Internationalization of the Commodities Market: Convergence of Regulatory Activity

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INTRODUCTION

An expansion of markets and an increase in investor participation characterizes the financial services industry today. Due to the growth, older markets in the United States and the United Kingdom face challenges from newly emerging markets. The internationalization of

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1. See Joseph A. Grundfest, Internationalization and Regulation of the World's Securities Markets, in REGULATING INTERNATIONAL FINANCIAL MARKETS: ISSUES AND POLICIES 123 (Franklin R. Edwards & Hugh T. Patrick eds., 1992) (noting that foreign involvement in the U.S. markets rose 21% annually from $75.1 billion in 1980 to $416.3 billion in 1989; U.S. involvement in the foreign markets rose 32.8% annually, from $17.9 billion in 1980 to $230.3 billion in 1989; direct investment from foreign participants in the U.S. markets rose 22.3% annually from $65.5 billion in 1980 to $400.8 billion in 1989; and that direct United States investment in foreign markets rose 6.3% annually from $215.4 billion in 1980 to $373.4 billion in 1989); Michael S. Sackheim, International Futures Transactions: The United States as Global Regulator, 24 J. WORLD TRADE 105, 107 (1990) (suggesting that the globalization of the market is illustrated by additional trading linkages among international commodity exchanges; increases in the number of exemption status applications; opening up of options on foreign futures contracts that were banned previously from circulation in U.S. markets; and innovative electronic trading advances that allow for 24-hour trading).

financial transactions, especially within the last decade, has not only intensified the level of competition, but also created a number of previously unencountered barriers such as regulation created by duplicative procedures and cross-border transactions.\(^3\) As a result, the Governments of the United States and the United Kingdom have reexamined the regulatory positions of the institutions of their financial service industries.\(^4\)

Several recent events have raised concerns particularly about the future of the commodities market.\(^5\) These events encouraged the Commod-

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4. See Andrew Large, Financial Services Regulation: Making the Two Tier System Work, Securities and Investments Board (1993) (discussing a review of Securities and Investment Board (SIB) regulatory responsibilities under the Financial Services Act (FSA)); Protection of Commodity Customers; Risk Disclosure by Futures Commission Merchants and Introducing Brokers to Customers; Bankruptcy Disclosure, 58 Fed. Reg. 17,495 (1993) (providing amendments designed to both enhance and simplify the effectiveness of risk disclosure); Revision of Federal Speculative Position Limits, 58 Fed. Reg. 17,973 (1993) (promulgating interim final rules amending federal speculative position limits governed by the Commodity Futures Trading Commission (CFTC or Commission)); Limited Marketing Activities from a United States Location by Certain Firms and Their Employees or Other Representatives Exempted Under Commodity Futures Trading Commission Rule 30.10, 57 Fed. Reg. 49,644 (1992) (allowing firms which have received rule 30.10 relief to participate in limited marketing conduct in foreign futures or option contracts within the United States through employees or other representatives).

5. See Jerry W. Markham & Rita McCloy Stephanz, The Stock Market Crash of 1987—The United States Looks At New Recommendations, 76 Geo. L.J. 1993 (1993) (indicating that the Stock Market Crash of 1987 cost the New York Stock Exchange $1 trillion and caused the Chicago Board Options Exchange to abandon its $600 million project to build a location to house New York's commodity futures exchanges). The Stock Market Crash raised concerns about the future and validity of the CFTC. Id. at 2006. Jerry W. Markham, The Commodity Exchange Monopoly—Reform Is Needed, 48 WASH. & LEE L. REV. 977, 987-89 (1991) [hereinafter Exchange Monopoly] (stating that the United States Attorney in Chicago executed the Chicago Sting Operation by charging 46 traders with the violation of federal laws when undercover agents went into the Chicago Board of Trade (CBT) and the Chicago Mercantile Exchange (CME) to assess the performance of traders); Large, supra note 4, at 114-15 (suggesting that the inefficiencies of the Investment Management Regula-
ity Futures Trading Commission to revise many of its rules to address emerging problems. Similarly, the Securities and Investments Board produced a report, discussed below, with recommendations for a more effective regulatory structure.

In light of these changes and concerns, several articles have been written about the need to standardize international regulatory activity. Few commentators, however, have explored the convergence of regulatory activity as a viable alternative to standardization. This Comment addresses this issue, by examining the outcome of attempts by the United States and United Kingdom to restructure their specific regulatory agencies and to amend the rules governing the supervision of commodity futures and options markets.

Parts I and II of this Comment trace the evolution of the regulation of commodity futures and options contracts in the United States and the United Kingdom, with particular emphasis placed on activity and legislation leading up to the creation of the Commodity Futures Trading Commission, the Securities Investment Board, and respective self-regulatory organizations. Parts III and IV address amended or proposed rule changes and various recommendations concerning market behavior. Specifically, this Comment shall introduce Commodity Futures Trading Commission rules governing risk disclosure requirements, speculative position limits, and exemption status for foreign futures and options transactions. This Comment will also discuss recommendations proposed by Andrew Large, Chairman of the Securities Investment Organization (IMRO), a self-regulatory organization supervised by the SIB, enabled Robert Maxwell to engage in corrupt conduct (i.e., theft from pension funds). IMRO failed to detect Maxwell’s mischief and the SIB failed to check IMRO’s weaknesses. Id. at 10. Moreover, London FOX engaged in malpractice and successfully escaped the guard of the SIB. Id.; Norma Cohen, SIB To Take Tougher Line on Financial Regulation: Large Says Two-Tier System Must Be Made To Work Better, Fin. TIMES, May 26, 1993, at 1 (pointing out that Norman Lamont, former Chancellor of the Exchequer, blames the Maxwell affair on the lax supervisory structure of the Self-Regulatory Organizations (SROs), which enabled the fraudulent contracting of life insurance and pension funds); Rod McNeil, SIB Concedes Its Lack of Enforcement, Announces Retreat From Direct Regulation, 5 THOMSON’S INT’L BANKING REG. 6 (1993) (stating that the Maxwell Affair became one of the most embarrassing and costly disasters in the history of the financial services industry in the United Kingdom); SIB Chairman Outlines Agenda For Financial Services Act Reform, INT’L SEC. REG. REP., June 29, 1993 [hereinafter SIB Chairman Outlines Reform] (calculating that the Maxwell Affair cost the industry over $650 million).

6. See infra notes 156-227 and accompanying text (describing how these statutory changes improve the competitiveness of the U.S. commodities market).
Board, regarding future regulatory changes. Part V discusses current channels available for market participants to contribute to and benefit from international organizations and agreements between regulatory agencies. In particular, this Comment focuses on the International Organization of Securities Committee and Memoranda of Understanding. Part VI evaluates proposals for standardization and the creation of a super-regulatory body governing international commodities transactions. Part VI also challenges, however, standardization with self-regulation and individual market manipulation to bring about a level of convergence. This Comment concludes by proposing that the best solution to remedy problems raised by the internationalization of the financial services industry is to foster the gradual convergence of regulatory policy that will be reached as each agency reacts individually to market trends and demands.

I. REGULATORY DEVELOPMENTS IN THE UNITED KINGDOM COMMODITIES MARKET

A. THE EARLY YEARS

During the Elizabethan period's discovery, expansion and trade in the United Kingdom, Sir Thomas Gresham created the first centralized commodities market in 1565 to maximize commercial activity in a trading intensive environment. By the eighteenth century, these rudimentary

7. See infra notes 98-148 and accompanying text (outlining that the two-tier regulatory structure needs modification to ensure the productivity of its market).
8. See infra notes 230-76 and accompanying text (indicating that the International Organization of Securities Committee (IOSCO) and Memoranda of Understanding (MOUs) provide the only means for international communication and harmonization of regulatory activity).
9. See Exchange Monopoly, supra note 5, at 1007 (stating that although self-government exists where exchanges predominantly govern their activity, a central regulatory body, such as a government organization, has the right to intervene and regulate at its discretion). Moreover, under self-regulation, the central body generally will refrain from interrupting the daily flow of investment activity. Id.
10. Anthony Belchambers, A History and Overview of the UK Markets, in THE BRITISH DERIVATIVES MARKETS HANDBOOK 1991/92 3, 5 (Jenny Fry & Jonathan Grosvenor eds., 1991). Only the Amsterdam Trade Center and the Japanese rice market predated the British commodities market. Id. See BARBARA B. DIAMOND & MARK D. KOLLAR, 24-HOUR TRADING: THE GLOBAL NETWORK OF FUTURES AND OPTIONS MARKETS 5 (1989) (asserting that Japan was the first nation to transact in futures contracts in 1679). In 1730, the city of Osaka set up the first futures market called the Dojima Rice Trading Board. Id. See also RAYMOND M. LEUTHOLD ET AL., THE
procedures evolved into a systematic practice whereby traders and investors assembled at select coffee houses to perform financial transactions.\(^{11}\) As the markets expanded on both domestic and international fronts, merchants sought new methods to stabilize prices from sudden and unexpected fluctuations.\(^{12}\) The creation of the "forward contract"\(^{13}\) resolved this concern by stabilizing prices through the performance of commodities contracts of actual commodities before physical delivery.\(^{14}\)

By the nineteenth century, however, cheap labor and improved transportation and communication\(^{15}\) produced rapid industrialization and expansion of the empire, which led to the demise of the forward contract.\(^{16}\) In its place, technological advances inspired the creation of futures contracts.\(^{17}\) In 1878, the London Corn Trade Association\(^{18}\) per-

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11. Belchambers, supra note 10, at 5. Founded in 1652, St. Michael's Alley was the first coffee house created specifically for commodities transactions. Id. Each coffee house traded a particular commodity such as the grain market of the Virginian and Baltic Coffee houses and metals of the Jerusalem Coffee house. Id. Furthermore, these coffee houses eventually became London's futures and options exchanges. Id.

12. See Belchambers, supra note 10, at 6-7 (attributing market fluctuations to weather patterns, irregular production or changes in producer or consumer nation stability).

13. See Commodity Futures Trading Commission, Annual Report 141 (1992) [hereinafter Annual Report] (explaining that a forward contract is one where a commercial "buyer and seller agree upon delivery of a specified quality and quantity of goods at a specified future date"). A price may be fixed in advance, or resolved at the time of delivery. Id. See also Belchambers, supra note 10, at 6 (asserting that contracts devised by the Liverpool cotton traders in the late eighteenth century provide the earliest example of forward contracts in the United Kingdom).

14. See Belchambers, supra note 10, at 6 (noting that forward contracts secured both price and supply while bypassing storage costs and allowed speculators to speculate on price without having to take immediate delivery).

15. See Belchambers, supra note 10, at 6 (conceding that the development of railways, steamships, a postal system, and the telephone greatly facilitated trade during this period).

16. See Belchambers, supra note 10, at 7 (stating that the restrictive requirements of a forward contract lacked the flexibility preferred in a market based on free trade).

17. See Belchambers, supra note 10, at 7 (noting that the inadequacies of the forward contract led to the development of the futures contract); see also Annual Report, supra note 13, at 141-42 (defining a futures contract as "an agreement to purchase or sell a commodity for delivery in the future: (1) at a price that is determined at initiation of the contract; (2) which obligates each party to the contract to fulfill the contract at the specified price; (3) which is used to assume or shift price risks; and (4) which may be satisfied by delivery or offset").

18. See generally Belchambers, supra note 10, at 7 (stating that the CBT devel-
formed the first official futures contract in the United Kingdom, modeled after the Chicago Board of Trade contract. In 1888, to complement those contracts by guaranteeing payments and to facilitate the "clearing out" of opposite contracts arising from futures contracts, market participants created the London Produce Clearing House. These events set the stage for the modern commodities market.

B. BANK OF ENGLAND AND OTHER REGULATORY BODIES

Prior to the Financial Services Act of 1986 (FSA), there was minimal statutory regulation in the U.K. market. Although laws such as

19. Belchambers, supra note 10, at 7 (suggesting that Liverpool cotton trade merchants actually utilized crude futures contracts to import cotton from the United States prior to the establishment of the London Corn Trade Association).

20. See Belchambers, supra note 10, at 8 (noting that the increase in anonymous trading and transactions performed through intermediaries, demanded the formation of an independent clearing facility to guarantee against system default).

21. See ANNUAL REPORT, supra note 13, at 130 (defining "clearing" as "the procedure through which the clearing house or association becomes buyer to each seller of a futures contract, and seller to each buyer, and assumes responsibility for protecting buyers and sellers from financial loss by assuring performance on each contract").

22. See Belchambers, supra note 10, at 8 (stating that the London Produce Clearing House both guaranteed contracts, and registered and cleared out equal and opposite contracts). Futures contracts must work in conjunction with clearing houses. Id. See also DAVID COURTNEY, FROM FORUM TO FUTURES 137 (1991) (stating that clearing houses register contracts, supervise positions by posting margins, charge a fee to ensure payment, and buy or sell any defaulted contracts on the open market).


24. See Phillip A. Thorpe, Regulation of Futures Markets in the United Kingdom, in REGULATING INTERNATIONAL FINANCIAL MARKETS: ISSUES AND POLICIES 161 (Franklin R. Edwards & Hugh T. Patrick eds., 1992) (indicating that markets primarily relied on self-regulation since no organized body supervised the market system); William Albrecht, Address at FIA/FOW International Conference (June 10, 1993) (stating that "the primary regulatory power was described to me as 'the raised eye-
the Gaming Act of 1845,\textsuperscript{25} Prevention of Fraud (Investments) Act of 1939,\textsuperscript{26} Exchange Control Act of 1947,\textsuperscript{27} and the Banking Act of 1979\textsuperscript{28} existed, their effect was inconsequential.\textsuperscript{29} Traditionally, the Bank of England regulated the United Kingdom's Commodity Futures Market.\textsuperscript{30} Nevertheless, the market itself remained primarily responsible for the effective monitoring of its members.\textsuperscript{31} Ultimately, "club" principles\textsuperscript{32} rather than statutory rules\textsuperscript{33} dominated regulatory behavior.

The Association of Futures Brokers and Dealers, Ltd. (AFBD), founded in London in October 1984, emerged as the first self-regulatory organization to combat increasing abuse in the futures market.\textsuperscript{34} On April
1, 1991, two major self-regulatory organizations (SROs), The Securities Association and the Association of Futures Brokers and Dealers, merged to form the Securities and Futures Authority to minimize costs while ensuring effective regulation of derivative market participants. As SROs evolved, the Bank of England officially assumed a secondary position as an intermediary between market institutions.

II. UNITED STATES REGULATORY HISTORY OF THE COMMODITIES MARKET

A. THE CHICAGO BOARD OF TRADE

In the United States, commodity futures regulation originated with the Chicago Board of Trade (CBT). Businessmen who sought to develop a commercial exchange for grain merchants created the CBT. During the 1800s, market participants expressed the need to implement forward and futures contracts to protect farmers from erratic price fluctuations. As the use of futures contracts flourished, the United States Congress


35. See Filler & Mayer, supra note 23, at 10 (stating that The Stock Exchange and The International Securities Regulatory Organization merged to form the Securities Association to supervise the domestic and international securities investments and financial futures and options transactions).


37. Thorpe, supra note 24, at 164. The Bank of England has renounced much of its powers to the SIB and the self-regulatory organizations (SROs) who now monitor membership status of the firms and govern the activities of those firms. Id.

38. See Legislative Act (State of Illinois) to Incorporate the Board of Trade, Chicago, Feb. 18, 1859, reproduced in THE RULEBOOK OF THE CHICAGO BOARD OF TRADE (1859) (illustrating that the members of the CBT established rules and regulations governing trade in gold and grain).


