



Organisation for Economic Co-operation and Development
In co-operation with the World Bank Group

*The 2008 Meeting of the
Latin American Corporate Governance Roundtable*

2 -3 December, Mexico City, Mexico

Summary Note

Co-hosted by:

Mexican Stock Exchange,
Mexican Ministry of Finance,
National Banking and Securities Commission,
Center for Excellence in Corporate Governance
Business Co-ordinating Council (CCE)

With the support of:

Government of Spain and the Global Corporate Governance Forum

1. The 2008 meeting of the Latin American Roundtable on Corporate Governance took place the 2nd and 3rd December 2008 in Mexico City, Mexico. The event, organized by the OECD and the IFC/World Bank Group, was co-hosted by Mexico's Ministry of Finance, National Securities and Banking Commission, Stock Exchange, the Center for Excellence in Corporate Governance and Business Coordinating Council (CCE), and was supported by the Global Corporate Governance Forum and Government of Spain.

2. The meeting provided an important opportunity to take stock of corporate governance-related developments in Latin America, particularly in the wake of the recent global financial turmoil. The aim was to help policy-makers, regulators, investors, businesses and other corporate governance stakeholders to advance in relation to four main themes:

- reviewing policy and best practice recommendations of the proposed White Paper on Institutional Investors and Corporate Governance, building on previous discussions;
- considering recent trends among stock exchanges to demutualise and enhance cross-border trading, and the implications for their role in corporate governance;
- discussing recent trends and priorities for corporate governance-related enforcement in the region; and
- developing a proactive agenda to anticipate risks and overcome obstacles to better corporate governance in the region that takes into account recent international developments in the markets.

3. Based on its consideration of the draft White Paper, the Roundtable broadly agreed on a set of recommendations aimed at encouraging institutional investors to promote better corporate governance of companies in the region. The elaboration of this document began at the 2007 meeting of the Roundtable in Medellín, Colombia, and has been attracting growing interest from the region. The OECD/IFC drafting team will further revise the draft White Paper presented at the meeting to take into account the comments of Roundtable participants before issuing a revised draft for wider public consultation in early 2009.

4. This year's Roundtable also saw the introduction of break-out discussion sessions in smaller groups, which proved to be successful in engaging government officials, investors and other corporate governance stakeholders in animated discussions on the threats and obstacles to the development of corporate governance in the region, in the midst of the financial crisis.

5. The level of participation and media coverage confirmed that the Roundtable continues to play a pivotal role as a forum for Latin American corporate governance policy dialogue. Below are a few highlights:

- The quality of the meeting was supported by **high-level participation**. Guillermo Babatz Torres, President of the Mexican National Banking and Securities Commission (CNBV), and Guillermo Prieto Treviño, President of the Mexican Stock Exchange (BMV), welcomed the Roundtable's 100 participants with introductory remarks. The meeting featured participation from 15 countries, including representation from six Latin American stock exchanges (Argentina, Brazil, Colombia, Costa Rica, Ecuador and Mexico), as well as representatives of the World Federation of Exchanges and Ibero-American Federation of Exchanges. Regulators and finance ministries were represented from Argentina, Brazil, Chile, Mexico, Peru and Spain. Private sector presence was also quite substantial, including representatives of the Companies Circle and investors, amongst them two from the largest pension fund in Brazil (PREVI), plus international investors such as Cartica Capital, Hermes, ING and TIAA-CREF. A range of international organisations, corporate

governance institutes, academic experts, business associations and other private sector participants (audit, rating agency, proxy advisory services) rounded out the participation.

- The topics discussed attracted considerable **media attention**. Reports from the meeting were carried by Bloomberg, the Global Proxy Watch newsletter as well as local newspapers such as La Jornada, Diario Monitor, El Economista, El Financiero and La Crónica. Coverage touched mainly on the role of Institutional Investors (IIs) but also on the perceived failings of Corporate Governance (CG) in the current financial crisis.

Session 1 / Session 5: White Paper on Institutional Investors and Corporate Governance / White Paper on Institutional Investors and Corporate Governance: Drafting Session

1. The discussion (session 1) was launched with a presentation by the lead drafters of the White Paper on Institutional Investors and Corporate Governance: Daniel Blume (OECD) and Davit Karapetyan (IFC). This section summarises comments from both the initial discussion and those made during the drafting session (session 5).

2. The White Paper's recommendations address changes needed at the policy level to facilitate stronger engagement by investors in corporate governance issues, as well as good practice recommendations for institutional investors, both in relation to their own governance as well as the governance of the companies in which they invest. The recommendations focus mainly on pension funds and mutual funds, which are the dominant IIs in the region's equity markets.

