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Winter 1986

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Recommended Citation

Tamar Frankel, *Symposium: The Internationalization of the Securities Markets--Introduction* , *in* 4 Boston University International Law Journal 1 (1986).
Available at: https://scholarship.law.bu.edu/faculty_scholarship/2995

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SYMPOSIUM: THE INTERNATIONALIZATION OF THE SECURITIES MARKETS

INTRODUCTION

TAMAR FRANKEL

Tamar Frankel is a Professor of Law at Boston University, teaching corporations, securities regulation, insurance, pension funds and banking law. She was a visiting professor at Harvard Law School (1979-80); Harvard Business School (Fall, 1980); and the University of California at Berkeley Law School (Boalt Hall) (1982-83). Professor Frankel was an Associate at Arnold & Porter, Washington, D.C. (1965); Special Assistant to the Commissioner of Corporations, State of California (1966); and Consultant, Bankers Trust Company, New York (1983-86). She is the author of a four-volume treatise, The Regulation of Money Managers (Investment Companies and Investment Advisers), as well as articles on corporations, fiduciary law, and mutual funds. Professor Frankel is a member of the American Law Institute; the American Bar Association, Section of Corporate, Banking and Business Law, Committee on Federal Regulation of Securities, and Banking Committee.

This symposium on international trading in securities was the brain child of William Schwartz, Dean of the Boston University School of Law, and John J. Phelan, President of the New York Stock Exchange. The idea was implemented by Donald L. Calvin, Executive Vice President of the New York Stock Exchange, and myself, with the staff and students of Boston University School of Law. The event was held in New York City on October 18, 1985.

The symposium had three purposes: first, to present a picture of the current status of international trading in securities, which has been developing rapidly; second, to highlight some of the problems posed by international securities markets; and third, to examine the future of the international securities markets.

To present the full picture of current international securities trading, we asked groups of renowned experts to discuss their specialties. The symposium's introductory presentation by Richard A. Debs was designed to give a broad overview and delineate the horizons and parameters of our topic.

The morning panel, moderated by John Paul Ketels and featuring Samuel E. Hunter, Stanley B. Shopkorn and Richard G. Ketchum, discussed how international trading is currently conducted and the problems traders face.

The presentation of the "doers" was followed by a luncheon speech by David B. Gill on national interests in international securities trading. He focused on the trend of third world nations to resort to international equity markets to fill their national capital needs.

The afternoon session began with a discussion by Professor William W. Park and John F. Chown of the tax ramifications of international trading to both traders and their customers. Professor Andreas F. Lowenfeld and Robert Coulson then addressed the issues of choice of law and conflict resolution in the context of international securities trading. The final panel focused on securities regulation. With Kenneth J. Bialkin as its moderator, this panel included Roberta S. Karmel, Lee B. Spencer, Jr., and Peter J. Wallison. All panels discussed the domestic and international aspects of their subjects, and panel members represented the viewpoints of traders, customers, and regulators.

The picture of international securities trading painted in the conference helps us understand the current state of this area, and gives clues to two questions regarding the future: Will global securities markets emerge? If so, how will these markets operate?

A number of observations can be made upon reflection of the discussions at the symposium. First, there seems to be a strong general consensus that the development of international securities markets is a good thing. The traders implied their approval, and this sentiment was echoed by the regulators and members of the bar who spoke. We can conclude, therefore, that the trend towards international securities trading will continue.

Second, the current developments show a multitude of practices in international trading. Large brokerage firms have developed their own around-the-clock trading techniques, while they simultaneously trade through stock exchanges and organizations of broker-dealers. In other words, there is no clear emerging pattern of trading or institutional organization. Right now, anything and everything goes, so long as it works. Since we are at the beginning of the era of international securities markets, we may expect a period of experimentation and perhaps the emergence of a number of dominant patterns and institutions that will continue to develop side by side.

Third, the major problems in international securities trading today are due to the incompatibility among the various trading institutions and the lack of uniform regulation of securities trading in various countries. Incompatibility is the result of different languages, modes of operation, and institutional cultures. Lack of uniform government regulation extends to unwritten rules and assumed customs.

This state of affairs may have a number of consequences. In the race to enter the international arena, old established institutions may not necessarily emerge the winners. In fact, they may lag behind if they are slow in learning, adapting, and changing their patterns of operations and their cultures.

Consequently, the primary actors in international securities trading may tend to avoid or minimize national regulation. Self-interest may result in self-restraint and self-regulation. These actors might develop a set of rules similar to the development of the "law merchant." We have witnessed such a development in the Eurodollar markets. If this occurs in international securities trading, we can expect more uniform rules to apply globally. As a corollary, governments may begin to collaborate rather than regulate international securities markets independently. The players themselves, however, will be the main architects of the law; as they carry on their business, the governments may play more of a partner's role.

A fourth observation is that the players in the international securities markets will be mainly institutions, not individuals. Therefore, as compared to markets in which individuals play an active role, the number of players will be smaller. The players will be more sophisticated and better informed. The concerns of governments will focus more on macroeconomic regulation than on "investor-oriented" regulation.

The fifth and final observation derived from the symposium focuses on what was missing from the symposium: there was no mention of the possibility that war or political unrest would affect these securities markets. This silence may evidence the belief that international trading would be quite resilient in the face of political unrest. Technology makes communication faster, cheaper, and more available to traders. Even though central stations which transmit and receive trading information can be held by governments during a period of political unrest, it would be difficult for governments to police the electronic sound track.

In sum, this symposium made clear that international securities markets are fast becoming a well-established phenomenon. They will continue to develop under private rather than public initiative, controlled by large financial institutions. Rules and regulations governing the international securities markets, however, will evolve as a cooperative effort by both the public and private sectors.