40. See Markham, supra note 5, at 197 (noting that the forward and futures contract standardized the system of trading and delivery). Grain was abundant in certain periods thereby decreasing the price; at other times, there were shortages that increased the price of grain above production and transportation costs. Id.
sought ways to regulate futures activity.\footnote{Stassen, supra note 39, at 827. As early as 1864, Congress, comparing futures trading to gambling, issued an act that banned gold futures trading and stated that “the ability to sell what isn’t his own was and is the hallmark of futures trading.” Id. Representative Hatch proposed the Anti-Options Bill but lost by a 25 vote margin in the House. Id. See LEUTHOLD ET AL., supra note 10, at 369 (explaining that the Hatch Act of 1893 was not ratified due to effective lobbying by commodity traders promoting the right to speculate).}

When farm prices improved, efforts to attack the futures markets subsided.\footnote{Stassen, supra note 39, at 829. Efforts to regulate futures activity primarily revolve around periods of price volatility. Id. See Holbrook Working, Futures Trading and Hedging, cited in B. Goss & B. Yamey, THE ECONOMICS OF FUTURES TRADING 47 (1976) (maintaining that since market participants blame futures trading for disruptions in price levels and movements, they attempt to regulate futures trading).} However, with prices beginning to decline in 1921 and with the nation facing an agricultural depression, farmers urged congressional action.\footnote{Stassen, supra note 39, at 829. The populace voted for a Republican administration that promised to take action against the CBT, an entity that farmers believed caused their problems. Id.} Senators Tincher and Clapper unsuccessfully attempted to pass the Futures Trading Act of 1921.\footnote{Stassen, supra note 39, at 830 (noting a suggestion by President Taft that Congress should emphasize that unregulated futures trading could burden interstate commerce and therefore violate the Commerce Clause).} Nevertheless, with the advice\footnote{Grain Futures Act, ch. 369, 42 Stat. 998 (1922). See Stassen, supra note 39, at 831 (asserting that the act mandated that exchanges license the trading in futures as “contract markets”). Once designated as “contract markets,” the licensed exchanges would ensure a trading environment free from manipulation. Id. If they failed to comply with statutory provisions, the Secretary of Agriculture would revoke their license. Id. See also Donald L. Tendick & John G. Gaine, Introducing the Regulator: The CFTC, 35 BUS. LAW. 751, 755 (1980) (stating that the Grain Futures Act of 1922 was the Government’s first attempt at regulating securities (commodities) transactions); Jeffrey W. Bartlett, An Introduction to Commodity Futures: A Regulatory Overview, in 9 INT’L BUS. LAW. 199 (1981) (stating that the act entrusted the Department of Agriculture with statutory control over the commodity futures market).} of William Taft, the Chief Justice and former President, Congress redrafted the act. This redraft became the Grain Futures Act of 1922,\footnote{Grain Futures Act, ch. 369, 42 Stat. 998 (1922). See Stassen, supra note 39, at 998 (1922). See Stassen, supra note 39, at 831 (asserting that the act mandated that exchanges license the trading in futures as “contract markets”). Once designated as “contract markets,” the licensed exchanges would ensure a trading environment free from manipulation. Id. If they failed to comply with statutory provisions, the Secretary of Agriculture would revoke their license. Id. See also Donald L. Tendick & John G. Gaine, Introducing the Regulator: The CFTC, 35 BUS. LAW. 751, 755 (1980) (stating that the Grain Futures Act of 1922 was the Government’s first attempt at regulating securities (commodities) transactions); Jeffrey W. Bartlett, An Introduction to Commodity Futures: A Regulatory Overview, in 9 INT’L BUS. LAW. 199 (1981) (stating that the act entrusted the Department of Agriculture with statutory control over the commodity futures market).} a law which served as a model for further federal financial regulation.
B. THE COMMODITY EXCHANGE ACT

By 1936, Congress passed the Commodity Exchange Act (CEA), which expanded the Department of Agriculture's authority over the market. Because the CEA allowed Congress to redefine and update the term "commodity" to regulate new futures products, the adoption of the CEA signaled the expansion of futures trading into goods other than grain. In 1968, Congress enacted additional amendments that imposed stricter duties and filing requirements.

C. THE COMMODITY FUTURES TRADING COMMISSION ACT

The period between 1968 and 1974 witnessed decreases in U.S. agricultural surplus holdings. To stabilize the volatile market, Congress

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47. Commodity Exchange Act, ch. 545, 49 Stat. 1491 (1936). See, e.g., 7 U.S.C. §§ 1-26 (1988). See Tendick & Gaine, supra note 46, at 756 (affirming that the Commodity Exchange Act (CEA) governed federal regulation over speculative position limits, anti-fraud provisions, fictitious trades, and registration of traders). Moreover, the CEA continues to govern trading in commodities today. Id. See also LEUTHOLD ET AL., supra note 10, at 370 (illustrating that the act enabled the Government to monitor trading by imposing reporting requirements that exposed the aggregate short and long positions of hedgers, speculators, spreaders, and any non-reporting traders); Andrea M. Corcoran & Jane C. Kang, The CFTC's Rules Governing Foreign Futures and Options Transactions, 7 COMM. L. LETTER 8 (1987) (explaining that the CEA was a reaction to Benjamin P. Hutchinson's cornering of the wheat pit, Arthur Cuttner's manipulation of grain, and options scandals).

48. Stassen, supra note 39, at 832 (noting that the Department of Agriculture believed that Congress provided it with an ineffective method of exercising power).

49. Stassen, supra note 39, at 832 (explaining that the onion was a commodity that the Government believed deserved federal protection, and thus, in 1955, Congress declared onion trading a federal offense). When onion prices later rapidly decreased, however, onion producers demanded Government action, arguing that the futures trading market triggered low prices. Id.

50. See MARKHAM, supra note 5, at 984 (implying that as trade expanded, new regulations were required to address innovative commodities now entering the market).

51. Pub. L. No. 90-258, 82 Stat. 26 (1968); see LEUTHOLD ET AL., supra note 10, at 370 (stating that the 1968 amendments compelled the exchanges to create more rules, set minimum capital requirements for FCMs, and include new contracts such as livestock and frozen concentrated orange juice for regulation); Tightened Regulation for Commodity Exchanges, 55 A.B.A. J. 858 (Sept. 1969) (discussing stricter regulation of commodities).

52. Stassen, supra note 39, at 833 (maintaining that increasing foreign demand for U.S. grain and protein products and the disappearance of anchovy schools created a turbulent environment in the futures market).
enacted the Commodity Futures Trading Commission Act of 1974 (CFTC Act) and created a federal regulatory agency, the Commodity Futures Trading Commission (CFTC or the Commission), to supervise all futures activity. Because congressmen remained divided over the creation of another regulatory agency, the CFTC faced a four-year "sunset" provision period.

The increase in futures transactions in foreign markets raised concerns from participants about the integrity of the market. As a result, Congress adopted the CFTC Act to combat fraud and manipulation fostered by an underregulated industry. Upon adoption of the act, all commodities transactions, including foreign market contracts, came under the supervision of the federal government. Moreover, because the CFTC

54. See Stassen, supra note 39, at 833 (explaining that the Commission consisted of five federal commissioners who exercised powers previously held by the Department of Agriculture).
55. See MARKHAM, supra note 5, at 984 (indicating that CFTC obtained powers to impose fines, seek relief, and supervise futures activity, and that the act broadened the definition of the term "commodity"); Stassen, supra note 39, at 834 (stating that the act covered all agricultural futures that previously had escaped regulation such as coffee, cocoa and sugar; silver and gold; petroleum products; U.S. Treasury bonds, bills, and notes; and Government National Mortgage Association certificates); LEUTHOLD ET AL., supra note 10, at 371 (confirming that exchanges require CFTC approval before new contracts are implemented and rules are amended).
57. See Stassen, supra note 39, at 834 (noting that when the four-year interim period terminated in 1978, Congress affirmed the CFTC's authority to regulate all transactions in commodities and extended its jurisdiction to cover stock-index futures; Mahlon M. Frandhauser & Ellen S. Levinson, Commodity Exchange Act Amendments, 25 REV. SEC. & COMM. REG. 245 (1992) (stating that every four years the CFTC must obtain reauthorization to continue its activity). The CFTC received its last reauthorization in 1992. Id.
believed options were highly risky and recognized the scandalous tradition of options, it banned most options transactions in 1978. The 1982 amendments to the CEA, however, reinstated certain options transactions in agricultural commodities.

In 1981, a CFTC Interpretive Letter further incorporated foreign futures activity under the supervision of the CFTC by compelling persons who sell foreign futures to register with the CFTC as a “Commodity Trading Advisor.” In 1983, Congress expanded the Commission’s regulatory authority to cover the sale of futures contracts made on a foreign exchange and sold or transacted in the United States, and reversed the 1936 ban on options trading by authorizing the trading of options on farm commodities.

III. THE DEVELOPMENT OF STATUTORY REGULATION IN THE UNITED KINGDOM

A. GOWER REPORT

As the futures market developed, government officials in the United
Kingdom recognized the need for statutory solutions to strengthen investor protection and to reaffirm the reputation of the London markets.\(^{66}\) Thus, the U.K. Government commissioned James Gower\(^{67}\) to study methods of regulating the futures market.\(^{68}\) Gower published his first report in January 1984, recommending a two-tiered organization comprised of, on one level, a government agency to regulate the overall supervision of the market and, on the other level, SROs to govern daily supervision.\(^{69}\)

Before Gower could publish the second half of his report and in response to his recommendations, the Bank of England created the Governor's Advisory Group to begin discussing the regulatory framework for securities, commodities, and financial futures.\(^{70}\) Also in response to the report, in January 1985, the United Kingdom Government issued the White Paper "Financial Services in the United Kingdom: A New Framework for Investor Protection" (White Paper).\(^{71}\) Both actions sought to introduce regulation to provide adequate protection to investors.\(^{72}\)

experienced a surge in activity since 1983 due to the liberalization of the Stock Exchange's rulebook and the internationalization of the financial markets).

66. See id. (stating that the failure of two prominent investment businesses decreased investor confidence).

67. See Thorpe, supra note 24, at 155 (noting that James Gower was the former Vice Chancellor of Southampton University); Filler & Mayer, supra note 23, at 1 (confirming that the U.K. Department of Trade and Industry commissioned James Gower to produce a report on investor protection).

68. The Regulatory System, in FIN. SERVICES L. & PRACT. 3 (Andrew Whittaker ed., 1989) [hereinafter Regulatory System]. The study was to encompass: 1) considerations of existing statutory protection required by private business investors in securities and other property; 2) evaluations of the need for statutory control of securities dealers, investment consultants and investment managers; and 3) advice concerning new legislation. Id.; see COURTNEY, supra note 22, at 139 (recognizing that the United Kingdom Government sought to restore the integrity of the markets).

69. Regulatory System, supra note 68, at 3. See Thorpe, supra note 24, at 156 (emphasizing that Gower believed his proposal best incorporated the following four fundamental ways of protecting investors: regulating the terms of investments; providing for full disclosure; regulating intermediaries; and regulating the modus operandi of the body in which the investor invests). Gower opined that self-regulation under the surveillance of the Government was the optimal solution. Id. at 158.

70. Regulatory System, supra note 68, at 3.

71. Introduction, supra note 65, at 2.

72. See Thorpe, supra note 24, at 159 (stating that the United Kingdom Government concluded that regulation should focus on improving the level of efficiency in the industry, boosting the level of investor confidence, creating an image of a safe
B. FINANCIAL SERVICES ACT OF 1986

Amid this backdrop of legislative reform, the United Kingdom Government enacted the Financial Services Act of 1986 (FSA).73 Although the British Secretary of State sat at the center of the regulatory system created by the FSA, most of the powers were transferred to the Securities and Investments Board (SIB),74 a regulatory body designed to supervise the SROs, recognized investment exchanges, clearinghouses, and recognized professional bodies (RPBs).75 Specifically, the United
Kingdom Government required the SIB to maintain the internal structure of the regulatory system through the process of authorization,\textsuperscript{76} to supervise the statutory regulations, to act as a general investigator and enforcer, and to provide sound and prudent advice.\textsuperscript{77} Additionally, the United Kingdom Government required the SROs,\textsuperscript{78} which formed the other half of the two-tier system, to preserve self-regulation within the industry and to monitor their members for unfair and lenient treatment.\textsuperscript{79}

Despite its modest attempts at providing statutory regulation, the FSA received criticisms that the new rules were too “detailed” and “legalistic.”\textsuperscript{78} Consequently, the Chairman of the SIB, David Walker, presented a program in 1989 called the “New Settlement”\textsuperscript{81} to address emerging problems.\textsuperscript{82} He proposed a three-tiered framework system of regulation.

\textsuperscript{76} See Regulatory System, supra note 68, at 4 (explaining that a firm can obtain authorization by registering directly with the SIB or by membership in one of the recognized SROs). This authorization process lies at the heart of the FSA. Id.

\textsuperscript{77} Id. at 10-11.

\textsuperscript{78} See Brayne, supra note 23, at 53 (listing the following organizations as current SRO's in the United Kingdom: Financial Intermediaries, Managers, and Brokers Regulatory Association (FIMBRA), which consists of members who provide advice and perform transactions in life assurance and “units in authorized unit trusts;” Life Assurance and Unit Trust Regulatory Organization (LAUTRO), which consists of members who transact in insurance units and in regulated collective investment schemes; Investment Management Regulatory Organization (IMRO), which consists of members who manage investment transactions and regulated unit trusts, investment trusts, and pension funds; and, SIB Regulatory Organization (SIBRO), which consists of members directly supervised by the SIB); see also Federal Securities & Corporate Developments, 25 SEC. REG. & L. REP. 758 [hereinafter Federal Securities] (maintaining that the Securities and Futures Association is the most effective SRO).

\textsuperscript{79} See Regulatory System, supra note 68, at 11 (explaining the SRO's responsibilities).

\textsuperscript{80} Thorpe, supra note 24, at 169-74. Critics called for more effective control of risk (systematic, market, broker, client); less structural overlap and underlap; and a reduction of unnecessary costs. See London's Regulatory Mess, THE ECONOMIST, May 29, 1993, at 15 (emphasizing that the FSA was an ineffective approach to regulation); JOHN R.C. WHITE, REGULATION OF SECURITIES AND FUTURES DEALING 1 (1992) (suggesting that the rules were too intrusive and burdensome).

\textsuperscript{81} See WHITE, supra note 80, at 1 (stating that the New Settlement sought to achieve the harmonization of self-regulation within a statute-based framework of regulation); Thorpe, supra note 24, at 167 (noting that the suggestions proposed in the New Settlement resembled the original assertions espoused by Gower).

\textsuperscript{82} See Thorpe, supra note 24, at 166; Dan Atkinson, Old System Bequeathes A Legacy of Squabbling, THE GUARDIAN, May 26, 1993, at 11 (illustrating that during the 1980s, the financial services community experienced frequent fraudulent investment
consisting of a top tier listing ten Principles, a second tier designating Core Rules, and a third tier describing SRO rules.\textsuperscript{83}

\section*{C. COMPANIES ACT OF 1989}

As part of the New Settlement, the Government of the United Kingdom passed the Companies Act of 1989 to encourage the SIB and the SROs to redraft their rules.\textsuperscript{84} While the act called for several changes affecting the financial services sector,\textsuperscript{85} it focused on the redrafting of § 62A of the FSA, which clarified the problematic area concerning a private investor’s right to file a civil right of action.\textsuperscript{86} Also, in the

... activity and noting that, in addition to fraud, FIMBRA experienced financial difficulties; see also Norma Cohen, supra note 5, at 1 (recalling that one cause of the Maxwell scandal was the failure of the SROs to maintain adequate supervisory rules).