3. On the policy level, recommendations relate to eliminating barriers to institutional investors' engagement with companies, such as barriers to casting their votes. It also addresses the establishment of incentives or requirements for such investors to directly influence good governance practices of investee companies through, for example, co-ordinating actions to appoint independent directors, and disclosing their governance policies and voting records.

4. The draft also recommends steps that should be taken in support of the good governance of the institutional investors themselves, including disclosure requirements and other measures to address conflicts of interest. In addition, it addresses complementary actors within the system that can contribute to a market environment in which institutional investors can play an effective role, including associations of investors, corporate governance institutes, rating agencies, proxy advisory services and the media.

5. Participants agreed that this document would be extremely useful, particularly for institutional investors, and suggested a number of ways in which it could become more user-friendly, for easier viewing and topic identification. Many suggestions were advanced, such as creating a table of contents page with hyperlinked titles, a more user-focused navigation tool for going directly to the desired part of the document (for the document's electronic version), greater use of sub-headings, and converting it into a Wiki document (i.e. a live document with interactive potential, available on the OECD web site that could be updated regularly to reflect new developments).

6. From a more substantive perspective, comments were made about the necessity of more and higher quality disclosure from institutional investors with regard to voting policies and actual votes. This extended also to greater transparency of ownership structures and proxy voting processes, including the use of "custodians" to cast votes, to ensure that both companies and investors understand how and whether votes were cast as announced or requested.

7. Discussions also gave significant attention to the need to enhance mechanisms to make voting easier and less costly, including through streamlining of requirements involved in voting through proxy mechanisms. One commenter expressed a concern that too much emphasis was given to e-voting mechanisms as a possible solution to this challenge, whereas other mechanisms such as increasing the flexibility to locate annual general shareholder meetings more conveniently for shareholder participation were welcomed.

8. Participants also discussed the growing prominence of the state in Latin America as an institutional investor, notably in the case of Argentina's nationalisation of its pension funds and the use of stabilization or sovereign wealth funds in some other countries, a trend which should be taken into account in the White Paper.

9. The discussion also pointed towards the need for stronger emphasis on the corporate governance of institutional investors themselves. Some participants suggested that the White Paper does not concentrate enough attention on this aspect, including how investors can add value, focusing instead much more on the corporate governance of the companies invested in. Particular areas of concern with respect to the corporate governance of institutional investor included: the structure of boards or other governance oversight structures for mutual funds, and compensation of board members in pension funds, amongst others.

10. Certain participants pointed to concerns with respect to the role that rating agencies and proxy advisory services play in helping institutional investors better gauge the corporate governance practices of investee firms, as the providers of these services often are not regulated and can be influenced by conflicts of interest in relation to the companies to which they provide services. It was suggested that a less positive and more neutral stance should be taken in the White Paper when referring to the role of these services in relation to IIs.

11. Participants agreed that a more fine-tuned alignment of incentives was needed, particularly in relation to board member and executive compensation, in which short-term returns may receive excessive attention vis-à-vis longer-term performance. Incentives must also maintain the right balance between excessive risk-taking and being too risk-averse.

12. Discussants also pointed towards the need to include in the White Paper the important role banks can play in affecting the corporate governance of the companies they lend to, this particularly is the case of Central American countries, which have less developed capital markets and where the most common provider of capital is the banking sector (there are very few IPOs).

13. Session 5 concluded that the OECD and IFC would make revisions to the White Paper to take into account the discussion and any further written comments to be submitted by December 19, so that a new draft could be issued in early 2009 for a final round of public consultation.

Session 2: Role of Stock Exchanges in Corporate Governance: the Impacts of Demutualisation and Cross-border Integration

14. This session was introduced with five presentations, which mainly focused on recent developments in stock exchanges in the region.

15. The opening presentation by the session Chair, Silvina Vatnick, developed a panoramic view of the broader implications of demutualisation of stock-exchanges and cross-border listings on corporate governance in the Region. This presentation argued that the effects of these developments on corporate

governance are largely determined by local regulation, or institutional corporate governance, and that generally better corporate governance practices required by exchanges have proven to be a magnet for companies to list, although this can be affected by cost of compliance.

16. The presentation by Thomas Krantz, Secretary-General of the World Federation of Exchanges, looked more broadly at the evolution of stock exchanges and their role in encouraging better corporate governance, arguing that the demutualisation wave, which started in Sweden 10 years ago, has not proven to be a race to the regulatory bottom, as the establishment of higher corporate governance standards through listing requirements has proven to be a way for stock exchanges to attract investments and listings. To minimise the impact of conflicts of interest, many stock exchanges have resorted to separating the regulatory and commercial functions of the exchange.

