Beyond Borders: Time To Tear Down the Barriers to Global Investing

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INTRODUCTION

In their article entitled A Blueprint for Cross-Border Access to U.S. Investors: A New International Framework, Ethiopis Tafara and Robert Peterson offer a proposal for eliminating some of the barriers between U.S. financial markets and comparably regulated financial markets outside the United States. Under this proposal, non-U.S. securities exchanges and broker-dealers (termed “foreign financial service providers” in the article) would be able to obtain exemptions from registration with the U.S. Securities and Exchange Commission (“SEC”) based on their compliance with substantively comparable non-U.S. securities regulations and laws and supervision by a substantively comparable non-U.S. securities regulator. With the benefit of this registration exemption, U.S. investors will have better and less costly access to a wider array of diversified investment opportunities and reciprocal exemptions for U.S. financial service providers will afford the same benefits to non-U.S. investors.

This is an idea whose time has certainly come. Indeed, it is one that is long overdue. There can be no argument that the securities markets are now global and that the dominance of the United States as the leading player in the global marketplace is being challenged. The SEC can no longer afford to sit on the sidelines and pretend that the U.S. market is the only game in town. It must acknowledge that other securities markets and regulators have matured to the point where they rival (and some might argue exceed) the United States in sophistication. Investing in non-U.S. markets is no longer the exclusive province of megainstitutions or the ultrawealthy; it is an essen-

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tial component of prudent portfolio diversification for all investors. The SEC must find a way to work with its counterparts outside the United States to eliminate barriers to cross-border investment. Tafara and Peterson have proposed a new framework (the “Proposed Framework”), one built on the idea of “substituted compliance,” to commence this process. The Proposed Framework is certainly a step in the right direction and its basic tenets should be embraced and pursued by the SEC. The SEC, however, must exercise care and restraint in its implementation (especially with respect to its assessment of the comparability of non-U.S. regulatory regimes) in order for the Proposed Framework to succeed. Moreover, the SEC needs to be bolder and go farther in its response to the globalization of the securities markets. It should extend the substituted compliance approach to other areas, such as capital raising, and to other market participants. And it should do so quickly.

I. MARKET REGULATION MUST REFLECT MARKET REALITY

The current U.S. regulatory scheme makes cross-border investment costly and inefficient. The SEC has taken no significant steps toward improving the access of U.S. investors to non-U.S. markets and securities in the more than seventeen years since the adoption of Rule 15a-6.\(^2\) The SEC’s reluctance to act is no doubt rooted in its desire (indeed, its mandate) to protect U.S. investors and U.S. markets. However, as Tafara and Peterson note, the SEC also has a mandate to “maintain fair, orderly and efficient markets; and facilitate capital formation”\(^3\) and it must balance its current approach to regulation with a recognition of market innovation and technological advancement. The rise of the internet has given investors a new window on the world and access to almost limitless information. A natural outgrowth of this technological revolution, coupled with increasing investor sophistication and the need for financial diversification that transcends home country borders, is the understandable desire of investors to communicate and effect transactions directly with market participants located in other jurisdictions.\(^4\) As a result, Rule 15a-6 no longer represents an effective solution for either investors or financial service providers. The rule’s cumbersome requirements are duplicative and add cost—both monetary and in terms of timely execution—that are neither necessary nor desired by the very persons the rule seeks to protect.

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4. See, e.g., Simon Targett, Billion Dollar Business Is Becoming Too Big for the Back Office, Fin. Times, July 6, 2001, at 1 (reporting that “US investors increasingly wish to put at least some of their money into European companies. In 1994, foreign investors owned 16.5% of the U.K. stock market. By 1999, this had grown to 29.3%. In Europe, the arrival of the euro has boosted cross-border investment.”).
Moreover, the SEC has done virtually nothing to allow U.S. investors to directly access non-U.S. exchanges.