83. See Thorpe, supra note 24, at 167 (indicating that the proposed three-tiered system appeared to complicate rather than facilitate the current system and emphasizing that due to duplication and waste the proposed system was not cost-effective). The tier structure subjected a single business activity to at least three different layers of regulation, each with different legal emphasis and significance. Id.; see also Big Test For Large Ambition, FIN. TIMES, May 26, 1993 [hereinafter Large Ambition] (stating that the New Settlement, although interpreted as a more relaxed approach to regulation, actually produced an unnecessary rivalry between the SIB and SROs).

84. See WHITE, supra note 80, at 2; Changes Introduced by the Companies Act 1989, FIN. REG. REP., Dec. 1989 [hereinafter Companies Act 1989] (stating that Parliament ratified the act upon receiving the Royal Assent on Nov. 16, 1989).

85. Companies Act 1989, supra note 84. The ten parts and twenty-four schedules of the Act discuss the amendments to the FSA. Id. Part I discusses the 1985 Companies act sections concerning company accounts. Id. Specifically, this section broadens the definition of parent and subsidiary undertakings in order to compel the disclosure of off-balance sheet financing. Id. Part II governs the rules concerning the supervision of auditors. Id. Part III addresses the powers given to inspectors for investigating overseas regulators and facilitates the acquisition of confidential and restricted information. Id. Part IV addresses guidelines about the registration of company charges. Id. Part V implements changes to current company law. Id. Part VI amends the Fair Trading Act of 1973, and includes criminal penalties for fraudulent activity. Id. Part VII addresses investment exchanges and clearing houses. Id. Part VIII covers amendments to the Financial Services Act. Id. Part IX introduces the issuance of securities without the need of a written instrument. Id. Part X covers general amendments not mentioned specifically in the other nine parts. Id. See WHITE, supra note 80, at 4 (noting that these changes benefited SROs by catering to their operating environment and specific clients). Critics argued that SROs lacked sufficient power to design rules to benefit the types of investment business it authorized and regulated and that the structure prevented an SRO from devising rules to account for its sophisticated members. Id. This change eliminates duplicative procedures from exchange rules and SRO rules. Id.

86. See WHITE, supra note 80, at 2-3. (acknowledging that the amended section
spring of 1990, the SIB carried out the proposal under the New Settlement87 to issue the Statements of Principle,88 'ten fundamental rules applicable to all members of SROs, firms and RPBs.89

In addition to the Principle Rules, the SIB created Core Rules to deal with financial resources,90 conduct of business,91 client money92 and

62A clarified and reduced the prosaic list of FSA rules). Previously, the FSA received criticisms for its broad scope which extended the right of action to "anyone who suffered loss as a result of a contravention by the SIB's or SROs' rules, even if he did not have a direct customer relationship with the firm responsible for the rule breach and even if he was another large investment house rather than an individual." Id. at 1; Regulation Is Too Detailed, BUS. L. BRIEF (Dec. 1989) [hereinafter Regulation Detailed] (noting that critics argued, prior to the Amendments, the different procedures followed by the SIB, SROs, and RPBs regarding the right of action for investors created 'regulatory arbitrage'); WHITE, supra note 80, at 118 (indicating that the change compelled SROs like the Securities and Futures Authority to redefine 'private customer' as one who does not perform investment business or does not qualify as an expert investor).

87. See Regulation Detailed, supra note 86 (stating that the confusion raised by market participants regarding consumer protection and market regulation compelled the SIB to devise a system of specific rules).

88. See WHITE, supra note 80, at 5. Many industry professionals refer to the ten Principles as the "Ten Commandments" for investment business because they delineate fundamental guidelines for business firms and investors. Id. The Principles have been termed the foundation to the revised FSA of 1986. Statement of Principles Effective May 1, SIB Says, INT'L SEC. REG. REP., June 4, 1990. All SROs and RPBs are subject to the rules that can be waived only if the SIB determines that compliance would unduly burden a party and if investors face minimal risk. Id.

89. See WHITE, supra note 80, at 5 (observing that the Principles also established moral and ethical standards). In 1991, five SFA firms were reprimanded for violating Principle 3 because they failed to observe high standards of market conduct while transacting in London Futures and Options Exchange's property index futures contracts. Id. Other rules violated by the firms but overshadowed by Principle 3 were the Core rules and third tier SRO/RPB rules. Id.

90. See WHITE, supra note 80, at 6-7. (observing that the first Core Rules were enacted on August 1, 1990, to govern whether a firm possesses adequate financial resources; specifically, the Core Rules deal with financial resources, records and reporting, internal controls and systems, ad hoc reporting, and auditing).

91. WHITE, supra note 80, at 387. There were 40 Core Conduct of Business Rules enacted by the SIB on January 30, 1991, to provide greater uniformity to the financial services industry. Id. The commencement date arrives on a rolling basis, depending on when an SRO completes its third tier rulemaking. Id. at 7. For example, the Investment Management Regulatory Organization was subject to the Core Rules on November 30, 1991, when its rulebook finally came into force and the Securities and Futures Authority fell under these Rules on April 1, 1992, when it completed its new rulebook. Id.

92. See WHITE, supra note 80, at 319. (explaining that there are two sets of
unsolicited calls.93 One fundamental difference between the Principles and the Core Rules was that the Core Rules applied only to investment businesses supervised by SROs and not RPBs.94 The creation of these Principles and Rules highlighted the importance for each SRO to devise its rules at its third tier level with specificity and in accordance with the other two-tiers.95

D. THE LARGE REPORT.

In light of the problems unveiled by the numerous scandals of the 1980s and early 1990s,96 including the infamous Robert Maxwell af-

93. White, supra note 80, at 7. These rules came into effect on January 1, 1992, pursuant to section 56 of the FSA of 1986. Id. There are a total of 20 rules referring to marketing restrictions and dealing restrictions. Id. Section 56 distinguished marketing restrictions, defined as “relating to unsolicited calls to enter into an agreement”, with dealing restrictions, defined as “the restriction on entering into an investment agreement in the course of, or in consequence of, an unsolicited call.” Id. at 231.

94. See White, supra note 80, at 8 (noting that even when applicable to SROs, the Core Rules are limited to transactions that are under the direct supervision of and regulation by an SRO; in other words, if a firm is subject to two regulatory bodies (i.e., a SRO and the Bank of England), the Core Rules apply only to those activities performed under the jurisdiction of the SRO). RPB members lobbied hard to exclude themselves from the jurisdiction of the Core Rules. Id. They argued that because their investment business was ancillary to their everyday activity and were already subject to effective regulation elsewhere, the Core Rules would create unnecessary duplication. Id. The Institute of Actuaries, however, are subject to the Core Rules on Client Money Regulations, because the institute is licensed to conduct investment transactions. Id. at 319.

95. See Robin Brooks & Martin Coleman, Protection or Confusion?, The Times, Jan. 9, 1990 (Features) (noting that suggested amendments to the FSA, which allowed individual SROs to add their own layers of regulation, created an unnecessary series of rules to add to existing regulations that already confuse investors seeking protection).

96. See McNeil, supra note 5, at 6 (1993) (illustrating that scandals marring the London markets include: the problems experienced by FIMBRA, LAUTRO, and SIBRO; financial services regulators concerning the sale of home income planning; and the London FOX scandal, where FOX’s staff members engaged in fraudulent transactions with firms of the newly-founded property futures market).
The Chancellor of the Exchequer in July 1992 asked Andrew Large, Chairman of the SIB, to prepare a report examining the regulatory responsibilities of the SIB and the regulatory structure itself. This request confirmed the growing concerns about the inadequate level of investor protection provided under the current system. From the beginning of the implementation of the FSA, critics noted that the speed with which the current regulatory system was implemented, concomitant with the establishment of new organizations and the unfamiliarity of statutory regulation, created a confusing atmosphere that compelled participants to conform to cryptic rules. In his report, Large noted that the primary criticisms expressed by market participants were that: i) the objectives of the Act are unclear; ii) too much fraud goes unpunished due to the negligence of regulators; iii) the system is too complex; iv) the regulation of exchanges and markets is imprecisely

97. See McNeil, supra note 5, at 6 (indicating that the Maxwell Affair illustrated the weaknesses of the U.K. regulatory system).

98. Large, supra note 4, at 1. The Chancellor of the Exchequer asked Large to examine the workings of the SIB under the FSA, particularly the SIB's supervision of the recognized bodies. Id.

99. Large, supra note 4, at 2. Large stated that current regulations did not ensure adequately that the system favored the investor, detected fraudulent activity, reprimanded fraudsters, and minimized costs. Id. While he acknowledged that this industry requires a level of market risk, he insisted upon regulation that guaranteed protection, which supposedly already was addressed by the FSA. Id.

100. Large, supra note 4, at 6: see Diana Wright, SIB at Work, SUNDAY TIMES, May 30, 1993 (Features) (indicating that producers and consumers of the financial services industry have voiced dissatisfaction with the FSA system for over six years); Robert Peston, Large Urges Clampdown on Investment Fraud: Calls for a Regulatory System That Can Prevent a Recurrence of Events Like the Robert Maxwell Pensions Scandal, FIN. TIMES, May 26, 1993, at 8 (noting that Large expected the confusion arising from the FSA, because the act regulated a large network of participants; including twenty recognized regulatory bodies and 28,000 firms; employed over 300,000 to perform investment activity; and has been modified and rewritten many times since its recent implementation to resolve the problematic provisions).

101. See Large, supra note 4, at 17 (illustrating the confusion that existed as to whether the FSA's primary goal was investor protection or market efficiency). People complained that regulators over-emphasized quick adaptation rules rather than improve the act to work within the actual environment. Id.

102. See Large, supra note 4, at 17. (asserting that recent events indicate increasing levels of fraud and the inadequacy of the regulatory system to attack fraud and punish offenders); SIB Chairman Outlines Reform, supra note 5 (stating that Large sought to eradicate the fraudulent activity performed by misguided participants).

103. See Large, supra note 4, at 18 (indicating that the plethora of rulebooks confused customers on a variety of issues, including whom to contact for redress).
defined;\textsuperscript{104} v) suspicion exists that self-regulation is synonymous with self-interest;\textsuperscript{105} vi) the compensation scheme is structured inappropriately and the funding scheme is unfair;\textsuperscript{106} vii) the retail area is ineffectively regulated;\textsuperscript{107} viii) the regulation of professionals is still not distinguished sufficiently from regulation of the retail market;\textsuperscript{108} and ix) cost-effectiveness is not evident.\textsuperscript{109}

To restore investor protection while remaining market-sensitive, Large concluded that reworking the two-tiered structure\textsuperscript{110} established by the FSA was a better solution than redesigning the entire system.\textsuperscript{111} While critics recommended a single regulatory agency,\textsuperscript{112} Large rejected this
would combine the roles of the SIB, SROs and the RIEs and RPBs into one unitary regulator and therefore may result in more effective regulation through consolidation of differing roles of the various institutions); Peter Montagnon, New Teeth for the Watchdogs, FIN. TIMES, June 22, 1993, at III (stating that James Fishman, a U.S. law professor, suggested that the SIB should evolve into a statutory-based commission similar to the United States Securities and Exchange Commission (SEC)).

113. See Large Report, supra note 111, at 10 (stating that proposals for a unitary regulatory system with a mandated statutory foundation were never considered); Andrew Large Discusses Recent and Planned Regulatory Reforms, INT'L SEC. REG. REP., Nov. 30, 1993 [hereinafter Andrew Large Discussion] (noting that Large responded to the Labour Party’s recommendations for a SEC-type body to regulate the industry by commenting that his policy is bringing and can continue to bring about an SEC-like structure without creating new and excessive legislative changes).

114. See Large, supra note 4, § 1.64, at 34 (suggesting that the system required specific modifications including “a more explicit commitment by SIB to the objective of investor protection; emphasis by SIB on setting the standards for recognised bodies and of firms in pursuing that objective; devising of performance measures to enable the performance of the system to be evaluated; a switch of emphasis by SIB from rules and policy to supervision; a more systematic and active supervisory relationship between SIB and recognised bodies; enforcement leadership by SIB, both to support its supervisory role and to ensure that the required standards of investor protection are delivered; greater attention to cost-effectiveness; a clear retreat by SIB from direct regulation; much greater transparency about the system—its objectives, its ways of working, its standards, its performance; changes in SIB’s organisation, and assurance of the appropriate resources, both at SIB and system-wide”).

115. See ANDREA M. CORCORAN, REGULATION AND DEREGULATION OF THE U.S. FINANCIAL MARKETS: A FIN DE SIECLE PERSPECTIVE 27 (1992) (arguing that self-regulation alone is not enough for effective regulation); McNeil, supra note 5, at 6 (stating that the SIB will discontinue its direct regulation of nearly eighty firms who are subsidiaries of large building societies and banking groups that perform retail investment transactions); Peston, supra note 100, at 3 (indicating that Large feels that direct regulation by the SIB was necessary during the initial stages of the FSA but is no longer necessary in today’s financial environment). SROs should directly regulate the industry and the SIB should intervene only when SROs are unable to perform their functions effectively. Id.

116. Large, supra note 4, § 2.2, at 36. The statement shall include the standards of behavior of SIBs, recognized bodies, and regulated firms. Id. Specifically, SIB shall
tionally, the public distribution of SIB’s and the recognized bodies’ statements of objectives can raise more effectively the level of market participant awareness of the regulatory system.\textsuperscript{117} Upon clarifying the objectives of the FSA system, the SIB can proceed to set its standards for regulation.\textsuperscript{118} In addition, the SIB should state with particularity the standards of investor protection.\textsuperscript{119} Large suggests that to ensure both standards work properly, the industry should introduce performance measures\textsuperscript{120} which detail and identify its progress and achievements.\textsuperscript{121}

To assist the recognized bodies in satisfying their requirements, the SIB should create new and more effective methods of notification.\textsuperscript{122} To guarantee the accuracy of submitted information, the SIB must devel-
op an on-site checking process to verify the information supplied by recognized bodies and visit them periodically. The SIB and recognized bodies should pursue better communication through formal board review meetings and bilateral staff meetings. Based on these visits and reviews, the SIB must publish a report assessing the level of performance of regulated bodies.

Because the FSA specifically limited the enforcement powers of the SIB, the SIB needs to maximize its legislatively created enforcement powers to increase compliance with regulation. The act, however, prevents the SIB from appointing officers for recognized bodies directly and from imposing punitive damages. Nevertheless, even though the division of power preserves equality between the two tiers, the FSA system will require a backup enforcement mechanism, as in the United States, to serve as an incentive for firms' compliance with existing rules and thereby avoid SIB intervention. Large warns that if the present practice continues to be ineffective, he will recommend alternatives to the Chancellor that would transfer direct enforcement powers to the SIB.

123. See Peston, supra note 100, at 8; Large, supra note 4, § 4.9(iii), at 47 (noting that recognized bodies shall submit an annual management plan containing projected targets for periodic review before SIB visits the sites). This process will eliminate duplicative efforts by the SIB and the recognized bodies. Id.

124. Peston, supra note 100, at 8 (contending that regular visits facilitate the process of supervision).

125. Peston, supra note 100, at 8 (explaining that previously, recognized bodies had no direct access for consultation with the SIB Board).

126. Large, supra note 4, § 4.9(ix), at 48.

127. See Large, supra note 4, § 4.15(i), at 50 (explaining that currently, SIB can ask the High Court to compel compliance from recognized bodies and it can ask to revoke the license of recognized bodies; Regulatory Reform, supra note 5, at 9 (indicating that the SIB needs to become more involved in enforcement activities).

128. See Large, supra note 4, § 4.15(i), at 50 (explaining that more defined powers would have allowed the SIB to enforce its rules more effectively).

129. See Large, supra note 4, § 4.19, at 53 (explaining that the SEC in the United States has greater power to enforce regulated firms as well as parties such as corporations that exist outside the securities industry). These powers, an interplay of civil and criminal proceedings, serve as an incentive for participants to practice in good faith. Id.

