced to Australia, regulation based on a functional distinction between products, as opposed to institutional supervision. Regulation based on products, such as bank deposits, or insurance policies; rather than according to institutions' predominant characteristics. According to the Treasurer, the need for rationalisation and harmonisation of the overlapping regulatory bodies had to be addressed - the objective not being to create *more* regulatory bodies, but to create a system of consistent and focussed prudential control and regulation.

The Financial System Inquiry was commissioned by the Government in May 1996 with three major terms of reference:

1. to review the results of financial deregulation of the Australian financial system (including the outcome of the reforms implemented after the Campbell Inquiry, and the float of the Australian dollar in 1983);
2. to analyse the forces driving change in the financial system, in particular, technological development; and
3. to recommend regulatory arrangements that would best ensure an efficient, responsive, competitive and flexible financial system to underpin stronger economic performance, consistent with financial stability, prudence, integrity and fairness.

It was apparent from these terms of reference that it was not the Government's intention to avert some perceived impending economic disaster; rather, the need was to produce a more focussed regulatory framework in keeping with the changes that had occurred and were continuing to occur in the financial system. In short, the Inquiry was not the result of a crisis, like the collapse of a bank, or a perception of widespread misconduct in the finance sector. The forces driving change were many and varied, and probably not limited to those referred to in the Inquiry's Final Report, released in April 1997, namely:

- rapid technological innovation;
- an evolving business environment; and
- longer-term changes in customer needs and profiles[1]

[1] Financial System Inquiry Final Report March 1997, page 3.

Do you remember when:

- the stock exchange was a place ?
- the stock exchange was a mutual ?
- banks did not fail ?
- banks did not lend money unless you did not need it ?
- there were a lot of building societies ?
- a hole in the wall was a place to leave secret letters ?
- you used to leave the supermarket with less money, not more ?
- insurance companies were mutuals too, did not borrow your money, or issue you with a cheque book ?
- companies issued share certificates ?
- banks operated within one country ?
- stock brokers were independent Australian professionals ?
- unit trusts were an indirect way of owning shares, not of depositing money ? and
- regulators could content themselves with what happened within their own country ?

and only the aged would recall when:

- the SFE was the Sydney Greasy Wool Futures Exchanges;
- super was petrol; and
- the only law about superannuation was the 30/20 rule, and choice was about whether you chose to take it or not.

Now of course:

- the stock exchange is a computer trading system - there is no “floor” (all that television footage is old film, or the futures exchange; more likely you simply see the moving digital display outside a building);
- the stock exchange is another listed company, like the telephone company and the bank and the airline;
- banks still do not fail, unless they are Barings, but even hedge funds - privately owned speculative vehicles of which few had heard until a year or two ago - aren’t allowed to fail either;

- banks still do not lend money if you need it, but they provide fewer places for you to even ask;
- most building societies are now banks, or a part of banks;
- automatic teller machines are the preferred way for banks to deal with their customers, even to the point where the banks would rather you withdrew cash as well as cereal and coffee from the cashier at the supermarket;
- insurance companies gave you shares in themselves, became listed, and now want you to think of them as doing everything the banks do;
- by the end of this year, no listed Australian company will have share certificates in paper form;
- for several Australian banks, much of their assets and business is now overseas, and one major bank talks of going overseas. The ANZ only "came" to Australia in the last 20 years or so (from the UK);
- few stockbrokers are not affiliated with financial institutions or overseas shareholders any longer;
- cash management trusts are a significant factor in the financial system - the first was created around 20 years ago;
- hardly any significant activity of this regulator has no international aspect - not just defendants fleeing to Spain; but witnesses resident overseas; or trading conducted here on a strategy devised in London and co-ordinated in Hongkong; or a letter of comfort from an African holding company listed in London and given for the benefit of directors of a failing Australian company; or the screens through which Australian brokers can trade on the NZ Futures and Options Exchange.

I mention all of the above not on some nostalgic whim, but to point out how much the financial system in Australia has changed and matured in just the last 20 years. Way back when, financial products were not quite so complex. PIN's[2] were used in sewing, not banking. Naked options[3] were a matter between you and your spouse, and a South American Spread[4] was a ranch in Argentina. Only a very small portion of the population were investors or knew anything much about shares and options. Banking transactions

[2] Personal Identification Number
[3] Taking an option position without any hedging to protect the options.

were relatively simplistic and you did them across the counter with a person and a passbook. And the financial markets were not global. No-one thought twice about whether the US Federal Reserve was about to cut interest rates. Now it's on the 7 o'clock, and even the 6 o'clock, news every other night.