While the SEC has remained passive, other regulators have moved ahead with the implementation of more investor-friendly substituted compliance regimes. For example, pursuant to its “Part 30 Rules,” the U.S. Commodity Futures Trading Commission (“CFTC”) may grant a non-U.S. firm an exemption from compliance with certain CFTC requirements, including registration, when a comparable regulatory system exists in that firm’s home country and certain safeguards are in place to protect U.S. investors.5 This permits certain non-U.S. firms acting in the capacity of futures commission merchants or introducing brokers to accept and to execute non-U.S. futures and options orders directly from certain U.S. customers without having to register with the CFTC. Under its exemption process, the CFTC generally issues an order granting relief to a non-U.S. regulator or self-regulatory organization and individual firms subject to supervision by such regulator or self-regulatory organization then apply for confirmation of the relief.5 With respect to its regulation of non-U.S. exchanges, the CFTC recently issued a policy statement affirming its use of a no-action process to permit non-U.S. exchanges to have direct access to U.S. investors without registering with the CFTC.7

Other regulators that have incorporated a substituted compliance approach include the U.S. Board of Governors of the Federal Reserve System (“FRB”) in connection with its determination of whether a non-U.S. bank is subject to “comprehensive consolidated supervision” by a bank supervisor in that entity’s home jurisdiction,8 the U.K. Financial Services Authority, and other securities regulators within the European Union, which allow “passporting” of securities licenses within the European Union under the Markets in Financial Instruments Directive (“MiFID”).9 Moreover, it was the action by EU securities regulators in 2002 mandating that any financial firm with significant operations in the European Union demonstrate that it was subject to substantially equivalent consolidated supervision by its home country regulator that prompted the SEC to develop its “consolidated supervised entity” (“CSE”) framework for U.S. broker-dealers.10 It is time for the SEC to take the

9. MiFID permits firms carrying on certain investment services and providing certain investment activities to provide those services in other European Union member states, either by establishing a branch or by providing services cross-border, without becoming separately regulated in each “host” jurisdiction. See Council Directive 2004/39/EC, Markets in Financial Instruments, 2004 O.J. (L 145) 1.
10. See Alternative Net Capital Requirements for Broker-Dealers that Are Part of Consolidated Supervised Entities, Exchange Act Release No. 49,830, 82 SEC Docket 3,515 (June 8, 2004). Under the CSE framework, broker-dealers and their holding companies may voluntarily elect to be subject to SEC supervision with respect to capital adequacy, risk management and operational status on a consolidated, group-
lessons learned from these approaches and adopt its own substituted compliance regime.

Breaking down the barriers between U.S. financial markets and comparably regulated non-U.S. financial markets will benefit both U.S. and non-U.S. market participants. U.S. investors will benefit from more efficient execution of transactions in non-U.S. securities. Non-U.S. investors will similarly benefit from more efficient execution of transactions in U.S. securities. Issuers, both within and outside the United States, will gain access to a wider pool of investors and benefit from a reduced cost of capital. In addition, a substituted compliance approach should also stimulate healthy competition among different regulatory schemes and allow market innovation to flourish.

In order for a substituted compliance regime to produce these beneficial effects, it must not create competitive disparities between different classes of market participants. In this regard, the Proposed Framework, which is based on a commitment to nationality-neutral capital markets, avoids certain problems that arose the last time the SEC considered a similar approach. First, the Proposed Framework does not discriminate against non-U.S. broker-dealers that are affiliates of U.S. registered broker-dealers. The exclusion of this large and powerful group of market participants from the proposal outlined in the 1989 Concept Release likely contributed to the failure of that effort. Second, the Proposed Framework recognizes the importance of reciprocity from non-U.S. regulators—in order for foreign financial service providers to access U.S. markets through the substituted compliance regime, their respective home country regulators should agree to permit U.S. financial service providers to have equivalent access to their own markets. The significance of reciprocity cannot be overstated—it is not only an attractive element of a substituted compliance framework, it is absolutely necessary to achieve widespread support from the U.S. securities community and a level playing field.
II. Implementing a Regulatory Framework Based on Substituted Compliance

For the Proposed Framework, or indeed any framework based on substituted compliance, to be successful, it must be implemented at the "right level."