130. See Large, supra note 4, § 4.15(iv), at 52 (suggesting that the SIB may intervene to instruct SROs how to deal with member firms whenever it feels that a problem has been handled improperly); Cohen, supra note 5, at 1 (indicating that the SIB should intervene in enforcement cases that it deems important and should measure the performance of enforcement activity in reviewing SROs).

131. Large, supra note 4, § 4.20, at 53; see Cohen, supra note 5, at 1 (empha-
Large argues that without proper enforcement mechanisms, the standards and regulations will become obsolete. As a result, he recommends that the SIB take a leadership position in the enforcement area to complement its supervisory role. For example, in certain circumstances, such as when it is necessary to “police the perimeter” and to prosecute offenders, the SIB should exercise its powers independently from recognized bodies and use sections 59 and of the

sizing that the SROs must cooperate with the SIB to ensure the success of new regulatory proposals, but if the proposals fail the SIB should impose alternatives; SIB Chairman Outlines Reform, supra note 5 (indicating that the Large Report is the last effort to establish a successful self-regulatory system). Large has warned that if his recommendations fail to remedy problems, complete statutory regulation will be the next step. Id.

132. See Large, supra note 4, at 55 (explaining that proper enforcement mechanisms gather information, survey transactions, investigate, intervene to restrict or suspend, impose fines and other disciplinary actions, and provide restitution for the injured).

133. Large, supra note 4, § 5.2, at 55. But Cf. McNeil, supra note 5, at 6 (stating that the Securities and Futures Authority believes that increasing enforcement activity by the SIB will become disruptive and intrusive).

134. Large, supra note 4, § 5.5, at 56. SIB needs to take charge in those situations where SROs lack sufficient power, multiple parties are involved, and a regulator has asked directly for SIB’s help. Id. at § 5.7.

135. See Large, supra note 4, § 5.9, at 57 (emphasizing that currently, the SIB can enforce activity other than fraud). In these situations, the SIB exercises its rights under sections 6 and 61 of the Act, which enable it to request injunctions or restitution from both authorized and unauthorized investment business. Id. To deal with fraudulent cases, SIB can use its civil powers to inform the police or SFA, who then can take action. Id.

136. See Large, supra note 4, § 5.10, at 57 (noting that section 59 enables SIB to ban participants from engaging in further investment activity). The SIB has never exercised this power under Section 59 because of disproportionate costs but recent discussions suggest that section 59 should be used more frequently. Id. See also, SIB weighs use of draconian powers, THE TELEGRAPH, Aug. 15, 1993 (indicating that since being mentioned in the Large Report, the SIB has investigated how it effectively can apply section 59 without burdening the industry and how it can overcome the legal complexities); Lisa Vaughan, SIB moves to strengthen its investor protection powers: Watchdog will be able to disqualify ‘unfit’ people from employment as part of campaign to crack down on fraud, THE INDEP., Sept. 17, 1993, at 27 (stating that on September 16, the SIB expanded the use of section 59 by incorporating the regulation of unfit persons under section 59 powers). Currently, 50 employees review section 59 cases as part of the SIB’s enforcement practices. Id. A spokeswoman for the SIB stated that this expansion can serve as a warning to all agents that they are subject to closer scrutiny and that misinformation to regulators falls under the definition of “unfitness.” Id. Disqualification bans firms from employing persons who are
Act more regularly. In addition, the SIB should lead inter-regulator issues by facilitating the level of cooperation among U.K. regulatory bodies. Commentators have suggested creating a central “policeman” to combat fraud, market manipulation, and insider trading. While many issues must be resolved for a central policeman to become effective, the Government should consider the SIB for this position if the proposal gains plausibility.

To implement these changes successfully, SIB actions must be more transparent and publicly accessible. Increased transparency will help to bring about a sense of investor confidence and will better illustrate to the public that both the SIB and SROs are performing according to the designated as “unfit.” *Id.* See also Andrew Large Discussion, supra note 113 (indicating that Large commented that the revised use of section 59 will promote efficiency by detecting malfeasance or misuse by market participants).

137. *See* Large, supra note 4, § 5.11, at 57-58 (explaining that section 60 grants SIB the power to criticize publicly authorized persons). Persons not authorized directly by the SIB can escape this clause. *Id.* Since the power is restricted to only a small portion of the investment community, Large recommends an expansion of this right. *Id.* See also Sara McCommell, *Building Society Rebuked by SIB Over Investments*, THE TIMES, Oct. 7, 1993 (stating that since the Large Report, the SIB successfully has used section 60 of the FSA to criticize publically the North of England Building Society). This is the first time that the SIB has utilized section 60 since Large accepted the position of Chairman of the SIB. *Id.* North of England provoked this action by failing to study the financial background of its customers and by encouraging them to purchase various policies without providing them with adequate information and advice. *Id.*

138. *See* Large, supra note 4, § 5.12, at 58 (explaining that schedule 7, paragraph 5 of the FSA assigns the SIB the responsibility of guiding regulators within the domestic and international forum).

139. Large, supra note 4, § 5.13, at 58-59. There shall be increases in the level of transparency and information-sharing between FSA and non-FSA authorities, and in developing remedies for cross-jurisdictional problems.

140. Large, supra note 4, § 5.18. at 60. *See* Paul Durman, *SIB Expected To Ask For Limit On Its Powers*, THE INDEPENDENT, May 24, 1993, at 20 (revealing that the Chairman of the Stock Exchange, Andrew Hugh Smith, has encouraged the creation of an enforcement body to address problems raised by insider trading and other abuses).

141. Large, supra note 4, at 61. Before a central policeman program is implemented, the question of who has jurisdiction over the affair—the criminal prosecutor, the SIB, a regulated body, or a combination of civil and criminal authorities—must be resolved. *Id.*

142. *See* Large, supra note 4, at 83-84 (indicating that the publication of information will encourage the public to express its opinions and debate the regulatory issues).
Rules. Because both the SIB and the recognized bodies shall publish reports addressing their objectives, management plan, performance indicators, and operational reviews, market participants can understand better the rules and apply them more effectively. Finally, Large encourages the creation of the Personal Investment Authority (PIA) to serve as the SRO supervising all retail financial services.

Large's recommendations illustrate a pending increase in regulatory behavior by the United Kingdom Government. From a minimal...
statutory-based regulatory system supervised by the Bank of England and a temporary deregulatory period under the “Big Bang,” the Large Report seeks to fine-tune the current rules implemented under the FSA, the first significant statutory-based regulatory system in the United Kingdom. By outlining the rules and strengthening of the powers of the SIB and SROs, the United Kingdom can restore waning investor confidence and encourage investors to participate in U.K. markets without fear of confronting the sort of scandalous activity exhibited in the recent Maxwell Affair.

IV. REGULATORY CHANGES IN THE COMMODITY FUTURES TRADING COMMISSION

The increasing internationalization of the commodities market illustrates how existing CFTC rules burden many market participants with excessive requirements and unnecessary costs. As a result, with the recommendations suggested by the Working Groups of the Regulatory

Nelson believes that the proposals will significantly restrict the activity of SROs. Id.; Federal Securities, supra note 78, at 758 (stating that Alistair Darling, Labour’s City spokesman, suggested that self-regulation in its current form should be eliminated). Darling also criticized the Large Report as being tentative and not as far reaching as it could have been. Id. See also Montagnon, supra note 112, at III (indicating that the United Kingdom faces a choice between statutory regulation or self-regulation). Mr. Fishman, a U.S. law professor, suggests that the United Kingdom prefers a self-regulatory system because it follows the tradition of the financial services industry in England and provides the flexibility to adapt to current market trends and practices. Id.

150. See After Big Bang, Watch Out for Guy Fawkes Day, The Economist, Oct. 25, 1986, at 87 (describing that the FSA is comparable to the creation of the U.S. securities laws resulting from the Great Depression). See also supra note 73 (discussing the “Big Bang”).


152. Commodity Futures Trading Commission Annual Report to Congress, Market Reform Act of 1990 42 (1992) [hereinafter Executive Summary]. Working groups comprised of Regulatory Coordination Advisory Committee (RCAC) members, which include industry professionals as well as academics and attorneys, meet to discuss market issues such as speculative position limits, clearance and settlement, managed funds, and international competitiveness. Id. at 41. The Managed Funds Working Group has raised over thirty issues including disclosure regulations. Id. at 42. The Working Group on Speculative Limits has presented proposals recommending the appropriate level of speculative position limits including interim levels. Id. at 43. The Working Group on International Competitiveness focused on ways to strengthen rules governing new contracts and products. Id. The Working Group on Clearance and
ry Coordination Advisory Committee (RCAC),\textsuperscript{153} the Commission has pursued deregulatory programs in the areas of risk disclosure, speculative position limits and exemption status for foreign futures and options transactions. The examination of each rule highlights the changes implemented to broaden and open U.S. markets.\textsuperscript{154} Moreover, an examination of each rule supports arguments made by market participants that antiquated and barrier-like regulations prevent effective international competition.\textsuperscript{155}

A. RISK DISCLOSURE

Several CFTC rules, specifically rules 1.55,\textsuperscript{156} 30.6,\textsuperscript{157} and 33.7,\textsuperscript{158} compel merchants and traders to satisfy risk disclosure require-

\begin{itemize}
\item Settlement studied the effects of banking practices and their effects on the futures market. \textit{Id.}
\item \textsuperscript{153} See \textit{id.} at 41 (explaining that the CFTC created the RCAC to improve and modify the rules and regulations governing commodities futures and options). RCAC's first meeting took place on September 26, 1990, and it has met an additional six times. \textit{Id.} at 42. At the meetings, the RCAC sought: to identify duplicative regulation among agencies; to institute methods for increased information sharing concerning enforcement, market trends, and financial risk among regulators; to improve credit clearing and payment systems among market members; and to obtain access to new markets for market participants. \textit{Id.} at 41-42.
\item \textsuperscript{154} See Jack R.S. Revell, \textit{The Complementary Nature of Competition and Regulation in the Financial Sector}, in \textit{COMPETITION AND REGULATION IN FINANCIAL MARKETS} 16, 17 (Albert Verheirstraeten ed., 1981) (suggesting that the financial system in the United States has been governed by an excessive overload of structural regulation).
\item \textsuperscript{155} Albrecht, \textit{supra} note 24, at 7.
\item \textsuperscript{156} Distribution of "Risk Disclosure Statement" by Futures Commission Merchants and Introducing Brokers, 17 C.F.R. § 1.55 (1993). Rule 1.55 compels futures commission merchants (FCMs) or introducing brokers (IBs) to issue risk disclosure statements and to receive a signed acknowledgment statement from the customer before opening an account for a domestic futures customer. \textit{Id.} See \textit{generally} Protection of Commodity Customers; Risk Disclosure by Futures Commission Merchants and Introducing Brokers to Customers; Bankruptcy Disclosure, 57 Fed. Reg. 46,101 (1992) [hereinafter \textit{57 Fed. Reg. 46101}] (stating that rule 1.55 serves to warn customers of the risks involved in commodities futures trading).
\item \textsuperscript{157} Disclosure, 17 C.F.R. § 30.6 (1993). Rule 30.6 states that a FCM or an IB may not open customer accounts for foreign futures and options until the FCM or IB issues a risk disclosure statement and receives a signed acknowledgment statement from the customer. \textit{Id.} See also \textit{57 Fed. Reg. 46101}, \textit{supra} note 156, at 46,102 (noting that rule 30.6 serves to warn customers about trading in foreign futures and options).
\item \textsuperscript{158} Disclosure, 17 C.F.R. § 33.7 (1993). Rule 33.7 states that no FCM or IB
Disclosure is a type of regulation that enables participants to make informed choices and allows the government to minimize market manipulation.\textsuperscript{159} Faced with increased criticisms and market developments which have normalized cross-border trading and electronic trading systems,\textsuperscript{160} the Commission sought to facilitate the opening of accounts by imposing fewer risk disclosure requirements.\textsuperscript{161}

The amendments to rules 1.55, 30.6, and 33.7, adopted on April 5, 1993, and effective on July 1, 1993 include the following provisions: allow a single rule 1.55 risk disclosure statement for a booklet of accounts, provided that the statement is placed on the cover of the document of the first page of the booklet; consolidate risk disclosure statement requirements for foreign and domestic futures and options accounts; allow single acknowledgment statements by customers and notification to the Commission for bulk transfers; and accept risk disclosure statements approved by foreign jurisdictions.\textsuperscript{162} The Commission believes that the consolidation of rules 1.55 and 30.6 is a more efficient method of risk disclosure without sacrificing the intent of the separate disclosure statements previously required by the two rules.\textsuperscript{163} The consolidation no longer requires the specially linked market disclosures re-

\textsuperscript{159} See Stephen Breyer, Regulation and Its Reform 162 (1982) (stating that disclosure ensures purchasers avoid unwanted products and contracts by providing purchasers with knowledge about them).

\textsuperscript{160} See Protection of Commodity Customers; Risk Disclosure by Futures Commission Merchants and Introducing Brokers to Customers; Bankruptcy Disclosure, 58 Fed. Reg. 17496 (1993) [hereinafter 58 Fed. Reg. 17495] (stating that the Commission chose to review proposals and comments submitted by industry professionals and participants to amend current disclosure requirements).

\textsuperscript{161} Id.

\textsuperscript{162} 58 Fed. Reg. 17495, supra note 160, at 17,496. See Rulemaking and Exchange Oversight, 3 CFTC News Feature (Commodity Futures Trading Commission, Washington, D.C.), April 30, 1993, at 3 [hereinafter CFTC News Feature] (stating that the Commission adopted the amendment to consolidate risk disclosure statements for FCMs and IBs for both domestic and foreign futures and options transactions).

\textsuperscript{163} 58 Fed. Reg. 17495, supra note 160, at 17,497. The consolidated rule 1.55 does not exempt FCMs and IBs from any other disclosure requirements required by law. Id. The Commission included a provision in the consolidated rules, which required the use of a statement encouraging customers to inquire about all possible protection plans before engaging in futures transactions, to accompany the risk disclosure statement. Id. Typical precautionary statements are questions addressing the high risk level of futures contracts and the remedies available for protection, such as insurance and disposition of funds. Id.
quired by some SROs. Also, the CFTC abolished rule 30.6(a)(2), which compelled a futures commission merchant (FCM) or introducing broker (IB) to receive a separate signed acknowledgment statement when transacting in foreign futures or options, in favor of the consolidated rule.

The Commission accepted the proposal to incorporate a new subsection, part (c), to rule 1.55 that would allow a risk disclosure statement approved by a foreign regulatory agency or a SRO to fulfill the requirements of rule 1.55. In connection with this new amendment, and at the urging of international regulators, the Commission is reviewing recommendations concerning the creation of a single risk disclosure statement. If foreign regulators adopt a universal disclosure statement, the Commission will consider replacing the consolidated rule 1.55 and rule 33.7 on options with the universal disclosure statement.

The Commission also decided to adopt “no-action” relief, providing for a single signature acknowledgment format to satisfy the multiple separate acknowledgment statements previously required by the Commission. Before this adoption, only “qualified eligible participants”

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165. See 58 Fed. Reg. 17495, supra note 160, at 17,497 (noting that FCMs and IBs must receive separate acknowledgment statements if the FCM or IB used rules 1.55 and 30.6 separately during the interim period between July 1, 1993 and July 1, 1994).

166. 58 Fed. Reg. 17495, supra note 160, at 17,498. See Susan Ervin, Panel on FCM Documentation (confirming that rule 1.55(c) allows foreign jurisdictions and SROs to use their risk disclosure statements); see also 57 Fed. Reg. 46101, supra note 155, at 46,103 (explaining that trends indicate that increases in cross-border trading have created an excess of duplicative disclosure requirements which increase costs and hinder efficient processing). The Commission notes, however, that those risks involved in foreign trading must already be disclosed facially. Id.