In response to these changes, the Inquiry made a total of 115 recommendations relating to market conduct, disclosure, safety, stability, competition and competitiveness.

The Report proposed a regulatory system based around three regulatory agencies:

- the Reserve Bank as "central bank", but without the role of bank supervision;
- APRA, as a new prudential regulator; and
- ASIC, a new single regulator for conduct and disclosure, responsible for administration of the Corporations Law, ensuring market integrity and consumer protection.

In submissions to the Inquiry, synergies identified between market integrity and consumer protection regulation suggested that these roles should be the responsibility of a single agency. The Inquiry noted that market integrity regulation was conducted on a functional basis by the ASC, but that consumer protection was conducted in varying degrees by any one of three Commonwealth regulators, depending on the type of institution offering the product or service.

The Inquiry considered that maintaining several specialised consumer protection regulators was unlikely to facilitate responsiveness to changes in the financial system. Moreover, it resulted in financial service providers having to deal with several regulators, and created confusion for consumers seeking to understand and compare like products. It also required regulatory agencies whose primary focus, at the time, was prudential regulation, to maintain expertise and powers in the quite different field of consumer protection.

[4] The risky practice of selling a large unhedged futures position (an then hopping a plane to Paraguay when it goes wrong).

Wallis justified the recommendation to give ASIC sole responsibility for consumer protection in the finance sector on the ground that, while there are economy wide objectives for conduct and disclosure regulation, the complexity of financial products, and the specialised nature of financial markets, has led most countries to establish specialised regulatory arrangements for the financial sector.

In Australia, this had been provided through a variety of agencies, with arrangements governed by the institutional form of the service provider. The Inquiry considered such arrangements to be inconsistent with the emerging structure of markets. It considered that they had resulted in inefficiencies, inconsistencies and regulatory gaps and that they are not conducive to effective competition in financial markets.

The Wallis Committee therefore, recommended a single market conduct and disclosure regulator for the financial sector to be established. This new body would seek to establish a consistent and comprehensive disclosure regime for the whole financial system, albeit one with flexibility to apply different rules, in response to different situations, beyond a common core and would also have responsibility for the regulation of advice and sales of retail financial products, including the licensing of financial advisers under a single regime. And that body is ASIC.

But I cannot deny that while the number of regulators has not increased, some institutions are now dealing with more regulators than they were. This was an inevitable consequence of functional regulation being adopted as the principle. Banks and general insurance companies are the best examples. A trading bank would have dealt with the Reserve Bank before 1 July 1998, and should now deal with APRA as supervisor, and ASIC as regulator of its disclosure and other consumer issues. Similarly a general insurer would have dealt with the ISC before as an insurer, and should now deal with APRA on prudential issues and ASIC again on disclosure issues. More regulators in each case. But not more regulation; in fact except for some additional powers given to APRA as banking supervisor, Wallis has not meant new or additional regulations, rather the old rules now being administered by new regulators.

It is an irony that it should be Suncorp-Metway which sponsors this lecture, because it is the exception which proves the rule and makes the point of Wallis, since it is a conglomerate and will not therefore actually suffer any increase!

I cannot, however, leave you with the impression that there will not be any new regulations; there will be - it is called the Corporate Law Economic Reform Program, and paper 6 provides new rules for financial markets and products; but they are not intended to be more onerous, they are supposed to be consistent with the spirit of Wallis.

A third possible way in which the appalling title of tonight's lecture could be taken, is as a reference to the possibility of still more regulators being created in the future. That could be understood either as a reference to the Australian domestic scene - more regulators still to be created ! Or as a suggestion for another level of regulation - a supra national supervisor. Yes, that is on the agenda.

Let me address the domestic possibilities first. When the Treasurer articulated this model for financial regulation while still in Opposition, his focus on consumer protection and prudential supervision as separate and distinct was significantly influenced by the "Twin Peaks" approach, first articulated in London several years ago in a report issued by the Centre for the Study of Financial Innovation[5]. The two peaks postulated in that report were prudential regulation on the one hand and consumer protection on the other.
Ironically, the Report had more influence here than in Britain. The British Government, in establishing the Financial Services Authority, combined the two peaks and nine regulators (namely, the Securities and Investments Board, the self regulatory organisations and the supervision activities of the Bank of England and the Department of Trade and Industry) into the Financial Services Authority. The regulatory objectives of the FSA seem to be consistent with those given to ASIC. In his inaugural address as Chairman of the FSA[6], Howard Davies noted that the FSA would have statutory objectives in four areas, namely:

[5] Michael Taylor Twin Peaks: A Regulatory Structure for the New Century Centre for the Study of Financial Innovation, London 1995
[6] Financial Services Authority Launch Conference, 28 October 1997

- promotion of confidence in the UK financial sector and markets;
- protection of consumers by ensuring that firms are competent and financially sound, while recognising that consumers must bear some responsibility of their own for their financial decisions;
- promotion of public understanding of the benefits and risks of financial products; and
- monitoring, detecting and preventing financial crime.