The Proposed Framework would exempt a foreign financial service provider from SEC registration and prudential oversight if (i) the foreign financial service provider is subject to a regulatory regime that the SEC has determined offers comparable regulatory oversight, and (ii) the SEC and the foreign financial service provider’s home country regulator have entered into an agreement that allows for prudential and enforcement information-sharing and contains an undertaking by the non-U.S. regulator describing how any regulatory preconditions set by the SEC are met (and a reciprocal undertaking by the SEC regarding any regulatory preconditions set by the non-U.S. regulator).\(^\text{13}\) This exemption from SEC registration would be limited to transactions in foreign securities\(^\text{14}\) and would be the subject of a detailed review and reassessment process every five years.\(^\text{15}\) As a condition of the exemption the foreign financial service provider would be required to make available to U.S. investors and the SEC a description of the differences between the legal and regulatory protections provided by its home country regulator and those provided under U.S. law with respect to U.S. broker-dealers or exchanges (as applicable).\(^\text{16}\) Finally, although the foreign financial service provider would remain subject to the rules and regulations of its home jurisdiction with respect to its activities in the United States, and the SEC would not enforce those rules and regulations, the foreign financial service provider’s U.S. securities activities would be subject to the anti-fraud provisions of the U.S. securities laws, which would continue to be enforced by the U.S. federal authorities (including the SEC).\(^\text{17}\)

A foreign financial service provider would obtain an exemption under the Proposed Framework through a four-step process:

\(^{13}\) See Tafara & Peterson, supra note 3, at 32–33.

\(^{14}\) The Proposed Framework does not define “foreign securities” for this purpose, though presumably the proper crafting of that definition will be of critical importance to the successful implementation of a substituted compliance regime. For example, would securities issued by a non-U.S. issuer that are listed both on a U.S. securities exchange and on a non-U.S. securities exchange be treated as “foreign securities”? In addition, at one point, the Proposed Framework appears to limit the exemption for non-U.S. broker-dealers to transactions “conducted on foreign stock exchanges.” Id. at 73. This limitation appears to conflict with other statements in the article and, in any event, should not be necessary (and in fact would be counter-productive) to achieve the desired goals of a substituted compliance regime.

\(^{15}\) Id. at 63.

\(^{16}\) Id. at 58–59.

\(^{17}\) Id. at 57–58.
First, the foreign financial service provider would file a petition with the SEC seeking the exemption.\(^{18}\)

Second, the SEC and the foreign financial service provider’s home country regulator would engage in a dialogue that would involve "a bilateral assessment to determine the degree to which the two jurisdictions’ trading rules, prudential requirements, examinations, review processes for corporate filings, and other requirements are comparable."\(^{19}\) Tafara and Peterson then note that this would also likely include a "discussion of whether regulatory adjustments may be needed to bring the two different regulatory systems into harmony to help ensure that no regulatory gaps or systemic risks exist"\(^{20}\) and that the discussion will:

conclude with negotiation of an enforcement, inspections and information-sharing technical arrangement or memoranda of understanding that would enable the two partners to not only share enforcement-related information and cooperate with each other’s enforcement investigations, but also share inspections reports, conduct joint inspections, and cooperate with each other at the prudential oversight level.\(^{21}\)

Third, the foreign financial service provider would provide information and undertakings required by the SEC and consent to SEC jurisdiction and service of process with regard to U.S. anti-fraud laws.\(^{22}\)

Fourth, the SEC would provide public notice of the petition, seek public comment on the proposed exemption, and, following receipt of any comments, deliberate on the petition and, if approved, issue an order granting the exemption.\(^{23}\)

Although a determination of whether the foreign financial service provider’s home regulatory scheme offers comparable regulatory oversight is a necessary element of any viable substituted compliance approach, the “bilateral assessment” and “harmonization” of the different regulatory schemes required by the second step of the Proposed Framework must be a “forest level,” principles-based assessment in order to be successful. For example, at the heart of any comparable non-U.S. regulatory scheme must be a general investor protection mandate. In addition, the non-U.S. regulator must have robust supervision and enforcement mechanisms. An “in the weeds” rule-by-rule examination of how each regulator implements these principles and achieves its goals would most likely become too entangled in the details and differences between the two regimes to ever result in a determination that the regulatory regimes are sufficiently comparable, and a requirement to “harmonize”

\(^{18}\) Id. at 58.

\(^{19}\) Id.

\(^{20}\) Id.

\(^{21}\) Id.

\(^{22}\) Id.