167. 58 Fed. Reg. 17495, supra note 160, at 17,497. A universally accepted single risk disclosure statement could ultimately facilitate transactions in all matters, both domestic and international. Id.


169. 58 Fed. Reg. 17495, supra note 160, at 17,498. The Division of Trading and Markets granted the no-action relief to limited categories of highly qualified industry
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defined under rule 4.7(a)(1)(ii),170 and persons eligible under rule 4.5(a),171 could exercise the single signature. The primary reason for the expansion was that separate signatures did not confirm more convincingly a customer’s understanding of the contract.172

The Commission also amended rule 190. First, the original Rule 190.06(b) compels a FCM to notify the Commission when it transfers customer accounts without the customer’s approval.173 Many firms are aware that they must notify the Commission subsequent to a bankruptcy filing but are not aware that it applies in other contexts.174 To remedy the confusion, the Commission chose to include a statement imposing this notification requirement in the new rule 1.65.175 Additionally, the Commission decided to simplify rule 190.10(c)176 by abolishing the rule 190.10(c)(1)(ii) acknowledgment requirement.177 Because subchapter IV of chapter 7 of the Bankruptcy Reform Act of 1978178 covers

customers. Id. The relief enabled FCMs to open customer accounts upon receipt of a single signature. Id.


171. See 58 Fed. Reg. 17495, supra note 160, at 17,498 n.14 (describing “eligible persons” under rule 4.5(a) as: “(1) registered investment companies; (2) state regulated insurance companies; (3) state or federally regulated financial depository institutions; and (4) certain pension plans subject to regulation under the Employee Retirement Income Security Act of 1974”).

172. 58 Fed. Reg. 17495, supra note 160, at 17,598. Commentators added that since a customer receives all disclosure statements at the same time, during the process of opening an account, a single signature should suffice under these circumstances. Id.

173. 17 C.F.R. § 190.06(b) (1993).


175. 58 Fed. Reg. 17495, supra note 160, at 17,501. This new rule will warn the Commission of any bulk transfers projecting financial disaster. Id.

176. 57 Fed. Reg. 46101, supra note 155, at 46,104. Under rule 190.10(c) FCMs and other commodity brokers who fall under the definition established in Rule 190.01(f), with the exception of clearing organizations, must accept only cash for purposes of margining, clearing, and securing a futures contract, unless the investor provides the commodity broker with a disclosure statement delineated in rule 190.10(c)(2). Id. at 46,102. Also, customers must acknowledge their understanding of that statement. Id. Rule 190.10(c) protects customers, who margin a futures contract with non-cash deposits, by disclosing an explanation that the return of deposits falls under the Bankruptcy Code governing pro rata distribution and that the deposit could be returned only in part. Id.


178. 11 U.S.C. § 761 (1988). This act guarantees that customers receive a pro rata distribution of liquid and illiquid assets. Id.
commodity brokers, the Commission stated that the elimination of a customer's acknowledgment of a risk disclosure statement in this situation will not jeopardize customer protection.  

B. SPECULATIVE POSITION LIMITS

The CFTC's actions concerning speculative position limits present another illustration of the deregulatory trend of the Commission. The Commission recently revised the rules on speculative position limits. In general, the CFTC decided to maintain the current speculative position limit levels for the delivery months, the specified month within which a futures contract matures and can be settled by delivery, but to increase limits for the single month and the all-months-combined levels. Additionally, the Commission chose to restrict both futures and options at the same positions and exempt spread positions for the same crop-year at limits determined by the Commission. In light of the concerns raised during the comment period, the Commission opted

180. See ANNUAL REPORT, supra note 13, at 154 (defining speculative position limits as: "the maximum position, either net long or net short, in one commodity future (or option) or in all futures (or options) of one commodity combined, which may be held or controlled by one person as prescribed by an exchange and/or by the CFTC"); LEUTHOLD ET AL., supra note 10, at 376 (stating that contract limits are placed only on transactions contracted by speculators and not by hedgers); Sanford J. Grossman, The Case for Eliminating Position Limits on Financial Futures, in REGULATORY REVIEW AND REFORM OF THE FUTURES INDUSTRY 35 (Robert J. Mackay & Robert W. Kamphuis, Jr. eds., 1992) (explaining that position limits function as a barrier preventing one party from cornering the market).
184. See 58 Fed. Reg. 17973, supra note 182, at 17,976 (indicating that an association of grain and oilseed merchandisers and processors raised concerns over the newly proposed limit increase by suggesting that increases can have detrimental effects on commodities traded on a low volume base, such as oats and soymeal, and can even decrease the level of price discovery, a practice required for maximum productivity). Agricultural producers expressed opposition to increasing speculative position limits arguing that an increase will create unwanted volatility in the market. Id. Others stressed the need to conduct further studies and gather more conclusive
for an incremental approach to amending speculative position limits, scheduling a two-step process gradually leading up to the proposed final position.\textsuperscript{185} Options traders, associations of managed futures industry, farm organizations, and agricultural processors supported the unification of futures and options limits, arguing that the benefits gained from the new limits outweighed any inconveniences.\textsuperscript{186} They agreed that the proposal will add liquidity and minimize the presence of net risk in the futures and options markets.\textsuperscript{187} Also, the new mobility between the futures and options markets will create a variety of innovative hedging opportunities,\textsuperscript{188} as well as futures and options contracts.\textsuperscript{189} While some commodity pool operators opposed the proposal, others encouraged the standardization of limits since fluctuations in price within the futures and options markets are intertwined.\textsuperscript{190} First, to facilitate the proposal’s implementation, the Commission decided that the CFTC shall: discard temporarily rule 150.3(a)(2), which exempts options contracts that offset data proving that increases are beneficial to the industry and will minimally affect price volatility. \textit{Id.}

\textsuperscript{185} 58 Fed. Reg. 17973, \textit{supra} note 182, at 17,978-79. The first phase combines futures and options limits to allow speculators greater flexibility. \textit{Id.} at 17,978. In March 1994, the Commission shall set the speculative position limit to one-half the proposed final level. \textit{Id.} About a year later, on April 30, 1995, the Commission will raise the limits to the final proposed level. \textit{Id.} The phase-in process enables the Commission to alter its actions according to market needs. \textit{Id.}

\textsuperscript{186} 58 Fed. Reg. 17973, \textit{supra} note 182, at 17,977. While market participants expressed concern that the unification of options and futures speculative position limits would grant the Commission increased administrative powers, the Commission ensured that this amendment would not endow more regulatory power than before. \textit{Id.} at 17979 n.8. To guarantee this promise, the Commission did not modify rules governing the reporting of options. \textit{Id.} at 17,979. Moreover, in the spirit of the amendment, the Commission sought to simplify compliance procedures for futures and options transactions. \textit{Id.}

\textsuperscript{187} 58 Fed. Reg. 17973, \textit{supra} note 179, at 17,977. The unification will eliminate the need to manipulate opposite positions continually and thereby provide greater power to the delta-neutral trader. \textit{Id.} The flexibility eliminates restraints previously placed on traders. Revision of Federal Speculative Position Limits. 57 Fed. Reg. 12,769 (1992) [hereinafter 57 Fed. Reg. 12766].

\textsuperscript{188} See \textit{ANNUAL REPORT, \textit{supra} note 13, at 144 (defining hedging as: “taking a position in a futures market opposite to a position held in the cash market to minimize the risk of financial loss from an adverse price change”).

\textsuperscript{189} 58 Fed. Reg. 17973, \textit{supra} note 182, at 17,977.

\textsuperscript{190} 58 Fed. Reg. 17973, \textit{supra} note 182, at 17,977. The certainty obtained through unity creates easier understanding of, and facilitates administrative activity toward, market surveillance. 57 Fed. Reg. 12765, \textit{supra} note 187, at 12,769.
futures positions from federal speculative position limits; amend rule 150.2 to incorporate options positions on a futures-equivalent basis within the applicable speculative position levels; and change rule 150.1 to include definitions of "futures equivalent," "long" position and "short" position.  

Second, the Commission decided to approve setting different speculative position limit levels in reaction to discouraging statistics. The Commission chose to select limits according to the size of the percentage of open interest or the distribution amount of the trader, thereby creating limits more indicative of market situations while remaining within the bounds of rule 1.61. Commodity pool operators and trading advisors justified the change, indicating that the current limits restrained the futures and options markets from further growth. Cotton trade merchants explained that an increase in limits directly can improve and revitalize market efficiency by increasing hedging opportunities.

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191. See 58 Fed. Reg. 17973, supra note 182, at 17,979 (explaining that futures-equivalent is defined as "an option contract which has been adjusted by the previous day's risk factor, or delta coefficient for that option").


193. 57 Fed. Reg. 12766, supra note 187, at 12,770. The Commission recognized that the speculative position limits imposed in 1987 were ineffective since two factors used to calculate limits, distribution of open traders and percentage of open interest, have moved away from each other rather than converged. Id.

194. 58 Fed. Reg. 17973, supra note 182, at 17,979. The Kansas Cotton Board of Trade (KCBT) and Minneapolis Grain Exchange (MGE) wheat and oats need not adjust their speculative position limits to parallel those of the CBT. Id. Previously, 600 contracts were the limit for the spot month and the individual month contracts devised in the KCBT, MGE and the CBT. Id. at 17,979 n.11 Also, KCBT and CBT faced a limit of 1,800 contracts and MGE spring wheat faced a limit of 1,200 contracts for the all-months contracts. Id. at 17,979. The differing levels of open interest among the three contract markets and the ability to determine limits using current deliverable supplies and trends indicated by spot month expirations justified this decision. Id. The Commission further explained that contracts based on the same commodity are traded normally one at a time and rarely simultaneously. Id. Furthermore, the MGE reiterated that smaller exchanges successfully matched higher position limits set for the CBT on previous occasions. Id.

195. See 17 C.F.R. §1.61 (1992) (asserting that rule 1.61 governs the exchanges' procedure in setting speculative position limits).

196. 58 Fed. Reg. 17973, supra note 182, at 17,979.

197. See 58 Fed. Reg. 17973, supra note 182, at 17,976 (suggesting that since the cotton trade survives on hedging capabilities, market liquidity created by any increase in the speculative base would best promote successful hedging). One commentator added that the changing environment of the commodity futures industry, where self-investors can become a member of commodity pools, justified increased limits. Id.
Most importantly, the current limits disadvantaged these markets in competing with regulated and non-regulated foreign markets which lack such limits.\textsuperscript{198}

Currently, proposals seeking to amend speculative position limits in specific exchange-traded commodities await approval.\textsuperscript{199} The Chicago Mercantile Exchange (CME) submitted a proposal to amend its speculative position limits on live cattle, feeder cattle, live hogs futures and options contracts, and the frozen pork bellies options contract.\textsuperscript{200} Upon the implementation of the amendment, a speculative trader can "hold" a maximum position "in any contract month of 2,400 live cattle contracts until the close of business on the first business day following the first Friday of the expiring contract month, and 750 feeder cattle contracts in any contract month until the last ten days of trading of an expiring contract month."\textsuperscript{201} Also, the amendments enable traders to create an unlimited number of options contracts on the same side of the market for a single contract month in live cattle, feeder cattle, live hogs, and

These increased limits would assist in retaining the important role of speculators in the marketplace. \textit{Id.}

\textsuperscript{198} See \textit{58 Fed. Reg. 17973}, supra note 182, at 17,976 (noting that the commentators recognized that foreign markets without speculative position limits have not faced similar problems); Grossman, \textit{supra} note 180, at 79 app. (stating that the United Kingdom, Japan, Australia, and Italy have no position limits and that burdensome position limits have weakened the U.S. futures market relative to foreign competitors); DEFERENTIAL TREATMENT OF CUSTOMERS, COMMODITY FUTURES TRADING COMMISSION, DIVISION OF TRADING AND MARKETS (1993) (stating that the United Kingdom does not have speculative position limits).


\textsuperscript{200} \textit{58 Fed. Reg. 19236}, supra note 195, at 19,236. The CME proposes to: (1) withdraw the all-months-combined speculative position limits in live cattle, feeder cattle, and live hogs futures and options contracts; (2) eliminate the 1,200 and 600 contract speculative position limits in the live cattle and feeder cattle contracts, which are applicable to positions during the period immediately preceding the effective date for the final spot month speculative position limit; (3) eliminate the nominal limit on the actual number of option contracts that can be held on the same side of the market in any contract month in the live cattle, feeder cattle, live hogs, and frozen pork bellies option contracts. \textit{Id.}

\textsuperscript{201} \textit{58 Fed. Reg. 19236}, supra note 199, at 19,236.
frozen pork bellies.\textsuperscript{202}

The CME suggests that the elimination of the all-months combined speculative limits not only provides the preferred position for commodities that are non-storable, but also adds greater volume and liquidity with which hedgers may participate in the market.\textsuperscript{203} The ability for traders to “hold on” to maximum speculative limits for a longer period of time will allow greater flexibility for lifting or rolling positions to attract large speculators.\textsuperscript{204} Lastly, by abolishing the maximum limits on options contracts held by speculators on the same side of the market, the net futures-equivalent position will govern option speculative position limits and thereby encourage the participation of agricultural producers and other hedgers seeking price protection.\textsuperscript{205}

The CME also proposed to amend its speculative position limits for the Standard & Poor’s 500 Stock Price Index (S&P 500) futures and options contracts.\textsuperscript{206} The CME plans to increase the number of futures and options contracts from 5,000 to 10,000 contracts for the all-months-combined speculative position limits.\textsuperscript{207} Member firms and their customers promoted this amendment, arguing that the rise in investor interest in the S&P 500 futures and option contracts over the last few years mandate such a change.\textsuperscript{208}

C. EXEMPTION STATUS FOR FOREIGN FUTURES AND OPTIONS TRANSACTIONS

To keep pace with the rapid development of the international futures markets, the CFTC amended rule 30 governing foreign futures and options transactions under the agency’s customer protections regulatory scheme.\textsuperscript{209} Rule 30.10, regulating petitions for exemptions, best illus-

\textsuperscript{202} See 58 Fed. Reg. 19236, supra note 199, at 19,236 (calculating that presently a trader is restricted to a limit of 7,500 option contracts in live cattle, 3,600 option contracts in feeder cattle and live hogs, and 2,400 option contracts in frozen pork bellies).

\textsuperscript{203} 58 Fed. Reg. 19236, supra note 199, at 19,236.

\textsuperscript{204} 58 Fed. Reg. 19236, supra note 199, at 19,237.

\textsuperscript{205} 58 Fed. Reg. 19236, supra note 199, at 19,237.

\textsuperscript{206} 58 Fed. Reg. 19090, supra note 199, at 19,090.

\textsuperscript{207} 58 Fed. Reg. 19090, supra note 199, at 19,090. Presently, the CME Rules forbid a trader to hold futures and option contracts in S&P 500 or a combination of futures and futures-equivalent option contracts net on the same side of the market in all contract months that exceed 5,000 contracts. \textit{Id.}

\textsuperscript{208} 58 Fed. Reg. 19090, supra note 199, at 19,090.