I must say that those objectives sound remarkably like the statutory objectives of ASIC. To this extent, I am confident that there will continue to be many common objectives and parallels that can be drawn between the regulatory structures of Australia and the UK and the respective regulatory agencies. From a regulatory perspective, ASIC has always had a close working relationship with the FSA's predecessor, the Securities and Investments Board. In fact, the then-ASC's first international MOU was signed with the SIB.

But within the original Twin Peaks report there was a suggestion that there may be a third peak - a regulator to deal with market integrity. That was certainly how this market regulator saw itself, and when Wallis decided to modify the twin peaks by aligning the role of consumer protection with market integrity, we saw considerable synergies between the two.

In the Wallis Report there is a small section right at the end, which seems not to have been read by many people, which explains why the Wallis Report did not recommend mega regulation along the style of what has since emerged as the "London Model". They give four reasons for not going the mega regulation route.

First, the cultures of those styles of regulation are quite different, with the result that it is not really sensible, appropriate or possible to merge those cultures into a single organisation. I will put the second aside for one moment. Thirdly, they also say that a single regulator with all those functions might become excessively powerful. Fourthly, the Wallis Report points out that these agency functions "might be too extensive to be combined in one agency with full efficiency".

All three are convincing enough. What was the second reason ? They say that it may be premature to consider such a move, which sounds inconsistent with the other two. So perhaps the next Wallis, the grandson of Campbell, will put ASIC and APRA together, but that is many years away.

What then of the international arena; is there another regulator in the offing ?

Clearly, one of the principal difficulties for companies of any kind operating in a multi-national jurisdictional environment, but especially financial services firms, is being confronted with a plethora of very different laws, rules and procedures governing the transactions in which they may be involved, and the structures they might adopt. The concept of regulatory harmonisation has therefore, until now, been promoted as the answer.

Harmonisation can best be described as a process by which laws, rules and procedures governing the operation of financial markets are amended by a jurisdiction to conform with those of one or several other jurisdictions.

Clearly, however, differences in legal structure, market development, national policy goals and culture all mean that global harmonisation is a long and difficult objective. In recent years, significant progress has been made towards harmonisation in the financial services sector at both regional levels (in Europe for example, and to a limited extent between individual countries such as between Australia and New Zealand and the US and Canada) and at the international level through bodies such as the Basle Committee, International Organization of Securities Commissions, the International Association of Insurance Supervisors, and the Joint Forum on Financial Conglomerates.

In terms of harmonisation, one of the most significant outcomes to date is the IOSCO project to develop and agree on a set of core principles for securities and futures regulation. This document formalises the objectives and principles of securities regulation and was presented to the annual IOSCO conference in Nairobi in September. It is an important piece of work in that these principles are intended as a benchmark against which progress towards effective regulation can be achieved. Most importantly, however, is that it is intended to support the development and implementation of global standards and should add significantly to the process of harmonisation within the global financial services sector.

As the Chairman of the Joint Forum on Financial Conglomerates, I feel I should say a few words about it. The Joint Forum is significant from a harmonisation perspective because it brings together banking, insurance and securities regulators to address issues of mutual concern connected with the supervision of significant bodies involved in at least two of those disciplines. It is also significant in that the composition of the Joint Forum is a reflection of the wider conglomeration occurring within the global financial services sector.

The Joint Forum was formed in 1996 under the auspices of the Basle Committee, IOSCO and the IAIS. The Joint Forum consists of nine representatives of each of its parent bodies together with a Chairman who is nominated by the parent bodies on a rotational basis. The membership of the Forum is drawn from thirteen countries: Australia, Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States. A representative of the European Union attends in an observer capacity.

The Joint Forum generally meets three times each year. Much of the work of the Forum is conducted between meetings through task forces of interested Forum members and their representatives. The Forum is supported by a secretariat provided by the Basle Committee.

The Joint Forum was established to take forward the work of an earlier informal gathering of banking, insurance and securities regulators known as the Tripartite Group. In particular, the Forum's mandate is:

- to pursue practical means at domestic and international levels to facilitate the exchange of information between supervisors within their own sectors and between supervisors in different sectors;
- to investigate any legal or other barriers which could impede the exchange of information between supervisors within their own sectors and between supervisors in different sectors;

- to examine ways to enhance supervisory coordination, including the benefits and drawbacks to establishing criteria to identify and define the responsibilities of a coordinator; and
- to develop principles toward the more effective supervision of regulated firms within financial conglomerates.

The Forum has made considerable progress in fulfilling its mandate. As an initial step the Forum engaged in a mapping exercise, examining the structures and operations of 14 significant conglomerates. This work has provided the Forum with a better understanding of the operations of these bodies. It provided the foundations for the development of principles and techniques for the supervision of financial conglomerates, and in particular:

- the assessment of capital adequacy;
- fit and proper tests for managers, directors and major shareholders;
- supervisory information sharing; and
- co-ordination arrangements between financial supervisors.

There will be many challenges ahead for the Forum after completing work on the matters I have outlined. In May the G-7 Finance Ministers released the Ten Key Principles on Information Sharing. These principles draw on the work of the Forum and its parent bodies including IOSCO. The Ministers have asked the Forum for help in explaining and disseminating the principles throughout the world. As a first step Forum members are conducting a self assessment exercise on compliance with the principles.

Work has commenced on examining supervisory issues arising from exposures between entities making up a conglomerate and large exposures by conglomerates to other parties. The Joint Forum is also looking at issues associated with situations where conglomerates have exposures concentrated in particular areas which although individually may not be large, may collectively give rise to problems; for example, a concentration of transactions in a booming real estate market or in a particular region or economy.

I believe that the Joint Forum has a significant role to play in addressing some of the most significant issues in international finance regulation. While the mandate of the Joint

Forum focuses on internationally active financial conglomerates, many of the principles and techniques it has developed will be of relevance to the supervision of conglomerates that substantially operate on a domestic basis. Will the Joint Forum evolve into a global regulator ? I very much doubt it, but it does play a useful role in co-ordinating the activities of the three peak world bodies of financial supervisors.

Global financial markets cross borders and jurisdictional zones, directly and via the Internet. A market based on open outcry may now be seen by many as an anachronism. Advances in information technology and the effect of electronic commerce will fundamentally change the basis of competition between securities markets. The past decade has seen increasing interest in automated systems, especially systems provided by member firms rather than by stock exchanges themselves. This increase in competition will require the development of entirely new strategies for the exchanges as well as for the traders that execute business on them.

At the same time, we have seen a proliferation of exchange mergers and "strategic alliances" occurring or mooted to occur, including NASDAQ and the Deutsche Borse, London Stock Exchange and the Deutsche Borse, and NASDAQ and the American Stock Exchange along with the Philadelphia Stock Exchange. In respect of the last, Richard Lindsey, Director of the Division of Market Regulation at the SEC has stated that "..the SEC..does not approve or disapprove of mergers between markets, exchanges or firms. ..We are typically supportive of efforts by the exchanges and markets that promote competition and educate and protect investors.."[7]. I could not have put it better myself. And that merger has just been approved and taken effect.

And of course, there is now the suggestion of an alliance between our own ASX and NASDAQ[8], initially based on sharing technology and online data, but possibly leading to cross-border trading of companies listed on both exchanges.

It was suggested recently that the major European links under discussion could be attributed to several factors:

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[7] SEC News Release 13 March 1998

[8] John Hurst Alliance with the ASX? NASDAQ sticks a toe in the water AFR 31 October 1998

(a) it is now easier, due to technology;

(b) the rising cost of maintaining separate technology;

(c) cost competition; and

(d) the never ending search for liquidity.

Add to that, the Euro, and the result is fewer, larger exchanges, and a decline in regional exchanges.

There are other regional alliances, such as that emerging in Scandinavia where the Copenhagen exchange is adopting Stockholm's trading system, and between the Frankfurt and Vienna exchanges. There is from time to time press speculation of a link emerging here between ASX and the Sydney Futures Exchange, but it remains speculation, unlike the little noticed link between the SFE and the New Zealand Futures and Options Exchange which is owned by the SFE and has screens operating for both markets on both sides of the Tasman Sea, with regulatory blessing. But regulatory blessing must and will be withheld from those alliances which create markets where investor protection, and the ability of customers to be confident in the integrity of a regulated marketplace, cannot be assured. In other words, without a regulator, such linkages should not happen !

Some of you who may have heard me speak in other forums recently will know that I have a particular interest in, and concern about, the problems posed by the advent of Y2K. Let me say something about the issue before concluding on the subject of global regulation of markets.

Last month, I attended a meeting of the Joint Year 2000 Council in Sydney. The Council has an active program to raise awareness among financial regulators worldwide and share information on important Year 2000 tasks. This is being done via the release of policy papers, through a regular bulletin and website. Other meetings will be held in the US, Europe, Africa and the Middle East, discussing topics such as:

- challenges for the private and public sector;
- remediation and testing;
- contingency planning; and
- infrastructure readiness.

Some of the key issues which arose from the Sydney meeting of the Council are as follows:

- financial regulators do not own the problem and regulators cannot take over responsibility for solving the problem, but we do need to watch what is occurring;
- disclosure of readiness on the part of the private and public sectors is critical to allay fears of systemic issues. Such disclosures must be actively promoted;
- infrastructure readiness appears to be a concern in many jurisdictions. This may not necessarily be because nothing is happening, but because progress is not being publicly disclosed. Utilities are not regulated by the financial regulators and so it has proved difficult to get details of progress;
- governments or regulators may need to give some assurances as to Y2K readiness. Regulators may be seen as neutral parties and as such, be called on to give assurances, but only with government backing;
- legal constraints are surrounding Y2K disclosure. If possible, the legal issues must be limited to ensure that disclosures are made;
- contingency planning is a critical next step in Y2K planning. To date, it has been discussed but its priority must be escalated in 1999; and
- management of public expectations must be addressed. While the danger is real, the media can tend to sensationalise - witness the story published in the *Good Weekend* magazine last weekend about a computer technician who is now behaving somewhat irrationally. Fortunately there are, as yet, few such people. Education of the press and the public will become increasingly important in 1999.

But that digression about harmonisation interrupted by a homily on Y2K, was all premised on the basis that harmonisation had been promoted as the solution to the undeniable fact that national regulators cannot regulate a truly global market. Surely someone, sometime, would eventually argue that yet another regulator, a global regulator, was needed.

Enter Gordon Brown, Chancellor of the Exchequer. Let me quote from a signed article published in the Wall Street Journal Europe on Tuesday, October 6 1998:

..I believe we must now go further and develop new global structures for the global age. The events of recent months have pointed out inadequacies in our understanding of the interrelationships between financial markets and between countries, particularly between developed and emerging market economies. Recent events have also brought out inadequacies in the quality of risk assessment and gaps in the international regulatory system.

The Basle Committee has published a comprehensive set of core principles for banking supervision and set up a liaison group and consultation group to monitor their implementation. I welcome the Basle Committee's work on improving transparency and risk assessment. But we now need a new co-ordinating mechanism to ensure proper standards and to provide regular and timely international surveillance of all countries' financial systems and of international capital flows. The new mechanism would not just point out weaknesses, but would also ensure that these weaknesses are addressed and would identify systemic risks to the global financial structure.

That is why we must explore creating a new permanent Standing Committee for Global Financial Regulation, bringing together not only the IMF and the (World) Bank, but also Basle and other regulatory groupings on a regular - perhaps monthly - basis. This global regulator would develop and implement the mechanisms ensuring that countries put in place and co-ordinate the necessary international standards for financial regulation and supervision.

Note he describes his proposed Standing Committee as a global regulator.

While his solution may not yet have widespread acceptance, or be awaiting only a tick from...whoever would tick such a proposal, he is not alone in thinking along these lines. Only a day or two earlier, the G-7 Finance Ministers concluded their communique from their meeting on October 3 with this sentence:

..We have asked Mr Tietmeyer, a member of our group who is also the Chairman of the G-10 Central Bank Governors, to consult with other appropriate bodies and to

consider with them the arrangements for co-operation and co-ordination between the various international financial regulatory and supervisory bodies and the international financial institutions interested in such matters, and to put to us expeditiously recommendations for any new structures and arrangements that may be required.

Co-operation between existing regulators does not create a new regulator; regulators do not breed, they are created by governments.

I return therefore to my topic. Yes, you have another regulator, but it is a familiar one, with a record of success, and now with a wider set of responsibilities. Yes, a few of you, not many, have an extra regulator. No, I cannot foretell the future, but any future domestic restructuring is more likely to reduce the number of regulators, than to increase it. And internationally, while the issue is on the agenda, it is much more likely that existing regulators will be urged to co-operate more closely, than that we acquire a global regulator. Remember how long a national corporate and securities regime took to be adopted, just in this country. ASIC was the product, and is not just any other regulator.