\(^{23}\) Id. at 58–59.
the two regimes, while perhaps academically appealing, is simply not realistic, nor—given inevitable differences in application and enforcement—is it achievable.24

Moreover, if a detailed rule-by-rule assessment and harmonization is indeed contemplated, the second step in the Proposed Framework is likely to become indistinguishable from a requirement of regulatory convergence—something that Tafara and Peterson expressly, and, in my view, correctly, disavow elsewhere in their article.25 And, as Tafara and Peterson also correctly note, such regulatory convergence, even if it were possible to achieve, would come at the expense of regulatory experimentation, which is the key to the “race to optimality” that is one of the goals of a substituted compliance approach.26 It should also be noted that, although we do and should take pride in our own regulatory system, the large scale financial scandals of the not so distant past have shown that our system is not without its own weaknesses and the SEC can no longer assume that its approach to regulation is the only, or even the best, approach.

Accordingly, instead of a detailed analysis of the rules a jurisdiction has adopted to serve its regulatory objectives (or of the extent to which those objectives are actually achieved), an assessment of comparability should be made at a much higher level, focusing on the basic regulatory principles and objectives themselves. As a first step in this process, the SEC should determine those fundamental principles underlying its own rules that must be embraced by a non-U.S. regulator before a foreign financial service provider in that jurisdiction will be eligible for an exemption from SEC registration based on substituted compliance.27 If a non-U.S. regulatory scheme embodies these identified principles, the specific path it takes to implement them should not impact the comparability determination.

24. Indeed, this is consistent with Tafara's own views, which he expressed in a 2004 speech discussing the benefits of ongoing dialogue between the SEC and the Committee of European Securities Regulators with respect to regulatory cooperation, that it "may not always be feasible to harmonize or converge [regulatory] differences away, or pretend that vastly different policy choices somehow produce equivalent regulation. Nonetheless, we should, where possible, work to minimize conflicts between them." Ethiopia Tafara, Dir., SEC Office of Int'l Affairs, The SEC's Experience in the Development of an Integrated Securities Market in the United States, Speech at the 2nd Annual European Financial Services Conference (Jan. 27, 2004).

25. Tafara & Peterson, supra note 3, at 50.

26. See, e.g., id.

27. The CFTC, for example, identified six basic elements of a comparable regulatory program for purposes of its Part 30 Rules:

(1) Registration, authorization or other form of licensing, fitness review or qualification of persons through which customer orders are solicited and accepted; (2) minimum financial requirements for those persons that accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) minimum sales practice standards, including disclosure of the risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law; and (6) compliance.

Furthermore, although the SEC may avoid certain political issues by allowing the bilateral assessment process to be initiated by any foreign financial service provider that wishes to petition for access, this approach could result in an extremely inefficient use of the SEC’s limited resources. The SEC should instead adopt an approach that would permit it to focus, at least initially, on those jurisdictions that are already known to have philosophically similar regimes and sufficiently comparable regulations. Like the CFTC approach, therefore, the SEC’s focus should be on the sufficiency of regulation in a particular jurisdiction, and the bilateral assessment process should be initiated by the primary securities regulator in that jurisdiction, not individual market participants.

Finally, if the Proposed Framework is to succeed, it should not get bogged down by unnecessary procedural delays. In particular, the Proposed Framework envisions a full notice and comment rule-making process with respect to each exemption request by an individual foreign financial service provider. Instead, the SEC should issue for public comment proposed rules that detail the basic principles that a non-U.S. regime must embody, the reciprocity and information sharing requirements, and the undertakings that must be made by foreign financial service providers seeking the exemption from registration. Once these general rules have been commented on and approved, the SEC should be able to determine which non-U.S. regimes meet the enumerated standards without further public comment or rule-making. In addition, once a non-U.S. jurisdiction has been determined by the SEC to have a sufficiently comparable regulatory regime (and assuming reciprocity and information sharing agreements are in place), foreign financial service providers in approved jurisdictions should be granted exemptions by the SEC upon the filing of the necessary undertakings without needing to file the request for public comment.28

III. JUMP-START THE PROCESS WITH A PILOT PROGRAM

The SEC should make up for lost time and show its commitment to regulatory innovation and to eliminating unnecessary barriers to cross-border investment by initiating a “ready to roll” pilot program that (subject to the reciprocity requirement) would include certain non-U.S. jurisdictions with robust regulatory regimes that have already been considered and deemed comparable by the SEC and other U.S. regulators and with which the SEC has already executed comprehensive information sharing agreements.29 In their