\textsuperscript{209} See Foreign Futures and Foreign Options Transactions, 52 Fed. Reg. 28,980
trates the deregulatory trend of the Commission.\textsuperscript{210} Under rule 30.10, foreign participants shall apply with particularity, clearly stating the reasons for exemption, and also agree to observe U.S. rules through a designated agent pursuant to the provisions of rule 30.5.\textsuperscript{211} Additionally, before the Commission can grant exemption status, it must find that the applicant agency exercises comparable standards to U.S. customers.\textsuperscript{212}

Before publishing its final rule order, the CFTC received many comments from market participants and regulators.\textsuperscript{213} In particular, U.S. exchanges argued that great difficulty would arise in determining the definition of comparability and the equivalent level of enforcement.\textsuperscript{214} Additionally, they expressed concerns over granting privileges to foreign nations who do not operate reciprocal policies with U.S. firms.\textsuperscript{215} On the other hand, foreign exchanges overwhelmingly supported exemption

\textsuperscript{210} 17 C.F.R. § 30.10 (1992). Under the Commodity Exchange Act, rule 30.10 allows persons located outside the United States and who face comparable regulatory standards from their home states to request rule 30.10 exemption status. \textit{Id.} Other sections that fall under rule 30 include: (1) definitions; (2) applicability of the act and rules; (3) prohibited transactions; (4) registration; (5) alternative procedures for non-domestic persons; (6) disclosure; (7) treatment of foreign futures and options secured amount; (8) quarterly reporting requirements; (9) fraudulent transactions that are prohibited; and (10) applicability of state law. 17 C.F.R. § 30 (1992).

\textsuperscript{211} See 52 Fed. Reg. 28980, supra note 209, at 28,981 (stating that they must also present and maintain record books for inspection by the CFTC or a representative of the United States Department of Justice).

\textsuperscript{212} See Commodity Exchange Act (CCH) ¶ 2707 (stating that it is the duty of the person seeking exemption to include with particularity the proof of comparability and all explanations).

\textsuperscript{213} See 52 Fed. Reg. 28980, supra note 209, at 28,981 (noting that the Commission received thirty comments from U.S. contract markets, FCMs, the Futures Industry Association (FIA), National Futures Association (NFA), the Departments of Commerce and Justice, the North American Securities Administrators Association, Inc. (NASAA), foreign exchanges, foreign commodities firms, and governmental entities).

\textsuperscript{214} 58 Fed. Reg. 28980, supra note 209, at 28,993.

\textsuperscript{215} See 58 Fed. Reg. 28980, supra note 209, at 28,993 (noting that one exchange proposed that when a foreign firm applies for exemption status, the application should be published in the \textit{Federal Register} so that concerned parties may comment on it). The Commission has rejected such an unprecedented procedure. \textit{Id.}
relief and suggested that the CFTC allow governmental agencies or self-regulatory organizations to file petitions on behalf of their member firms to reduce duplication. Based on these comments, the Commission set up seven requirements that every foreign applicant must meet to receive an exemption: qualification, minimum financial requirements, customer funds, recordkeeping and reporting, sales practice standards, compliance, and information sharing.

Recently, the CFTC expanded the powers allotted to firms with exemption status under rule 30.10. The order, issued on November 3, 1992, allows firms with rule 30.10 relief to transact directly in limit-

216. Commodity Exchange Act (CCH) ¶ 2707.
217. Id. See Commodity Futures Trading Commission, Action Order for 17 C.F.R. Part 30, 9-10 (1993) (stating that qualification will be assessed according to fitness standards required for registration, authorization, and licensing). To satisfy the minimum financial requirements element, there must be standards that protect a firm's holding of customer accounts when one customer defaults on the customer's payments and that ensure a licensee's possession of sufficient funds. Id. To protect customer funds from misapplication, customer funds must be segregated from firms' funds. Id. The segregation protects customers from bankruptcy and fraud. Id. Records including trade confirmations, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation, monthly customer account statements, and order tickets shall be made available for inspection. Id. Minimum sales practice standards protecting customers from fraud and misrepresentation including unapproved advertising, improper trading activities, disclosures to prospective customers, and prohibitions on certain representation must be in force. Id. A system to ensure compliance with the rules and to redress violations must be found. Id. Finally, an effective information-sharing arrangement between the Commission and the appropriate organization must be found. Id. See generally Commodity Exchange Act (CCH) ¶ 2707 (explaining that each agency must meet certain minimum standards before the CFTC can grant exemption status).
219. See Foreign Investment Approvals & Exemptions, 1-91 BACKGROUNDER (1993) [hereinafter Foreign Investment Approvals] (indicating the exchanges receiving rule 30.10 relief). The exchanges to which rule 30.10 relief applies include: the SIB, the Securities and Futures Authority (SFA), the IMRO, the Commission des Operations de Bourse (COB), Members of the Marche a Terme International de France (MATIF), the Toronto Futures Exchange and its designated members, the Montreal Exchange, the Singapore International Monetary Exchange (SIMEX), the Sydney Futures Exchange, and the Tokyo Grain Exchange. Id. The Kuala Lumpur Commodity Exchange, Mercados de Financieros de Futures, and the New Zealand Futures and Options Exchange currently await relief. Id.
ed foreign futures or options contracts in the United States through their employees or subsidiaries. A series of amendments predated this change: the CFTC broadened and liberalized the scope of rule 30.10 by enabling foreign firms to correspond directly with U.S. persons from within the United States; representatives of foreign firms exempted under rule 30.10 can now solicit certain U.S. institutional entities under specific circumstances and conditions, and the CFTC approved the participation of foreign futures exchanges in limited one-day promotional events in the United States.

Only a “qualified eligible participant” (QEP) shall benefit from the new expansion. This limitation ensures that customer protection remains the Commission’s primary goal while expanding rule 30.10 activity to attract foreign participants. The amendment, moreover, does


221. 57 Fed. Reg. 49644, supra note 218, at 49,645. See Division of Trading and Markets Interpretative Letter 88-3, Comm. Fut. L. Rep. (CCH) ¶ 24,085, Jan. 15, 1988 (stating that foreign firms are still eligible for rule 30.10 relief even if they interact with affiliated or unaffiliated United States registered international brokers (IBs)).

222. See Division of Trading and Markets Interpretative Letter 90-14, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,688 (July 24, 1990) (stating that this expansion, nevertheless, required the registered person, belonging to affiliates of Commission-registered firms, to accompany the foreign firms and compelled Commission-registered firms to open the foreign firm’s accounts).

223. 57 Fed. Reg. 49644, supra note 218, at 49,646. The CFTC staff argued that this provision benefited U.S. customers by providing exchanges with a better opportunity to promote and advertise their products to certain United States institutional customers. Id.

224. See Exemption for Commodity Pool Operators with Respect to Offerings to Qualified Eligible Participants; Exemption for Commodity Trading Advisors with Respect to Qualified Eligible Clients, 57 Fed. Reg. 34,853, 34,860 (1992) (defining “qualified eligible participants” as enumerated in rule 4.7(a)(ii) as: “one who may participate in an exempt pool” and explaining that the Commission intended to define QEP [Qualified Eligible Participants] through objective criteria requiring that “such persons possess either the investment expertise and experience necessary to understand the risks involved, as evidenced by the registered status of certain investment professionals, or have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risk of their investment”).

225. See 57 Fed. Reg. 49644, supra note 218, at 49646 (stating that the Commission chose to utilize the “QEP” definition because it demanded a portfolio test which focuses on a person’s investment experience). The Commission, however, remained flexible in expanding the list of participants, subject to the results of the initial
not allow foreign firms to provide services from permanent locations in the United States.\textsuperscript{226} If foreign firms have permanent status, they become subject to the rules and regulations of the CFTC and must register with the Commission.\textsuperscript{227}

V. INTERNATIONAL ORGANIZATIONS AND AGREEMENTS

Regulatory agencies have participated in international organizations designed to enhance cooperation among nations and to create new linkages among markets.\textsuperscript{228} In addition, they have developed improved methods for communication and information sharing through bilateral agreements.\textsuperscript{229} Two primary vehicles fostering cooperation and encouraging harmonization within the commodities market include the International Organization of Securities Commission (IOSCO) and an international treaty making device called the Memorandum of Understanding (MOU).

A. INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSION

IOSCO was officially created in 1984 to instigate the cooperation and coordination necessary for a harmonization of international securities and futures regulations.\textsuperscript{230} Over 50 countries\textsuperscript{231} participate in IOSCO; in

\begin{itemize}
  \item \textsuperscript{226} 57 Fed. Reg. 49644, supra note 218, at 49,646. The CFTC decided that a firm is entitled relief under this order if it solicits activity for less than a total of thirty days in duration or frequency. Id.
  \item \textsuperscript{227} 57 Fed. Reg. 49644, supra note 218, at 49,646. See Commodity Exchange Act (CCH) ¶ 2705A (stating that the Commission requires those foreign businesses which establish a fixed presence in the United States, de facto presence, to register).
  \item \textsuperscript{228} See Executive Summary, supra note 152, at 23-28 (noting that the United States and other nations pursue information sharing arrangements and other cooperative measures through working parties established by IOSCO and bilateral agreements created by participating nations).
  \item \textsuperscript{229} See infra notes 264-76 and accompanying text (discussing MOUs as a potential mechanism through which to enhance cooperation between commodity exchanges).
  \item \textsuperscript{230} See Paul Guy, Regulatory Harmonization to Achieve Effective International Competition, in REGULATING INTERNATIONAL FINANCIAL MARKETS: ISSUES AND POLICIES 291 (Franklin R. Edwards & Hugh T. Patrick eds., 1992) (explaining that in 1984 IOSCO succeeded the Interamerican Association of Securities Commission and Similar Agencies, founded in 1974, to address developments within the securities markets in Latin America).
  \item \textsuperscript{231} See News in Brief, INT’L SEC. REG. REP., Nov. 2, 1993 (hereinafter News in
turn, these countries organize into an Executive Committee, regional standing committees, and specialized working committees. These committees attempt to address issues promoting harmonization by encouraging the adoption of comparable regulation that can prevent the placement of limitations or impediments on foreign competitors. In addition, they seek to create an open market environment that will preserve competitive equality.

Two types of barriers, political and regulatory, prevent competitive equality from becoming a reality. As IOSCO exerts pressure on

_Brief_ (indicating that the IOSCO's 18th annual meeting held in Mexico City revealed that there are now 110 members).

232. Guy, _supra_ note 230, at 292. Members of the Executive Committee consist of the following organizations: the National Companies and Securities Commission of Australia, the Commission des operations de bourse of France, the Commissione Nazionale per le Societa e la Borsa of Italy, the Securities Bureau of the Ministry of Finance of Japan, the Comision Nacional de Valores of Mexico, the Ontario Securities Commission, the Securities and Investments Board of the United Kingdom, and the Securities and Exchange Commission of the United States. _Id._

233. Guy, _supra_ note 230, at 292. The regional standing committees include: the Interamerican Regional Committee, the European Regional Committee, and the Asia-Pacific Regional Committee. _Id._

234. Guy, _supra_ note 230, at 292. Two specialized working committees include the Technical Committee on International Transactions, which consists of agencies that regulate the most developed markets and raise regulatory problems arising from cross-border investment activity, and the Development Committee, which consists of regulators of emerging markets that encourage the growth of new markets and confront problems acting as barriers. _Id._ at 293. Two Consultative Committees have been created to provide channels for affiliate members of IOSCO to voice their concerns. _Id._ See also _News in Brief, supra_ note 231 (indicating that Kenya and Nigeria created some controversy when they requested membership into the Technical Committee despite their developing nation status). The committee elected to grant membership on an ad hoc basis and under the discretion of its members. _Id._


236. See Guy, _supra_ note 230, at 293 (suggesting that the Organization for Economic Cooperation and Development defines "open market" as securities-related services with full access to the market and freedom to function in any subsector of the securities sector, either established in the country of origin or on a cross-border basis).

237. Guy, _supra_ note 230, at 294. A government intentionally implements political barriers to hinder the access of foreign investors into its markets. _Id._

238. Guy, _supra_ note 230, at 294. Regulatory barriers are those where agencies supervise the entry of foreign participants or impose strict reciprocity requirements. _Id._
market participants, however, it can overcome most political barriers. Also, IOSCO can impact the financial services industry directly through working parties established by the Technical Committee on International Transactions. In the past, several effective working parties attempted to assess the level of progress and to provide guidelines for futures practices. The publication of the results of the working parties, presented at the Venice Conference in 1989, symbolized the beginning of a movement toward regulatory harmony. Because IOSCO's recommendations are not compulsory, however, the international financial community must implement these proposals and support IOSCO if the community desires to establish competitive equality.

IOSCO works closely with other organizations. The Group of Thirty, the International Federation of Stock Exchanges, and the European Economic Community have influenced IOSCO concerning issues of clearing and settlement.

The International Accounting Standards

239. Guy, supra note 230, at 294.
240. Guy, supra note 230, at 294. This committee met for the first time in July 1987 in London to discuss problems encountered by regulators while carrying out international transactions. Id.
241. See Guy, supra note 230, at 295 (stating that the working parties have addressed problems concerning equity offerings on an international basis, including 'euro-equity offerings'). In addition, they reviewed the problems of multiple listings, auditing and accounting approved by International Accounting Standards Committee (IASC) and the International Federation of Accountants; capital requirements for multinational securities firms; exchange of financial information; growth of international off-market trading; international clearing and settlements; coordination among futures regulators; methods to distinguish futures markets and futures intermediaries; ethics for financial intermediaries; and rules of conduct for intermediaries in an international setting. Id.
242. Guy, supra note 230, at 295. The two most critical issues concerned international equity offers and capital adequacy standards. Id.
243. See Guy, supra note 230, at 296 (emphasizing that IOSCO provides only a forum for market regulators to discuss issues). The Annual Conferences provide a forum for consultation and the Consultative Committees provide a forum for direct interaction by SROs. Id.
244. Guy, supra note 230, at 295.
245. See Commodity Futures Trading Commission, Intermarket Coordination Report 37 (1991)[hereinafter Intermarket Coordination Report] (explaining that the Group of Thirty is an organization that promotes activity in the international financial system).
246. Guy, supra note 230, at 259. In the field of clearing and settlement, IOSCO seeks to reevaluate the structure of clearing and settlement systems by examining the influence the derivative markets has in the system and by incorporating issues such as systemic vulnerability, risk elimination, and risk management, concerns that are shared
Committee (IASC) worked with IOSCO to review accounting and auditing standards; this joint effort led to the publication of Exposure Draft 32 on Comparability of Financial Statements. 247

In 1991, eight jurisdictions joined to form the IOSCO Working Party on Futures, led by the CFTC. 248 Some accomplishments of the group include a cross-regulatory comparison of the existing regulatory systems for derivatives, a report listing ten Principles governing screen-based trading, 249 and a summary of the types of information sharing that maintains levels of confidentiality among participating jurisdictions. 250

The CFTC also participated in the Clearance and Settlement Working Party and the Working Party on Principles of Conduct of Business. 251 The Working Party on Clearance and Settlement recommended that international markets utilize a worldwide comparable standard for clearance, settlement, and payment systems. 252 The Working Party on Principles of Conduct of Business created a report listing seven principles of business conduct which IOSCO adopted at its annual meeting in November of 1990. 253

The CFTC actively participated in the IOSCO Enforcement and Exchange of Information Working Party. 254 The group produced a report listing ten principles governing the negotiation and implementation of Memoranda of Understanding (MOUs) approved by IOSCO in September 1991. 255 Having completed the project on MOUs, the same group by regulatory agencies. Id. IOSCO intends to harmonize regulatory standards by establishing a set of minimum standards and to encourage cross-border transactions through direct linkages. Id.

247. Id. IASC produced a report, approved for implementation in June 1991, suggesting methods to limit the number of international options contracts. Id.

248. See INTERMARKET COORDINATION REPORT, supra note 245, at 22 (noting that the participants were Australia, France, Italy, Japan, Switzerland, the United States (SEC and CFTC), the United Kingdom, and West Germany). Sweden, Hong Kong, and the Canadian provinces of Ontario and Quebec contributed. Id.