17. Pedro Zorilla, General Manager of the Mexican Stock Exchange, presented the Mexican experience with its demutualisation, in which it was argued that the effects of globalisation of corporations, investment and financial intermediaries have also increased competition between stock exchanges, creating at the local level horizontal and vertical integration, at the international level more listings and more recently the building of global exchanges through mega mergers. Furthermore, this presentation argued that the pressure exerted by the demutualisation process with regard to conflicts of interest was alleviated and will be solved through the restructuring of the supervisory function and an enhanced corporate governance structure of the stock-exchange itself.

18. This session also heard from Matthew Sullivan, Director of Strategy and Markets of the Costa Rican Stock Exchange, about the experience of integration in Central American regional capital markets, which on a country by country basis have proven to be too small for attracting capital. The aim has been to achieve regulatory convergence towards higher standards of corporate governance to establish a larger and more unified market that can better attract investment. The presentation also highlighted efforts in the region to promote better corporate governance such as the establishment of a regional alliance of corporate governance institutes, the revision of the Code of Corporate Governance in Costa Rica (on a “comply or explain” basis), amongst others.

19. Finally, the session concluded with a presentation from Cristiana Perreira of BM&F BOVESPA of Brazil, about their experience of demutualisation. She suggested this was driven by the need to: respond to international competition and adjust to an integrated market dynamic; add more flexibility and response velocity to the changes in the domestic and international scenario; raise capital for new investments; add liquidity and valorisation to brokerage houses’ (members) investments; and to strengthen the commercial focus - thus turning the BOVESPA into a stronger international player. This presentation also touched upon BM&F BOVESPA’s management of conflicts of interest. Three models for dealing with conflicts of interest after demutualisation were suggested in the presentation: the internalisation of the regulatory function by the exchange; the separation of the commercial and business functions; and finally the outsourcing of the function. The exchange has sought to deal with conflicts of interest by establishing a separate entity to handle regulatory activities, and by increasing transparency related to its activities, including its own compliance with its listing requirements.

20. The ensuing discussions centred on the problems of conflicts of interest arising from demutualisation. Participants cited a range of mechanisms that have been put in place to deal with this issue, such as a cap on single ownership of exchange stocks (Colombia, Brazil). The Chair concluded that, in comparison to previous years, the session had revealed a noticeable increase in stock exchanges’ preoccupation with their own governance and measures necessary to address conflicts of interest.

Session 3: Corporate Governance Enforcement Priorities: The Gap between Standards and Implementation

21. This session gave participants an overview of the regulatory regime in three of the biggest capital markets in Latin America, namely Brazil, Chile and Mexico, and highlighted emerging enforcement priorities such as mechanisms to prevent abusive related party transactions and insider trading.

22. Maria Helena Santana, President of Brazil's Securities Commission, noted that insider trading has become a priority due to its negative effects on the credibility of the market and trust in price formation, etc... This presentation also touched upon other priorities in the Brazilian context, namely enforcement against abusive related party transactions, poison pills and tender offer rules.

23. In the Mexican case, Carlos Quevedo, CNBV Vice President of Stock Exchange Supervision, highlighted the strengthened framework for enforcement established by Mexico's 2006 reforms, including requirements for audit committees and corporate practices committees that review and render opinions on all related party transactions. His presentation addressed disclosure of information practices, highlighting the fact that the board of directors and the executive are responsible for information disclosure. The presentation also described the Tender Offer Rule in the country, market abuse definitions, including how Mexico deals with insider trading cases and market manipulation, and finally concluded with the sanctioning role of the National Securities and Banking Commission (CNBV).

24. Hernan Lopez, the Chilean Deputy Superintendent of Chile's Superintendence of Securities and Insurance (SVS) presented the evolution of corporate governance in the country from a regulatory perspective. The presentation initially focused on the changes made to the legal and regulatory frameworks in recent years and then moved on to look at internal changes within the structure of the regulator aimed at strengthening its supervisory functions.

25. Finally, Juan Munguira, Legal Adviser for the Spanish National Market Commission (CNMV), referred to the importance of the Latin American Roundtable as a forum to advance the implementation of the OECD Principles of Corporate Governance in the region, as well as the relevance of developments in Europe, such as new disclosure requirements set out in the EU's Transparency Directive on Financial Standards.

Session 6: Main Conclusions from Group Discussions on Threats and Obstacles to Corporate Governance in Latin America (Session 4).

26. This session was devoted to the conclusions from the discussions in the break-out groups (session 4). This innovative feature in the format of the Roundtable was welcomed by most participants as it allowed for discussion in groups of as few as eight people. In each of the three breakout groups a lead speaker was asked to present to the group a variation on the theme: *Threats and Obstacles to Corporate Governance in Latin America*. The three different perspectives were: the role of the private sector; the regulatory/policy framework; and the global economic and policy environment.