29. Information sharing and cooperation agreements, commonly referred to as “Memoranda of Understanding,” are currently in place, as of Feb. 6, 2006, with Argentina, Australia, Brazil, Canada, Chile, China, Costa Rica, Egypt, European Community, France, Germany, Hong Kong, Hungary, India, Indonesia, IADB/UNECLAC, IOSCO, Israel, Italy, Japan, Jersey, Mexico, The Netherlands, Norway, Portugal, Russia, Singapore, South Africa, Spain, Sweden, Switzerland, and the United Kingdom. See Office of Int’l Affairs, SEC, SEC Bilateral Information Sharing Arrangements, http://www.sec.gov/about/offices/
article, Tafara and Peterson in particular point to the SEC’s latest “memorandum of understanding” with the U.K. Financial Services Authority as an example of a suitable agreement regarding information sharing and cooperation at the prudential oversight level. An obvious choice for one of the potential pilot jurisdictions is, therefore, the United Kingdom. In addition, the SEC could select potential pilot jurisdictions from those jurisdictions to which the CFTC has granted general registration exemptions under its Part 30 Rules, those jurisdictions with respect to which the FRB has made a “comprehensive consolidated supervision” determination, and/or those jurisdictions with respect to which the SEC has made “satisfactory control location” determinations for purposes of Rule 15c3-3 under the U.S. Securities Exchange Act of 1934. At a minimum, the pilot program should include...
the jurisdictions with the largest, most liquid markets: Hong Kong, London, Tokyo and Singapore.

Potential pilot jurisdictions should be approached to determine whether they would be amenable to testing a bilateral substituted compliance regime and to determine whether any refinements to the existing information sharing agreements would be necessary. As discussed above, the order approving the pilot jurisdictions should delegate authority to accept, without further public comment or rule-making, exemption applications from foreign financial service providers regulated in the pilot jurisdictions, provided those applications contain the required undertakings (including consent to SEC jurisdiction and service of process with regard to U.S. anti-fraud laws).

Access to U.S. investors by foreign financial service providers (and to non-U.S. investors by U.S. financial service providers) under the pilot program could also be limited to those investors that the SEC and the relevant non-U.S. regulators have already recognized as sufficiently sophisticated and able to fend for themselves. These investors likely have considerable experience

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35. The regulators in the proposed pilot jurisdictions will also need to take appropriate steps to ensure that U.S. financial service providers will be able to access their markets without registration during the pilot period.

with cross-border investment and should be able to evaluate the regulatory
differences (which would be detailed in the required disclosure statement
provided by the relevant financial service provider) and the potential risks
and rewards of dealing directly with financial service providers located in
jurisdictions outside their home markets.

The pilot program should provide the SEC and participating non-U.S.
regulators sufficient time (e.g., three to five years) to evaluate the efficacy of
the program and to determine whether it should be expanded to include addi-
tional jurisdictions and/or other types of investors. The knowledge gained
from observing how the participants in the pilot program interact will also
help to identify strengths and weaknesses in the regulatory regimes of each par-
ticipating jurisdiction and provide a meaningful framework for the assess-
ment of other potential participants.

IV. Take It a Couple of Steps Farther

The Proposed Framework would be a vast improvement over the SEC’s
current approach to regulating access to U.S. markets by non-U.S. securities
exchanges and non-U.S. broker-dealers. However, there is no reason for the
substituted compliance framework to stop there. The SEC should work with
its non-U.S. counterparts to identify and tear down other barriers to an efficient
global marketplace. For starters, the substituted compliance framework could
also encompass non-U.S. investment advisers and non-U.S. mutual funds or
other investment vehicles (again, assuming reciprocal treatment for U.S.
advisers and investment vehicles).

In addition, it has been widely reported that compliance and other costs
of securities registration in the United States are too high and that this is
one of the reasons for the declining number of initial public offerings being
conducted in the United States by non-U.S. issuers.37 At the same time, the
number of non-U.S. issuers that are (or that have indicated that they are consid-
ering) delisting their securities in the United States is increasing.38 This
trend away from the U.S. securities market will restrict opportunities for
U.S. investors to diversify their portfolios through investment in non-U.S.
companies—which will be especially detrimental to retail investors since
institutional investors will still have the ability to purchase non-U.S. securi-
ties in private placements and offshore offerings. To stem this tide the SEC
should quickly move forward on a parallel track with a securities offering
regime that would permit non-U.S. issuers subject to comparable offering regu-
lations in their home jurisdictions (or the jurisdictions in which their securi-
ties are listed) to publicly offer their securities to U.S. investors without compli-

37. See, e.g., Peter Thal Larsen, London Calling the Shots in Listings Markets, FIN. TIMES, Oct. 25, 2006,
at 1; Craig Karmin, New York Loses Edge in Snagging Foreign Listings, WALL ST. J., Jan. 26, 2006, at C1.
38. See Demise of the ADR, FIN. TIMES, Mar. 12, 2006, at 16; Letter from Darla C. Stuckey, Corporate
Sec’y, N.Y. Stock Exch., Inc. (Feb. 21, 2003), available at http://www.nyse.com/content/articles/
1047054055817.html.
ance with the securities registration requirements of the U.S. Securities Act of 1933.\textsuperscript{39} In this regard, and assuming reciprocal exemptions for U.S. issuers, a pilot program could be commenced with a select group of jurisdictions with robust offering regulations and limited, at least initially, to issuers that meet the “well-known seasoned issuer” standard and that comply with U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards.\textsuperscript{40}

\textbf{Conclusion}

Tafara and Peterson should be commended for focusing much-needed attention on an area that has long called for it. During the past several years, the competitive supremacy of the U.S. securities market has been increasingly challenged. Moreover, U.S. investors (both retail and institutional) are demanding greater access to non-U.S. markets and market participants. Tafara and Peterson’s substituted compliance proposal offers a possible approach toward breaking down outdated regulatory barriers that prevent efficient access to cross-border investment opportunities. To be workable, however, the Proposed Framework must focus on basic, high-level, principles and not attempt a detailed rule-by-rule analysis of different regulatory regimes. The SEC must recognize that different regulators may adopt different mechanisms to address similar concerns.\textsuperscript{41} Moreover, the SEC should initiate as expeditiously as possible a pilot program with select counterparts in other jurisdictions with comparable regulatory regimes that would be willing to offer reciprocal exemptions to U.S. financial service providers. This pilot program should be limited to sophisticated investors and encompass broker-dealers, exchanges, and investment advisers. After an initial review and evaluation period, the pilot program should be expanded to include other jurisdictions and investors so that the efficiencies and cost savings achieved by eliminating duplicative regulation can be enjoyed by a broader group of market participants. Quick action by the SEC should help demonstrate the SEC’s commitment to this process and enhance its credibility with other regulators.

\textsuperscript{39} The Multijurisdictional Disclosure System (“MJDS”) between the SEC and provincial securities regulators in Canada represents an early SEC effort to recognize another jurisdiction’s offering regime. However, this regime has a somewhat tortured history (the concept was first introduced in 1985 and rules were not adopted until 1991), does not represent a true mutual recognition approach and should not be used as a model going forward. See Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers, Securities Act Release No. 6,902, Exchange Act Release No. 29,354, Investment Company Act Release No. 18,210, 49 SEC Docket 260 (June 21, 1991); Facilitation of Multinational Securities Offerings, Securities Act Release No. 6,368, 50 Fed. Reg. 9281 (Mar. 7, 1985) (Request for Public Comment). See also \textit{Edward F. Greene et al., U.S. Regulation of the International Securities and Derivatives Market} § 9.01 (8th ed. 2006).

\textsuperscript{40} I previously discussed this approach on November 17, 2005, during a lecture at Fordham University School of Law. See \textit{Edward F. Greene, Sixth Annual A.A. Sommer, Jr. Lecture on Corporate, Securities and Financial Law, 11 FORDHAM J. CORP. \\& FIN. L. 697, 717–18 (2006)}.

\textsuperscript{41} See Tafara, \textit{supra} note 24.
The SEC should also pursue a substituted compliance framework for issuers. A non-U.S. issuer subject to a robust offering registration regime in its home jurisdiction (or in the jurisdiction in which its securities are listed) should not also be required to comply with U.S. securities registration requirements if it wishes to sell securities to U.S. investors. Similarly, U.S. issuers should not be subject to both U.S. and non-U.S. offering registration regimes.

The SEC must acknowledge that the securities markets have evolved beyond jurisdictional borders and that its current regulatory regime has resulted in barriers to competition and placed roadblocks in the way of investor access to cross-border investment opportunities that have contributed to increased cost and market inefficiencies. Tafara and Peterson have written a provocative article and have offered a framework for addressing these issues. No doubt the world’s securities markets will be anxiously awaiting the SEC’s response.