249. Id. The ten Principles created an international consensus in dealing with automated trading systems. Id.

250. INTERMARKET COORDINATION REPORT, supra note 245, at 22.

251. INTERMARKET COORDINATION REPORT, supra note 245, at 22.

252. INTERMARKET COORDINATION REPORT, supra note 245, at 23. With the assistance of the Group of Thirty, the Working Party on Clearance and Settlement produced six recommendations about improving the national clearing and settlement systems and methods to improve cross-border lines between those systems. Id.

253. INTERMARKET COORDINATION REPORT, supra note 245, at 23.

254. INTERMARKET COORDINATION REPORT, supra note 245, at 22.

255. Executive Summary, supra note 151, at 27. The principles outlined a blueprint
confronted issues concerning money laundering, cross-boiler room operations, and enforcement of screen-based trading systems. The CFTC currently is participating in the Working Party on Regulation of Market Professionals. This group works to develop a common position on the supervision of financial conglomerates.

The Working Party on Secondary Markets replaces the Working Party on Futures, which completed its mandate. This revised group seeks to address concerns such as the coordination between cash and derivative markets, proprietary screen-based trading, design of index derivative products, and transparency. Although the regulators of the derivatives markets dissolved the Working Party on Futures, many members of that Group decided to maintain and update the “Collated Summary of Responses to Common Framework of Analysis and Cross-Regulatory Chart,” a report which is designed to illustrate the regulatory systems of the participating members. The CFTC, which compiled the report, will continue to update the document independently of IOSCO. This document is now entitled “International Regulation of Derivative Markets, Products and Financial Intermediaries” and includes the original ten jurisdictions plus two new participants as of December 31, 1992.

B. MEMORANDA OF UNDERSTANDING

Information sharing arrangements have become critical in today’s

for developing MOUs. Id.

256. Executive Summary, supra note 151, at 27.
257. Executive Summary, supra note 151, at 27.
259. Executive Summary, supra note 151, at 26.
260. Executive Summary, supra note 151, at 27.
263. See Commodity Futures Trading Commission, International Regulation of Derivative Markets, Products and Financial Intermediaries 331-45 (1993) (listing that the jurisdictions are Australia, the Canadian provinces of Ontario and Quebec, France, Hong Kong, the Japanese Ministry of Finance, Sweden, the United Kingdom, and the CFTC and SEC in the United States). Two new participants are Italy and Spain. Id. The effect of this document encourages other regulatory agencies to participate in order to document all approaches to regulation of derivatives markets. Id.
global futures and options market. MOUs, defined as bilateral agreements between market authorities, provide a means for effective cross-border information sharing toward the enforcement of products, participants, and the use of information technology. Currently, the CFTC has entered into regulatory and enforcement MOUs with Australia, Brazil, Canada, France, Singapore, Taiwan, and the United Kingdom.

The United States and the United Kingdom entered into a Memorandum of Understanding on Mutual Assistance and Exchange of Information Between the CFTC, SEC, the U.K. Department of Trade and Industry, and the Securities and Investments Board on September 1991. This MOU broadened the reach of the agencies’ powers in enforcement matters. For example, the MOU sought to improve the regulation of fraudulent and abusive acts and to provide for accelerated methods to counter those acts. Motivated by the spirit of this MOU, the CFTC has developed unofficial relationships with other nations to exchange

264. See INTERMARKET COORDINATION REPORT, supra note 248, at 19 (indicating the critical nature of information sharing arrangements to improve the competitiveness of the markets and to cope with the increase in international participants and cross-border trading).

265. The CFTC: An Active Partner in International Cooperation Through Enforcement and Regulatory Memoranda of Understanding, 4-92 BACKGROUNDER 1 (1992) [hereinafter Active Partner]; see Michael P. Malloy, Bumper Cars: Themes of Convergence in International Regulation, 60 FORDHAM L. REV. S1, S10 (1992) (stating that bilateral agreements like MOUs can serve as the first step to a broader coordinated response).

266. Id. at 1. Specifically, the CFTC abides by an enforcement MOU with Brazil, France and the United Kingdom. Id. at 2. The MOU between France and the United States concerns issues such as misrepresentation, fraudulent or manipulative practices, and the failure by market professionals to behave honestly. Id. The MOU between Brazil and the United States deals with providing access to confidential information including the ability to take the testimony of witnesses. See also CFTC NEWS FEATURE, supra note 161, at 10 (stating that the Taiwan authorities entered into a MOU with the United States on January 11, 1993).

267. Active Partner, supra note 265, at 2. This MOU supersedes the MOU signed earlier in 1986. Id.

268. Active Partner, supra note 257, at 2. Situations that fall under this MOU include fraud in the sale of: option contracts and foreign futures to U.S. customers; prohibited off-exchange option and futures contracts to U.S. customers; violations of trade practice on U.S. markets including wash sales, cross trading, and accommodation trading; material omission or fraudulent statements in reports or applications filed with the CFTC; and infractions of reporting requirements under the Commodity Exchange Act and relevant regulations. Id.

269. Active Partner, supra note 265.
information and cooperative measures concerning enforcement matters.\footnote{270}

Regulatory MOUs also help preserve the integrity of the markets and their participants.\footnote{271} The United Kingdom and the United States signed the Financial Information Sharing Memorandum of Understanding (FISMOU) on September 1, 1988.\footnote{272} Under the FISMOU, participating agencies can ask for routine or ad hoc information sharing requests satisfying traditional financial requirements for U.S. firms with branches in the United Kingdom.\footnote{273} In exchange, an Addendum, added on May 15, 1989, reciprocated this waiver to British firms which received exemption status from the CFTC under rule 30.10.\footnote{274} The CFTC also entered into a FISMOU with Canada in 1991.\footnote{275} Furthermore, the United States entered into a Mutual Recognition Memorandum of Understanding (MRMOU) with the French Commission des Operations de Bourse (COB) in December of 1991.\footnote{276}

\begin{itemize}
\item 270. See Executive Summary, \textit{supra} note 152, at 24 (stating that currently, there are unofficial reciprocal agreements with Australia, Canada, Germany, Hong Kong, Japan, the Netherlands, Spain, and Switzerland).
\item 271. \textit{Active Partner}, \textit{supra} note 265, at 1.
\item 272. \textit{Active Partner}, \textit{supra} note 265, at 4. This was the first Financial Information Sharing Memorandum of Understanding (FISMOU) signed between any two nations. \textit{Id.} The participants included U.S. and U.K. regulatory and self-regulatory organizations. \textit{Id.}
\item 273. \textit{Active Partner}, \textit{supra} note 265.
\item 274. \textit{Active Partner}, \textit{supra} note 265, at 4-5.
\item 275. \textit{Active Partner}, \textit{supra} note 265, at 5. The participants of the Canadian FISMOU (the CFTC, the Ontario Securities Commission (OSC), the Commission des valeurs mobilières du Quebec (CVMQ), the Toronto Futures Exchange, and the Montreal Exchange) agreed to share information about the Quebec and Ontario firms that were exempt from registration under CFTC rule 30.10 and key related firms in Canada and the United States. \textit{Executive Summary, supra} note 152, at 24, 25.
\item 276. \textit{Active Partner}, \textit{supra} note 265, at 4. This MRMOU enables U.S. firms to conduct business directly with French customers and vice versa. \textit{Id.} As a result, licensed brokers can engage in cross-jurisdictional transactions, conditioned upon recognition by the COB or the CFTC. \textit{Id.} Similar MRMOUs exist between the United States and the Ontario Securities Commission, the Montreal Exchange, the Commission des valeurs mobilières du Quebec, the Toronto Futures Exchange and the National Futures Association (NFA) to complement CFTC rule 30.10. See \textit{Executive Summary, supra} note 152, at 24 (stating that information sharing is provided on an as needed basis).
\end{itemize}
VI. RECOMMENDATIONS

This Comment has provided a general description of regulatory changes implemented by two of the largest markets, with specific reference to significant statutes, regulations, and other influential documents. These changes indicate that both the United States and the United Kingdom are entering a restructuring period of their regulatory systems for competitive purposes. The changes depict a convergence of regulatory activity. As a result, the convergence reflects the optimal regulatory solution in which each nation reacts individually to market situations. The respective agencies of the United States and the United Kingdom have undergone changes in reaction to current market fluctuations and to help remedy problems posed by the increasing internationalization of the commodities industry. Due to an increase in cross-border activities, international transactions dominate much of the industry’s business today. Innovative electronic trading systems are replacing the traditional pit forums and further expanding the boundaries to previously unknown limits.

277. See supra notes 96-276 (describing how the CFTC implemented several revisions to its rules governing risk disclosure, speculative position limits, and foreign nation exemption status, the United Kingdom proposed a revamping of its current regulatory system, and both the United States and the United Kingdom have joined working parties and signed MOUs to promote harmonization).

278. See supra notes 10-95 and accompanying text (providing a framework of commodities regulation in the United States and the United Kingdom from which both countries have worked to eliminate burdensome requirements and unnecessary costs).

279. Large, supra note 4. See George J. Benston, Competition Versus Competitive Equality in International Financial Markets in Regulating International Financial Markets: Issues and Policies 277 (Franklin R. Edwards & Hugh T. Patrick eds., 1992) (asserting that customers benefit from a competitive market that enables them to acquire the goods and services they require and thereby contribute to a nation’s wealth). But cf. Wilmouth, supra note 3, at 191-92 (stating that the differing regulatory requirements have created conflicting business procedures and that duplicative requirements have increased transaction costs).

280. See Economic Causes, supra note 3, at 361 (stating that advances in financial, telecommunications, and computational technology, political restructuring of its markets, and capital market imbalances accelerated the rapid internationalization of the market).

281. See Economic Causes, supra note 3, at 349 (explaining that the domestic financial services market of the 1960s and 1970s experienced a steady decline while international markets, developed in the 1980s, replaced their activity).

282. See Executive Summary, supra note 152, at 31-35 (stating that the acceptance of further proposals to expand Globex, the automated system instituted in the United
Such progressive changes require institutional support for legitimizing and facilitating the interaction of numerous active markets. As a result, certain market participants and analysts suggest that a single super-regulatory agency create and enforce a standard set of rules regulating all commodity futures and options transactions. Although the proposal for a single mega-institution appears at first glance to promote efficiency and harmony, the proposal ignores key market characteristics. First, a super-regulatory agency likely would overlook particular idiosyncrasies of the commodities market. In its desire to treat all States by the CME and Reuters, have received approval; Wilmouth, supra note 3, at 191 (acknowledging that U.S. exchanges tend to emphasize creating electronic trading systems to make them more competitive and to attract more international investors). Screen trading appears to have replaced the role of open-outcry trading. Id. The Tokyo Stock Exchange, Swiss Options and Financial Futures Exchange, Osaka Securities Exchange are fully automated. Id; Albrecht, supra note 24, at 6 (indicating that internationalization compelled IOSCO to adopt ten principles governing screen-based trading systems).

283. See Economic Causes, supra note 3, at 351, 370-71 (stating that some commentators believe that the plethora of markets with different regulatory procedures mandate the creation of a single “uber-regulator” to supervise a standard worldwide set of regulations).

284. See Economic Causes, supra note 3, at 372 (emphasizing that the diversity of markets proves beneficial to the industry by allowing innovation and experimentation and by enabling participants to choose transaction procedures that best suit a person’s market status and work best in conjunction with market changes).

285. Economic Causes, supra note 3, at 372. International quality competition among regulators provides a market mechanism that helps prevent regulators from adopting rules that impose costs in excess of their benefits. Id.; see ALAN STONE, REGULATION AND ITS ALTERNATIVE 245 (1982) (stating that regulation by one body will disrupt the natural flow and functioning of market activity and will move away from professionals who deal with the particularities and uniqueness of the market on a daily basis); Edward J. Kane, Regulatory Structure in Futures Markets: Jurisdictional Competition between the SEC, the CFTC, and other Agencies, 4 J. FUTURES MARKETS 370 (1984) (stating that industry regulation stimulates the creation of performance measures that cushion fluctuations in market activity at minimum levels of cost as well as seek methods to maximize aggregate profits). When government bodies intervene, they not only restrict profit levels directly but also influence participants to minimize efforts in creating performance guarantees and production costs. Id.; see Diamond & Kollar, supra note 10, at 98 (proposing that standard rules can overtax certain members as they take action to protect their risk). See also Interview with Division of Economic Analysis, Commodity Futures Trading Commission, in Washington, D.C. (July 27, 1993) (stating that because the needs of each commodities market is unique and because the commodity futures market evolved from the specific needs and requirements of the local cash market, those needs vary from nation to nation). As a result, factors, such as specific grade specifications, transportation efficiencies,
participants uniformly, the standard set of rules may not satisfy the
types of contracts required in specific markets and circumstances.\textsuperscript{286} Also, a super-regulatory agency may prove dangerous to impose such a
permanent, all-powerful body during periods of market turmoil; the
ability to change in response to transient problems may be compro-
mised.\textsuperscript{287} While such an institution might remedy current difficulties,
its long term effects could be catastrophic because it might eliminate the
ability to develop innovative contracts and to experiment freely.\textsuperscript{288}

The corporate and shipping industries provide examples of both
over-regulated and under-regulated markets. These industries highlight
the consequences of ignoring specific market trends and indicators with-
in the framework of a long-term plan. The corporate and shipping indus-
tries illustrate the consequences and rewards of modifying regulation to
incorporate current market trends.\textsuperscript{289} First, in Delaware a more flexible
and liberal set of incorporation rules has allowed it to emerge as the
incorporation capital of the United States.\textsuperscript{290} Specific characteristics that
make Delaware the state of choice include the Delaware General Corpo-

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\textsuperscript{286} See, e.g., Benston, supra note 269, at 287 (stating that the Bank for Interna-
tional Settlements (BIS), an international body governing banking activities, may dis-
advantage certain members, including the United States and other foreign banks that
share similar tax structures with the United States). Consequently, the BIS fails to
place its members on a common playing ground. Id.

\textsuperscript{287} See Economic Causes, supra note 3, at 372 (stating that standardization will
impose regulations inconsistent with fluctuating worldwide standards).

\textsuperscript{288} See Economic Causes, supra note 3, at 351 (stating that the maintenance of
individual regulatory regimes allows for experimentation and innovation, in addition to
countering governmental attempts to impose excessive regulation).

\textsuperscript{289} See infra notes 298-301 and accompanying text (explaining that corporations
and the shipping industry provide examples of the benefits of self-regulation and the
consequences of excessive governmental regulation).

\textsuperscript{290} See Rodman Ward, Jr. & Erin Kelly, Why Delaware Leads in the United
States as a Corporate Domicile, 9 DEL. LAW. 15, 15 (1991) (stating that over 50% of
the largest U.S. corporations have chosen Delaware as their state of incorporation).
Moreover, over two-thirds of companies seeking reincorporation have moved to Dela-
ware. Id. Furthermore, many international corporations set up subsidiaries in Delaware,
and two of the most prominent include Sony/Columbia Acquisition Corp. and
Yamanouchi Acquisition Corp. Id.
ration Law's flexibility in instituting up-to-the-minute statute changes, the permanence and predictability of statutory interpretation, and devotion to servicing its chartered members. Delaware's popularity is augmented by the speed with which a company can incorporate and the ability to reduce agency costs.

Delaware's ability to tailor regulation to what best satisfies market participants has enabled it to capture a substantial portion of the incorporation market. If Delaware were required to conform to a standard set of rules governing incorporation, it might lose its appeal, and corporations might choose to incorporate elsewhere. Furthermore, there would be little incentive for states like Delaware to create innovative and more efficient rules. The Delaware example illustrates the benefits of allowing each nation to establish rules governing its own exchange. If all nations followed the same rules and one supreme body governed, the commodities market could stagnate and become saturated. Without incentives, growth might slow down, and a booming industry could grind to a halt.

The shipping industry offers another example of the consequences faced by a nation that imposes burdensome statutory rules on an industry. On June 30, 1993, SeaLand Services, Inc. and American President Lines, announced their decision to relocate seven of their fifteen ships to

291. See Curtis Alva, Delaware and the Market for Corporate Charters: History and Agency, 15 Del. J. Corp. L. 885, 890 n.11 (1990) (stating that the Delaware General Corporation Law is designed to incorporate quickly innovative changes enacted by other states that are favorable to the corporation and that can best satisfy the interests of the shareholders).


293. Alva, supra note 291, at 901. For example, the process of service of all papers to examine a company's level of fitness takes about three weeks in New York, four weeks in Connecticut, but only 24 hours in Delaware. Id.

294. Alva, supra, note 291, at 919. Delaware's commitment to maintaining a small corporate legal body allows for the relocation of a corporation's domiciliary to the most cost-efficient agent, thereby reducing agency costs. Id.

295. See Alva, supra note 291, at 889-90 (stating that Delaware regularly seeks to update its law concerning corporations in order to maintain its control of market shares and to keep up with changing corporate practices).

296. See Kane, supra note 285, at 370 (indicating that growth depends on a system of self-regulation where there are incentives to improve performance guarantees). These constant improvements function to maximize the aggregate profit of the commodities industry. Id.

297. See Kane, supra note 285, at 371 (explaining that when there is no room for self-regulation, the market lacks the incentive to maximize performance guarantees, and the governments can use their political needs to manipulate profit margins).
foreign nations.\textsuperscript{298} Officials of the two companies have been negotiating with the United States Government for several years but have been unable to come up with a satisfactory solution.\textsuperscript{299} As a result, strict safety rules and tax laws in the United States forced the two flagship companies to find alternative countries to register their ships.\textsuperscript{300} The companies' action raised concerns because the moving of the ships to foreign nations would endanger potentially 30,000 U.S. jobs and reduce seriously the number of ships available to the military during times of war.\textsuperscript{301}

These two examples clearly illustrate the need for markets and their regulators to adapt to changing environments. By ignoring market trends, a nation can suffer enormously.\textsuperscript{302} Specifically, a nation can lose significant revenue that an industry's presence produces.\textsuperscript{303} Every nation has its own needs and goals. A super-regulatory international agency or an unsympathetic system of regulation will be unlikely to satisfy many such needs.\textsuperscript{304} By allowing each nation to amend and adopt policies or rules that will improve market behavior, each agency can preserve the national identity of its exchanges while promoting nation-specific goals and interests.\textsuperscript{305} Convergence of regulations in different countries pres-

\begin{itemize}
\item \textsuperscript{298} Don Phillips & Richard M. Weintraub, Last Major U.S. Merchant Shippers Seek Refuge Under Foreign Flag, WASH. POST, June 30, 1993, at A7. These two carriers are the last two major flag merchant ship companies in the United States. \textit{Id.} In addition to the seven ships that have been relocated, six new ships that will be delivered to the United States in 1995 will be registered in other nations. \textit{Id.} \textsuperscript{299} \textit{Id.} \textsuperscript{300} \textit{Id.} \textsuperscript{301} Don Phillips, Merchant Shipper Says Subsidy Is Necessary; Official Threatens to Remove U.S. Flag From Vessels If Promised Federal Aid Is Not Forthcoming, WASH. POST, Mar. 10, 1993, at A20. \textsuperscript{302} See, e.g., U.S. DEP'T OF TRANSPORTATION MARITIME ADMINISTRATION, UNITED STATES OCEANBORNE FOREIGN TRADE ROUTES OCTOBER 1992 29-31 (1992) (indicating that, in the U.S. shipping industry, statistics reveal that since 1956 the total tonnage of U.S. oceanborne foreign trade has dropped from 20.7% to 4.1%). In fact, the top three carriers transporting U.S. foreign trade include Liberia (24.2%), Norway (10.2%), and Panama (9.9%). \textit{Id.} \textsuperscript{303} See Alva, \textit{supra} note 291, at 888 n.8 (stating that the rise in the number of incorporations in Delaware has increased the revenue generated from this activity from $55.0 million in 1975 to $180.8 million in 1988, with projected revenues in 1992 at $224.6 million). See Stone, \textit{supra} note 285, at 252 (stating that stringent regulation has forced the shipping industry to accept low-density routes at a loss). \textsuperscript{304} 'See Edwards, \textit{supra} note 2, at 2 (proposing that the best solution to today's problems lies not in less regulation but rather in more innovative regulation that remains sensitive to market realities and keeps everyday trends closer to home). \textsuperscript{305} See Albrecht, \textit{supra} note 24, at 11 (stating that "with the inevitable impact of
ents the optimal solution for the global arena. Such convergences will result as each nation reacts individually to market situations, thereby potentially alleviating fears of the lack of harmonization.\textsuperscript{306}

Therefore, the CFTC should continue to liberalize its rules by imposing less stringent or fewer duplicative requirements on its participants\textsuperscript{307} so that domestic as well as foreign investors will want to commence or continue transactions.\textsuperscript{308} The Commission should increase actions that alleviate burdensome procedures and unnecessary requirements in areas such as risk disclosure, speculative position limits, and large order executions, which can impede or slow down the transactional process.\textsuperscript{309} Furthermore, with increasing cross-border activity, the CFTC should broaden the scope of rule 30 even further to encourage foreign activity.\textsuperscript{310} Excessive legislation can only hurt an industry.\textsuperscript{311}

\textsuperscript{306}See \textit{Economic Causes}, supra note 3, at 373 (stating that each market can implement regulation that directly confronts externalities without requiring standardization); \textit{Albrecht}, supra note 24, at 4 (asserting that "equally powerful forces are driving some regulatory functions . . . toward a convergence, a common middle ground"); \textit{Corcoran}, supra note 114, at 12-18 (articulating that deregulation can induce consolidation because deregulation eliminates restrictions that may create barriers for competing interests).

\textsuperscript{307}See \textit{Stone}, supra note 285, at 250 (asserting that deregulation does not imply no regulation but rather a reduction in regulation providing participants with the freedom to engage in activity without fear from government intervention).

\textsuperscript{308}See \textit{Worth}, supra note 235, at 142-43 (stating that conflicting securities regulation that creates more expensive forums will compel companies to select the cheapest forums from which to conduct their activity).

\textsuperscript{309}See \textit{Executive Summary}, supra note 151, at 37-38 (indicating that the CFTC has implemented amendments that facilitates the crossing of orders for large order executions). The Commission has implemented proposals to improve the competitiveness of U.S. financial markets. \textit{Id.} at 28. For example, the Commission took measures to facilitate the transaction of swaps and other off-exchange products and contracts of hybrid instruments and to update electronic trading and trade recordation systems. \textit{Id.} at 28-39.

\textsuperscript{310}See \textit{Robert K. Wilmouth}, \textit{International Cross Registration of Futures Professional}, 1991 \textit{Futures and Options Market Regulators Symposium} (asserting that the rapid internationalization of the commodities market should convince the CFTC and the SROs to allow cross-licensing). Cross-licensing enables for-
On the other hand, the United Kingdom should implement Large's recommendations so that investors will continue to participate in the markets without fear of market failure and lack of customer protection. With embarrassing incidents weakening investor confidence, investors will want guarantees that their transactions are protected from fraudulent and irregular behavior. While investors may prefer to transact in an environment with minimal regulation, the United Kingdom needs to ensure that its investors are receiving adequate protection because no regulation or ineffective regulation can be as detrimental as excessive regulation. Investors preferring government protection will find other markets providing sufficient investor support. Sacrificing legislation does not offer the proper solution. Consequently, it appears as if the United Kingdom will face a stricter regulatory environment.

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eign traders registered with their perspective regulatory organization to trade directly on U.S. exchanges without registration with U.S. regulatory organizations. Id.

311. See S. Craig Pirrong, Removing Undue Regulatory Impediments to the Use of Futures and Options by Institutional Investors, in REGULATORY REVIEW AND REFORM OF THE FUTURES INDUSTRY 55-56 (Robert J. Mackay & Robert W. Kamphuis, Jr. eds., 1992) (stating that deregulation can benefit an industry by relaxing those rules that burden participants from developing innovative derivative transactions and from unnecessary costs and duplicative procedures). See Stone, supra note 275, at 245 (stating that each nation should look to the overall picture favoring public/investor interests and not specific interest groups who seek to limit competition and competitors).

312. See Benston, supra note 279, at 278-79 (stating that government intervention can help an industry bring about consensus required for effective market pursuits). Standardization of rules can add efficiency and investor confidence and prevent unfair play by its members. Id.

313. See TRADING IN FUTURES, supra note 34, at 64 (stating that the motivating reason to institute a regulatory system was to convince its investors that they would receive sufficient protection from a new framework that supervised futures brokers and dealers).

314. See Benston, supra note 267, 278-79 (stating that a race to the bottom, reducing regulation to a point that provides inadequate customer protection, has never been suggested as a viable solution).

315. See Markham & Bergin, supra note 60, at 591 (stating that, generally, the foreign exchanges faced far fewer restrictions than the United States). The United Kingdom's London Metal Exchange provides one such example. Id. This market, however, may soon have self-regulatory protections. Id. at 591 n.63. See also NatWest Chief, supra note 147 (revealing that Large anticipates that many of his recommendations should be in effect by mid-summer and that most should follow within the next twelve months). See also SIB Reviews Reform Program Highlights Objectives for 1994, INT'L SEC. REG. REP., Dec. 14, 1993 (noting that the SIB announced in its report, "Review Implementation," that its objectives for 1994 are to: 1) commission
The U.S. and U.K. regulatory systems appear to be engaging in market appropriate behavior and should expect rewarding results from their committed actions. By remaining market sensitive, the United Kingdom and the United States are reaching a point of convergence as the United Kingdom increases its level of regulation and the United States decreases its level of regulation. The principle of convergence can offer a challenge to criticisms that promote standardization of rules.

To encourage attainment of the optimal level of convergence, international organizations like IOSCO should promote establishment of comparable rules. IOSCO serves as a neutral body that recommends, rather than imposes, action. Thus, participants attend the conferences to discuss current market trends and problems and to devise a satisfactory solution acceptable to all its members. While none of the recommendations obligate implementation by the members, most choose to do so; if certain members instigate policies furthering IOSCO's suggestions, others feel the need to harmonize their rules accordingly or else face competitive inequality that might deter potential investors. IOSCO should continue to hold meetings regularly to discuss current problems and resolve issues. Without a super-regulatory body governing the market, market participants must create a forum encouraging unity and progress toward a more profitable and healthy market within the industry; IOSCO can fulfill this role.

an inter-regulation task force who can propose recommendations on disclosure concerning anti-competitive practices to the Chancellor of the Exchequer; 2) issue a report about the Investor Compensation Scheme by April of 1994; 3) invite comments regarding the issue of custody; 4) function within its revised organizational structure of four divisions consisting of supervision, enforcement, policy and legal affairs, and operations; and 5) issue consultative documents on the Investment Services Directive and the Capital Adequacy Directive).

316. See supra note 4 and accompanying text (listing various changes implemented by the United States and the United Kingdom that will eventually intersect to form a level of convergence).

317. See Worth, supra note 235, at 145 (stating that multilateral organizations like IOSCO can contribute to harmonize efforts in regulation).

318. See Guy, supra note 230, at 294 (describing the ways in which the IOSCO can attempt to persuade international actors to adapt its recommendations).


320. See News in Brief, supra note 231 (stating that IOSCO's goals for 1994 include proposals to promote a higher profile, to expand its officers' language proficiency, and to establish closer communications with the Basle group of banking supervisors).

321. See News in Brief, supra note 231 (noting that Andrew Large stated that IOSCO should strive to improve its enforcement capabilities and settle problems aris-
In addition, MOUs harmonize rules and foster the standardization of regulation, but in a more diplomatic manner. These bilateral agreements are not absolutely mandatory, but the spirit of friendship and the compelling need to reach a common ground between nations encourages the participants to implement the agreements. MOUs serve an important function by providing solutions to problems on an “as needed” basis. Moreover, MOUs can remain sensitive to market needs and, most importantly, to the needs of each commodity exchange. MOUs and IOSCO Working Parties function as the international body that critics who propose a standardized system governed by one body so desire. Concomitant with MOUs and IOSCO Working Parties, convergence of regulation reached as each agency adopts legislation in reaction to current market forces will harmonize the commodities industry and stimulate market efficiency and market solutions to internationalization.

CONCLUSION

The commodities industry has experienced a long and expansive history. From the early agricultural markets to the innovative financial futures and options markets, each nation has faced the need to supervise the industry in some manner. The United States became one of the first nations to create a highly regulated market with an agency devoted specifically to the regulation of commodities. While the United Kingdom formally had little or no regulation of the commodities market, it has introduced recently more substantive legislation that regulates the industry. The divergent backgrounds explain why the nations are currently practicing opposite regulatory strategies: the United States seeks to decrease its regulation level while the United Kingdom seeks to

\[322. \text{See Economic Causes, supra note 3, at 368-69 (stating that these bilateral treaties serve to provide an effective network for cooperation and for the exchange of information).} \]

\[323. \text{See Economic Causes, supra note 3, at 373 (encouraging international securities regulation to follow a balanced approach that relies on basic forms of cooperation in enforcement and coordination on compliance, rather than adhering to a single transnational regulatory philosophy).} \]

\[324. \text{See Trading in Futures, supra note 34, at 72-73 (stating that the United States has an extensive history of regulating the commodity markets, as demonstrated by several legislative acts).} \]

\[325. \text{See Thorpe, supra note 24, at 152 (indicating that the financial services industry functioned without the intervention of governmental regulation until the 1970s and 1980s).} \]
increase its regulation.  
William Albrecht, former Chairman of the CFTC, asserted that the increasing and decreasing regulatory activities, while creating on the surface an illusion of the markets diverging, in fact disguise the actual movement toward a common middle ground.  
Regulatory convergence reached by the agencies can provide comparable playing fields so that no one market will serve as a refuge for crooks and profiteers.  
Therefore, convergence, rather than standardization, provides the best solution. MOUs, contracted between agencies and IOSCO Working Parties recommending various solutions, help agencies reach that level of convergence.  
Convergence remedies the problems created by the internationalization of the market, the new competitive era of commodities, the varied makeup of the participants, and the increasing costs engendered by duplicative regulation.  
Convergence maintains the national identity and interest of each nation, two fundamental qualities that strengthen a nation and its industry.  
Lastly, convergence can best strengthen today's commodities market and guide that market into the twenty-first century.

326. Albrecht, supra note 24, at 4.
327. See Molloy, supra note 265, at 52 (arguing that while some domestic regulatory systems can interact on a transnational basis the inequities between those systems impede transactions in the international market). Convergence can best remedy these inequities.  
328. INTERMARKET COORDINATION REPORT, supra note 245, at 21-22.  
329. See Economic Causes, supra note 3, at 349 (stating that the international markets of the 1980s have surpassed the domestic markets); Brian Quinn, Regulating Global Financial Markets: Problems and Solutions, in REGULATING INTERNATIONAL FINANCIAL MARKETS: ISSUES AND POLICIES 300-01 (Franklin R. Edwards & Hugh T. Patrick eds., 1992) (proposing that the pace of liberalization and internationalization of the financial services industry will only accelerate as markets expand not only into North America and Western Europe but all over the world); Joel R. Reidenberg, The Privacy Obstacle Course: Hurdling Barriers to Transnational Financial Services, 60 FORDHAM L. REV. S137, S141 (1992) (arguing that efforts should continue to promote a convergence of rules managing regulatory differences rather than pursuing a "dialogue de sourds" about uniform rules).
330. See Malloy, supra note 265, at 512 (asserting that the need to alleviate variations in national standards that create inefficiencies in the international arena rather than harmonize them, mandates the convergence of international regulatory activity).