27. The first group, which looked at threats and obstacles to corporate governance in the region focusing on the role of the private sector, highlighted the fact that many companies remain resistant to the one-share one-vote premise, particularly family-owned companies seeking to maintain control. The group also highlighted the strong interest in having more empirical information and focused research on the impacts of corporate governance, such as on company performance, risk, and the potential not only for it to improve company value but also to shield against the negative impacts of the financial crisis. This group also concluded that it is important to instill a corporate governance culture at the very top of companies in order for it to permeate to the rest of the organisation.

28. The second group, which focused on the policy and regulatory perspective, considered whether policy and regulatory attention to corporate governance would be diminished in the wake of the financial crisis. While there were divergent opinions on the extent to which the regulatory framework should be tightened to prevent further crises, there was agreement that corporate governance failures had contributed to the crisis, and that therefore greater attention would be needed in the immediate future to determine how corporate governance could be improved not only at the level of policy and regulation, but also at the level of enforcement and implementation. Amongst other discussion points from this group, the speaker highlighted the problem of aligning incentives, for instance in relation to board compensation. The *rapporteur* from the group also suggested that more legislation was needed to strengthen the regulatory framework.

29. Reports from the third group on the global economic and policy environment raised concerns that the current financial crisis may have led to an overreaction by some governments, and that the public bail-outs, which function as temporary cures, could become permanent situations. Increased State intervention provides an opportunity for the State to have a say on corporate governance in companies it has a stake (in the case of Argentina for instance). But such State intervention also carries risks of misaligning incentives and encouraging risk-taking, as the State could become a *de facto* guarantor. This group also highlighted some concerns regarding the ability of institutional investors to conduct due diligence on investment carried out, and the extent to which IIs can rely on credit agencies or advisory services to inform them of CG in investee firms. Furthermore, this group argued that the current crisis showed that boards are ill prepared to properly understand certain complex financial transactions, and that “risk committees”, or external advice should be sought when dealing with certain risk profiles. This group’s conclusions pointed towards a better implementation and application of the OECD Principles as the best way to shield companies from a crisis; it also called for a White Paper on the corporate governance of regulators.

30. From the general discussion that ensued, participants agreed that since some skepticism regarding the benefits of corporate governance still exists, and since it is difficult to “prove” that CG improves performance, more needs to be done to “spread the word” and concentrate on the known positives of CG, such as better knowledge of risk, alignment of incentives amongst others to promote CG in the region.

31. The difficulty of instilling a CG culture in family owned (and closed) companies in the region (which are the most common type of companies in Latin America) was also raised as an issue for further consideration. It was argued that due to the costs and sometime to the lack of understanding of the value-enhancing nature of CG, it is difficult to establish good CG in these companies.

Session 7: Concluding Session– New Initiatives and Priorities for the Future: New Guidance for Corporate Governance Implementation

32. The concluding session featured two presentations, one from the Latin American Venture Capital Association presenting a new toolkit designed for closed and family-owned companies for the identification of corporate governance risks, and a second one about the Companies Circle’s draft Practical Guide to Corporate Governance Implementation, due to be published in 2009, in which one of the highlights was a finding that Companies Circle members have been performing generally (in certain indicators) better than other companies in Latin America, according to preliminary conclusions.

33. This was followed by a number of comments on interests for the Roundtable’s programme of work for 2009. It was announced that Chile’s representatives had offered to serve as the co-hosts of next year’s Roundtable, with a tentative target date of early October to be confirmed. As the Chile meeting will mark the 10th annual meeting of the Roundtable, it was seen as an opportune time to take stock of achievements during this period and continuing challenges, with particular interest expressed in assessing progress on enforcement.

34. Interest was also expressed in continuing work on institutional investors, increasing global collaboration and communication on the Roundtable’s work to involve new institutions and constituencies. Among the possible new issues/constituencies to address were the influence of banks on company corporate governance (particularly important for influencing non-listed companies), and deepening discussion with pension fund managers in the region on the tools available to them to promote better governance, both through AGMs as well as through appropriate incentives and oversight of boards. The growing role of the State in some countries’ corporate governance was also highlighted as an issue for possible consideration. Participants also highlighted their interest in building the work of the Companies Circle and experience of its members more fully into the Roundtable agenda.

35. Given the wide range of interests expressed for future Roundtable priorities, both in the closing session and in evaluation forms submitted to the OECD, the OECD underlined the interest in carrying out a broad stock-taking of developments in preparation for the 10th annual meeting, but noted that the specific Roundtable agenda will be determined based on further consultation with Roundtable participants and in light of developments in the region before the Chile meeting.

Summary of Roundtable Evaluation Form Responses:

