Summary Record

The 2013 Meeting of the Latin American Corporate Governance Roundtable

20-21 June, 2013

http://www.oecd.org/daf/ca/latinamericanroundtableoncorporategovernance.htm

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LATIN AMERICAN ROUNDTABLE ON CORPORATE GOVERNANCE SUMMARY RECORD

QUITO, ECUADOR 20-21 JUNE 2013

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EXECUTIVE SUMMARY

The Latin American Roundtable on Corporate Governance met in Quito, Ecuador on 20-21 June, 2013. Organized by the OECD and co-hosted by the Bolsa de Quito and Ecuadorian Corporate Governance Institute (IEGC), the Roundtable attracted 109 participants from Argentina, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Nicaragua, Panama and Peru in Latin America, as well as from the US, UK, Spain, Turkey and Italy and regional and international organizations. Support from the government of Spain and Ecuador's Superintendency of Companies was also noted, along with the sponsorship of the CAF Latin American Development Bank, International Finance Corporation and the Ecuadorian consulting firm Governance.

The main theme of the meeting – **how corporate governance may contribute to Latin American equity market growth and economic development** – was discussed in an OECD background report, "Trends and Factors Impacting on Latin American Equity Market Development." This theme was further explored through more specific sessions dealing with corporate governance challenges for SMEs, corporate groups, and listed state-owned enterprises; a new World Bank/IFC report on corporate governance indices; reports on progress against Roundtable Task Force recommendations on preventing abuse of related party transactions; and corporate governance considerations for institutional investors.

Key outcomes included the following:

- Discussants provided a number of suggestions for further development of the Roundtable's work on "Trends and Factors Impacting on Latin American Equity Market Development." This included a call for further consideration of:
  1) The relevance of the wider **economic policy framework**, including foreign exchange controls, limits on capital flows, the tax framework and incentives, and role of banks.
  2) The importance of **bond markets** for corporate governance and capital market development in the region;
  3) The need for better understanding of how corporate governance requirements may differ for **SMEs**, depending on the size of the company, type of financing being sought, and other factors;
  4) The need to develop a better understanding of different policy frameworks, requirements and corporate governance needs for different types of **company groups;**
  5) The growing use of Exchange Traded Funds (ETFs), high-frequency trading, and patterns of market fragmentation and consolidation and their impacts on equity market development and corporate governance incentives;
  6) The relevance of **state intervention** and the role of state-owned development banks and their impact on equity market development; and
  7) More detailed development of sections dealing with **country-specific equity market development and corporate governance initiatives**.

The report will be revised and re-circulated, taking into account discussion from the Roundtable meeting and written comments.

- Following discussion of specific corporate governance challenges for listed state-owned enterprises, looking at cases in Brazil, Colombia and Ecuador, the Roundtable decided to bring the results of these discussions to the next meeting of the **Latin American Network on Corporate Governance of State-Owned Enterprises.** The SOE Network, co-organized by OECD and the CAF Latin American Development Bank, will hold its 3rd meeting in early 2014 (date and location still to be confirmed). It was also proposed to disseminate the work of the Roundtable Task Force on Related Party Transactions to the SOE Network for its consideration and further development within the context of state ownership.

- **The Task Force on Related Party Transactions** reported on progress against the Task Force's recommendations in Brazil, Chile and Mexico and its interest in developing best practice recommendations or options for consideration, particularly with respect to company groups. The Roundtable and its Task Force expressed an interest to have the Latin American Companies Circle Working Group on Company Groups develop its work on these issues before bringing it back to the Roundtable for further consideration.

- Reports from **breakout groups** were warmly welcomed on the use of stock exchange corporate governance indices (highlighted in a new World Bank/IFC report); corporate governance challenges for company groups; and corporate governance needs for SMEs seeking bank or private equity finance.

- Brazil's capital market investor association AMEC proposed to lead a task force to further address the **Roundtable's recommendations on institutional investors and corporate governance**. Colombia and Peru also reported on progress of their own country task forces to address the Roundtable's recommendations. Other countries were invited to consider reporting on progress at the next Roundtable meeting in 2014.

- Some **convergence of practices and requirements** were particularly noticeable in the cases of **Chile**, **Colombia** and **Peru**, which are linked through the **MILA initiative** to integrate trading of listed companies across these three countries. All three countries have launched comply or explain corporate governance codes and are looking to pension funds to play a stronger role in nominating and electing independent, professionally-qualified board members.

- Looking ahead, the Latin American Network of Corporate Governance Institutes (IGCLA) will work to support corporate governance improvements across the region. **The Latin American Corporate Governance Roundtable will meet in the last quarter of 2014** to give further consideration to the issues identified above, and to ensure timely input to the upcoming review and revisions of the **OECD Principles of Corporate Governance** and **OECD Guidelines on Corporate Governance of State-Owned Enterprises**.

Meeting papers and presentations are available at www.iegc.ec and on the OECD web site at http://www.oecd.org/daf/ca/latinamericanroundtableoncorporategovernance.htm.

DETAILED SUMMARY RECORD

Background

The 2013 meeting of the Latin American Corporate Governance Roundtable was organized by the OECD and co-hosted by the Quito Stock Exchange and Ecuadorian Institute of Corporate Governance with the support of Ecuador's Superintendency of Companies and the Spanish Government. Additional sponsors included the CAF Latin American Development Bank, International Finance Corporation and the Ecuadorian consulting firm Governance.

The objective of the Roundtable is to facilitate corporate governance improvements by providing a forum for the structured exchange of experience among senior policy-makers, regulators and market participants.

This year's meeting featured active discussions among 109 participants from 16 Latin American and OECD member countries. Latin American participants included representatives of Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Mexico, Nicaragua, Panama, Peru, the CAF Latin American Development Bank and the Inter-American Development Corporation. Participants also attended from Italy, Spain, Turkey, the United Kingdom, the United States, IFC, World Bank and OECD.

This document presents a detailed Summary Record of the main points made in each of the sessions that took place during the meeting.

Welcoming Remarks

Suad Manssur Villagrán, Companies Superintendent, Ecuador

Ms. Mansur welcomed participants and recalled the Roundtable's history and principal objective of promoting international corporate governance standards to be shared in discussions and workshops adapted to the local circumstances of all Latin American countries. She cited Roundtable work including the White Paper on Corporate Governance and work on enforcement, institutional investors and overall progress reports on corporate governance improvements.

She noted that Ecuador's Institute of Corporate Governance, established on 20 September 2012, has played an active role in preparing this Roundtable. The Superintendency of Companies, which coordinates oversight of the stock market sector, has undertaken a series of initiatives with the intention of strengthening the development of stock markets at the local level, with the appropriate protection of shareholders and clear definition of the rules of the game to ensure easy access to information for all actors within the market, to eliminate asymmetry, and to ensure the appropriate and fair setting of prices. She noted that it is precisely corporate governance that is one of the best methods to achieve these goals. She concluded by suggesting that participants will be able to apply the Roundtable's work to their different country situations, and that she was convinced that in Ecuador the Roundtable discussions would be useful not only for Ecuador's listed companies but for all participants in Ecuador's market.

Patricio Peña, Chairman, Ecuadorian Institute of Corporate Governance

Mr. Pena welcomed and thanked all participants for taking the time to come, and referred to the many of attributes of Ecuador and of Quito (the first city in the world to be designated as a World Heritage site) as host of the meeting. He noted that Ecuador's government has currently proposed a number of reforms to support its development, and that the country is confronted with an enormous group of challenges, but also an enormous amount of opportunity.

Corporate governance is relevant to these challenges, and the Ecuadorian Institute of Corporate Governance was created in this context, inspired by the lessons and recommendations of the Latin American Corporate Governance Roundtable and Network of Corporate Governance Institutes, and the programs instigated by the Quito Stock Exchange to bring together professionals with the most experience regarding corporate governance in the region and in much of the world. Thus, the birth of the Ecuadorian Institute of Corporate Governance, and this meeting of the Latin American Roundtable comes at a good time, three years after Mr. Pena had first offered for Quito to serve as the Roundtable's location. He concluded by expressing hope that the conversations, the discussions, the reflections, and the knowledge that all participants have brought to this occasion will be of benefit to the process of developing corporate governance in Latin America.

Marcello Bianchi, Chair of the OECD Corporate Governance Committee from Italy's securities regulator, CONSOB

Mr. Bianchi welcomed participants and thanked the co-hosts and sponsors. He highlighted OECD's conclusions and concerns about corporate governance in the wake of the global financial crisis, and suggested that unconventional approaches are required because the traditional ones failed or at least have seemed to be ineffective.

He pointed to current concerns about the functioning of equity markets revolving around two aspects:

- Structural changes in terms of:
  - Ownership (re-concentration of ownership in the hands of institutional investment intermediaries: new and unexplored agency costs between record owners and beneficial owners);
  - Market fragmentation and trading practices (new trading venues, dark pools, algorithmic trading, high frequency trading contributing to poor price discovery);
  - Investment strategies (indexing, exchange traded funds : reduced incentives for active and engaged ownership);
  - Type of investors (private equity and hedge funds: extensive use of financial innovation for decoupling of economic and voting ownership).

- A regression in the role of the equity markets:
  - In developed markets, a prevalence of going private (delistings and low levels of new companies). Since 2002, an annual average of 2,000 companies have delisted from stock exchanges, which means almost 40% of the listed companies delisted over the last ten years in most markets. SMEs have disappeared from the IPO markets. And markets are not providing equity capital to listed SMEs anymore. Stock exchanges are becoming a closed old boys club; adverse selection can move them into "markets for lemons".

  - While there has been an increase in IPO activities in some emerging markets, mainly China but also in Latin America (listings of family-owned companies and SOEs), emerging

economies' corporations are still highly dependent on short-term bank lending for financing long-term business investment.

He concluded that the Roundtable meeting would offer an opportunity to explore and better understand factors influencing Latin America's rapid growth over the last decade, including what corporate governance steps have contributed to that growth and what may have impeded it, and that these experiences would also feed into the OECD's work on these issues, including its planned revision of the *OECD Principles of Corporate Governance* beginning in 2014. He expressed hope that the meeting would also support participants' own efforts to further improve their countries' own corporate governance frameworks to best support sustainable economic growth.

Session 1: Trends and factors impacting equity market growth

Daniel Blume, OECD Corporate Affairs Division Senior Policy Analyst

Mr. Blume highlighted the key trends and issues covered by the Roundtable report, "Trends and Factors Impacting on Latin American Equity Market Development." The paper is based in part on the OECD's work on "Corporate Governance, Value Creation and Growth" which focuses on global trends in the development of equity markets with an aim to facilitate the meeting of savers and companies that need equity capital for growth and job creation; to facilitate the allocation of equity capital to the best investment opportunities; and to provide incentives for informed and long-term ownership. The Roundtable report is intended to better understand the specific dynamics of Latin American markets and the relevance of these global trends, and to provide input to the upcoming review of the OECD Principles of Corporate Governance, planned in 2014. The overall trends in global markets, including a declining number of IPOs, increased market fragmentation, new trading techniques, and more complex investment strategies and structures, have raised new challenges for corporate governance (These are summarized in more specific detail in Mr. Bianchi's welcoming remarks above).

Latin American markets have shared in some of these trends, but to a lesser degree. As in Asian emerging markets, Latin American markets have been growing relative to OECD markets, with market capitalization as a percentage of GDP increasing from 28% in the late 1990s to an average of 52% in the period of 2006-2010. But high ownership concentration and low liquidity has changed very little. While fragmentation of markets has not emerged as a problem, and use of exchange traded funds (ETFs) and high-frequency trading (HFT) is much less of a factor than in developed markets, their use is nevertheless growing and may negatively impact on incentives for new, smaller issuers to list and for shareholders to monitor corporate governance.

Mr. Blume briefly highlighted developments and achievements in individual countries before pointing to achievements and challenges remaining in the region. Key achievements have included consolidation and integration of trading in most markets; better disclosure in some markets; a convergence of standards through implementation of International Financial Reporting Standards, increased attention to director independence, establishment of audit committees and voluntary corporate governance codes in most markets; requirements for pension funds and increased awareness by other institutional investors of the need to take corporate governance into account; and a range of actions to facilitate shareholder participation.

Challenges remaining include how to get mid-sized companies to list, and how to foster market conditions that ensure effective functioning of corporate governance frameworks, including:

- The balance between regulatory requirements and the flexibility for companies to adopt their own practices;

- How to improve board functioning;
- How to address corporate governance in conglomerate structures;
- How to address global trading trends (including ETFs and HFT);
- The role of the state in equity markets;
- The feasibility of establishing successful listing segments for SMEs; and
- The use of corporate bond markets as an intermediate vehicle to enhance corporate governance.

Alexandre Di Miceli, Professor, University of Sao Paulo, Brazil

Dr. Di Miceli first highlighted several indicators of Latin American equity market health (details available from his Powerpoint presentation). The region has made progress in terms of market capitalization and total value of traded shares as a percent of GDP but still remains well below OECD averages. No progress or even deterioration has occurred with respect to several other indicators, including number of listed companies, market concentration, level of free float, and the high level of ownership concentration for listed companies. Companies with dispersed ownership have been established for the first time, but still remain a small minority (7% of Brazilian listed companies).

IPOs in the region reached a peak in the 2004-2007 "IPO wave," featuring 61% of all IPOs taking place over the last decade. He suggested some macroeconomic reasons for the wave (macroeconomic stability in the region coupled with a commodities boom, easy credit conditions available as part of a global asset bubble), as well as companies (fuelled by investment banks) making use of a "window of opportunity" resulting from hot, mis-priced markets. However, corporate governance improvements may also have played a role, both in terms of regulatory and self-regulatory improvements, as well as practices at company level.

Despite a significant number of IPOs in the region over the last decade, only a small number of large, established companies and conglomerates are benefitting from this financing opportunity. The average size of Latin America's 256 IPOs over the last decade was USD 217 million, more than double the US average of USD 95 million from 2010-2012. The Latin American IPO statistics have been dominated by Brazil, which accounted for 56% of all IPOs in the region, three-quarters of which occurred in the 2004-2007 IPO wave. Fifteen of the 20 largest IPOs, accounting for 52% of all capital raised, went to non-independent companies (spin-offs or carve-outs, demutualization, etc.). Only 0.5% of medium and large Brazilian companies are currently listed on the exchange.

He suggested several reasons for the limited use of equity markets. On the supply side, there is an alternative (cheaper and less stringent) source of finance: the Brazilian National Development Bank (BNDES), which has provided more capital to companies in Brazil over the last decade than the bond and equity markets combined. Controlling owners may also fear losing total control over decisions and increasingly view the markets as excessively focused on the short-term. The greater transparency required of listed companies may also reduce their scope for tax evasion and shed too much light on political donations, especially for those depending on government bids. On the demand side, investors may be less willing to buy shares in listed companies following state interventionism at the industry level (electricity and financial services) as well as at the company level. He also cited well-publicized corporate governance problems with listed companies, including fraud, derivative losses due to improper risk management, controversial restructurings involving Novo Mercado firms, and poor performance by some high-profile companies. He suggested that there is some evidence that some companies are more interested in corporate governance as a marketing tool rather than as a new approach for their business.

Finally, Dr. Di Miceli suggested three solutions to facilitate capital formation through primary equity markets in the region: 1) increase transparency requirements for medium and large privately-held firms to reduce their competitive advantage vis-a-vis listed companies; 2) stock exchanges should foster a market structure that helps SMEs, favoring a "long-term investor model" rather than replicating the "trading model" currently prevailing in developed markets (based on high-frequency trading, decimalization, etc.); 3) continuous acculturation programmes are essential for privately-held firms to understand the business case for good governance that can increase their competitiveness and long-term value, rather than serving as a formal compliance exercise.

Elvira Schamann, Ibero-American Federation of Stock Exchanges (FIAB)

Ms. Schamann considered the work extremely valuable, and thanked the Secretariat as well as contributors from the stock exchanges of Buenos Aires, Lima, Santiago and Mexico City for their input to it. Her detailed comments for further elaboration and refinement of the paper included the following insights and suggestions:

- She noted significant differences between countries and markets ranging from the largest market of Brazil to the Dominican Republic, which has no stock market (but has a bond market), and highlighted that some markets rely more heavily on short-term instruments (i.e. commercial paper with terms of less than one year), such as Chile, which trades intermediary financial instruments in annual amounts five times greater than the bond market and 11 times greater than the stock market.
- She stated that the region has experienced extraordinary and dynamic development in recent years, with domestic stock market capitalization increasing from 1.6% to 6% of total international capitalization between 2000 and 2012, and with a growth of 585% versus a growth of 70% for other international markets (source WFE).
- While the OECD report focuses mainly on the six largest markets, there are 19 Latin American stock markets within the FIAB (plus two derivative markets in Argentina). However, the six largest markets represent 97.5% of regional domestic stock market capitalization and 74% of listed companies.
- These six markets also feature important trading of fixed income securities (corporate bonds), and a wide diversity of instruments that are negotiated in Latin American Exchanges (or Stock Exchanges). Indeed, only in Argentina, Brazil, Peru, and Venezuela do the amounts traded annually by shareholders surpass the amount traded in corporate bonds for the stock markets included in FIAB.
- Considering the total amount traded in fixed income (including both corporate and government bonds), only Brazil, Mexico, Peru, and Venezuela have equity markets that are more active than their bond markets. Actually, in 73% of Latin American markets the total transactions of bond markets surpass those of equity markets. But, it should be recalled that in Venezuela, regulatory restrictions contribute to this situation.
- Markets also exist for trading securities that do not require a public offering in the local market for the companies involved (for example the global market BMV). These are particularly relevant to issues of regionalization and globalization done by organizations such as the OECD and in this Roundtable, regarding the diffusion and promotion of good corporate governance practices.
- She suggested also taking a look at indicators such as the percentage of listed companies with respect to overall number of companies (for example in relation to the largest 500 or 10,000 companies in a country), and to supplement the data of IPO listings and secondary listings with real investment indicators. She also suggested to work towards getting more of the main/principal companies of each country to open up to capital markets, to list on the stock market and provide investors with the opportunity to participate in their growth, and of course share their risk as well.

- Ms. Schamann referenced FIAB work on the development of markets for SMEs, comprising not only stock markets, but also other instruments, such as bonds and short-term financial structures which can cater to different financing needs, and also to cultural factors aimed at influencing the possibility or interest of companies to open up to capital. However, only three stock markets in the region (Buenos Aires, Brazil, and Lima) have specific markets for SME shares, but many markets offer the possibility to trade corporate bonds or fixed income securities and other instruments other than SME equity.
- She supported references in the paper to the role that institutional investors and private equity play, in particular in their ability to guide strategic decisions that increasingly range from finding sources of financing on the market, to more consolidated stages of business development, including the adoption of good corporate governance guidelines.
- Regarding market integration, she suggested that this doesn't necessarily mean a consolidation or only one stock market for each country, but rather points to the goal of creating authentic national and regional markets stemming from the diverse experiences and initiatives that have been observed throughout the region. Regarding the MILA initiative, involving trading of secondary shares between Chile, Colombia and Peru, she suggested that it is more a process of integration and not so much consolidation in its current stage, driving also a cultural change for listings and professionals which are now emerging and naturally increasing. With increased presence of "trans-Latina" multinationals in this context, she asked whether specific aspects of corporate governance that are relevant in such cases could be addressed.
- On the issue of exchange traded funds (ETFs), which have experienced rapid growth in some Latin American markets and which are an instrument that can allow the local investor to diversify his portfolio, she noted that the amounts negotiated in 2012 amounted to $130 billion dollars, and Mexico made up 88% of this total. In BM&FBOVESPA, which ranks second in the region for ETFs, the total traded amounts doubled between 2011 and 2012. However, she downplayed the risks cited in the OECD report suggesting that greater use of ETFs may lead to further market concentration. Rather, many of the ETFs traded in Latin America reference the indices of foreign stocks or commodities. For example, in Mexico, out of a total of 455 ETFs enabled during 2012, only 12 of these referred to Mexican company indices.
- Regarding reasons for the region's dynamic equity market growth over the last decade, she noted first the importance of macroeconomic factors including global liquidity, and low interest rates in other markets, but also suggested that gradual adoption of good corporate governance practices for listed or registered companies and the increased perception of their importance in the region constitutes a major element relevant to the beneficial development cycles, and to the popularization as the Brazilians say, of the markets.
- Finally, and in relation to the specific challenges mentioned in paragraph 125 of the paper, while all are relevant, she suggested as most central: 1)The reference to the need to achieve a balance between regulation and flexibility, while controlling costs; 2) To recognize the reality in Latin America that is called "path of the company" (senda de la empresa) and the different instruments that are associated with different stages of development of the stock market; and, 3) In Latin America, the stock market offerings and appropriate instruments for SMEs (although many international experiences in developing markets have not had significant success, it is also true that many of the largest companies today began as SMEs).

Alvaro Clarke, President, Corporate Governance and Capital Markets Center, University of Chile

Mr. Clarke first discussed the complementary roles of equity and debt markets, focusing particularly on the case of Chile. He noted that pension funds are the major player in Chile, playing a key positive role in influencing corporate governance of the companies they invest in as long-term investors, including through their appointments of independent directors. They generate positive externalities throughout the market and for all of the smaller investors that don't have the same capacity to monitor and

influence corporate governance issues. He suggested that Colombia, Peru and Mexico have similarities that also lend themselves to a strong role for pension funds in corporate governance matters, stressing that their power is fundamental to developing corporate governance standards in the long run. Other investors such as mutual funds and hedge funds play a role as well, particularly with smaller listed companies, but because the cost of capital is relatively higher for such companies, it can be more difficult for them to list on the market, and some of them have had difficulties maintaining share values following initial listings. Insurance companies are more focused on debt markets but also have a strong potential role to play in disciplining debt market investments.

Mr. Clarke had several specific comments regarding the report. He noted that the Chilean system of establishing a Directors Committee with the power to monitor related party transactions, as well as to propose external audits and rating agencies, and to classify risk, dates back to 2001 legislation, and suggested that the paper creates a misimpression that it was established during the 2009 reforms (which offered amendments to this system). These are functions that are essentially designed to ensure that internal conflicts within the companies are resolved. He suggested that Chile has achieved an environment of relative equilibrium, a healthy balance, between controlling and minority shareholders. He cited as an example the recent case of a shareholder dispute involving Enersis, a holding company with control of Endesa, that was resolved with an ultimate outcome providing much more favorable conditions to minority shareholders through active pension funds and reliance on legal protections and active involvement of the regulator.

Regarding the report's conclusions, he cited the MILA initiative, involving the establishment of a mutual trading platform between Colombia, Chile and Peru, as a particularly important development that will require regulatory and supervisory convergence in order to achieve its full potential. He suggested that MILA has a huge potential due to the larger size of the market and similarities in the development models and economies that are involved. In addition to the important role of pension funds, he cited as a final key issue the role of the board of directors, including the important role played by independent directors. He noted in particular the important responsibility that they play in reviewing and managing risk issues, and suggested that there has been a tremendous improvement in the definition of their responsibilities and role that they are playing in corporate governance.

Silvina Vatnick, Managing Partner, Global Outcomes LLC, Argentina

Ms. Vatnick suggested that the diagnosis of the report could be expanded to address a few key macroeconomic factors relevant for capital market development. She suggested that the presence of foreign exchange controls which have expanded in the recent past in several countries in the region should not be overlooked as a factor influencing capital market development. For example, existing foreign exchange controls in Argentina distort the availability of credit and increase the cost of financing for companies which need to tap the credit markets for working capital and need to finance their capital equipment acquisitions. These combined with the lack of access to external financing explained by the lack of clear definition of restructuring of the country's external debt has created a wedge for companies between domestic and external financing and has contributed to increase the cost of relying on the stock market to finance economic growth. Taxation is also an important factor that can influence the choice between use of debt or equity finance (arbitrage between the two, or cases in which the tax code is not well aligned with objectives to develop the market).

Ms. Vatnick suggested that the report could also benefit from data on investment aggregates. The degree to which investment comes from public versus private funds can help to more fully address the questions raised in the report. The challenge, she said, is to develop enough instruments and liquidity for short, medium and long term financing of the private sector. Most SME financing requires pay-back within less than a year. We have a dichotomy between short-term financing and some larger companies

that can use long-term equity finance. But there are few alternatives to meet needs that are in between. She suggested that access to finance of SMEs is not covered fully in the paper but noted that the Roundtable would be addressing it in other sessions, so suggested that this could be more fully incorporated in the report's further development.

Finally, Ms. Vatnick commented on the new Argentinian law on capital markets, which aims to modernize a law that has been in place since 1968. The new law provides for progress in some areas, such as the potential consolidation of Argentina's trading institutions, though it remains to be seen whether Argentina's many exchanges will merge as is sought. Some aspects of the law, however, are potentially problematic. The role of the regulator has been strengthened but in her view is slightly too heavy, entailing some risks. There is a risk that the regulator may intervene in certain companies on their governance, giving powers to the state through the regulator, which is not independent. A positive point is that it incorporates the 677/10 transparency decree, in effect since 2001, into law, making it more enforceable. However, it doesn't go far enough to address conflicts of interest including in relation to state-owned enterprises.

Ana Fernanda Maiguasha, Colombian Central Bank

Ms. Maiguasha stated that listed company corporate governance has been improving in Colombia, and that this has led to an increase in investor confidence in their equity market in recent years. However, the market remains highly concentrated with relatively few listed companies, 80 out of 25,413 that are registered with the Superintendency of Companies. Among the 25,413 companies, 4,383 are categorized as large companies, meaning that even the vast majority of large companies are not accessing equity market financing. These 4,385 companies together make up about 15% of GDP, which potentially could be much larger if they had access to such financing. The universe of companies is even larger than this, with 150,900 companies registered with the Chambers of Commerce, and an unknown number not registered anywhere. They have no access to financing precisely because they live under informal conditions that prevent them from gaining access to even traditional sources of financing like bank loans. This is a significant detriment to growth potential, a problem not only in the case of Colombia but probably for the rest of Latin America.

Market concentration carries with it a concern about the concentration of risk. Most of the 80 listed companies on the Colombian market are either from the financial sector or are producing primary or basic products, while other sectors are not represented. This concentration of sectors increases the risk level for local portfolios, including pension funds which are playing a particularly important role in local equity markets. Investment is further concentrated by the fact that most listed companies are parts of conglomerates.

The increased participation of pension funds on the stock market is a positive trend, but brings additional risks that are on the radar of supervisors in order to see if they need to consider new corporate governance standards. She suggested a need to consider what should be done when there are very large buyers in the game, and few who are buying.

In the case of Colombia, and also relevant for the rest of Latin America, there is a huge need for early stage financing. Colombia has been doing work to develop projects involving an early stage financing fund that can be a good, productive outlet for public resources. Second, "hybrid markets" can be useful, involving development of fixed income markets, providing an entry point for companies to diversify their financing base. Then, when they are eventually ready to incorporate and meet the necessary standards to be listed on the public stock market, they can do so in only a few years. The government of Colombia is working in this direction, to clarify the regulation of hybrid markets between private and secondary markets, including restrictions on the types of investors allowed, to ensure that they have the

size and the ability to manage the risk that is involved in entering this world of issuers which have, by definition, a lower level of standards, and thus higher risk.

An interesting line of work to address the risks or barriers to further development of Colombian or other Latin American markets would be to consider the cultural restrictions found on the demand side. Previous studies suggest that companies have little ambition to open up their sources of financing, but further investigation is needed to understand why.

Ms. Maiguasha also noted a tendency in Colombia to blame the state as responsible when something goes wrong in the market. Colombia has had scandals related to pyramid or ponzi schemes and the recent bankruptcy failure of a major, important company. Without placing judgment, it is clear that in all of these events there are lessons to be learned, that things could have been done differently or better.

Regarding the growth of indices and collective investment instruments prepared by mutual funds (not necessarily ETFs), Ms. Maiguasha suggested they play a useful role, particularly for retail investors who may not have the sophistication to evaluate and choose which individual companies to invest in. Packaged investments can diversify risks associated with participation in the stock market.

General discussion:

The extensive discussion of the report and the issues raised in it included the following points:

- **Marcello Bianchi**, the session Chair, suggested that the liquidity of the secondary market should also be analyzed. Probably the turnover of shares has not increased in the last 15 years and this can be a problem, important for attracting new companies to the market. Alogrithmic and high-frequency trading (HFT) can contribute to short-termism but also can address the need for liquidity and trading of secondary shares, so finding the right balance is still an issue for these markets.
- **Carlos Barsallo** of Panama suggested that in smaller markets such as those in Panama, the Dominican Republic and other Central American countries, the issue of taxes, and companies' fear that transparency requirements will expose them to greater tax liabilities, is a major deterrent to public listing. A second concern is the competitive disadvantage that companies perceive they may face if they must implement higher standards to list, while their non-listed competitors continue with lower standards and less transparency. If non-listed companies are to be subject to the same standards, these standards need to be enforced, creating an even playing field for all companies. Mr. Barsallo noted that he was proposing these as ideas for consideration in the report without a specific road map for carrying them out. Finally, he noted that companies may be reluctant to list, even to obtain cheaper finance, because of a desire to maintain full control of the company.
- **Simon Wong** of Governance for Owners suggested that the paper and discussion could highlight more clearly that high-frequency and short-term trading at some level is considered desirable in order to have liquidity and efficient price discovery, while long-term shareholders are sought to maintain price stability and to enable companies to focus on long-term sustainability. He said that these two goals are in conflict and there can be a tension between them, but that what may need to be recognized is that what is happening in OECD markets has reached an extreme with high-frequency trading, and that the goal should be to have a good balance between the two. Secondly, he suggested that some focus is needed on the phenomenon of for-profit exchanges. Because they need to generate revenue, they may offer products that contribute to an un-level playing field, like data feeds and co-location of services that discriminate against other shareholders.
- **Luciana Dias, Commissioner, CVM, Brazil** cited findings of Brazil's working group on SMEs as relevant to the OECD report, which she suggested could incorporate two of its main findings:

1) The demand side—most foreign and institutional investors, including pension funds, don't want to get involved in small transactions. Even if demand were created on the retail side, companies do not want their shares purchased by retail investors, because they are considered to be very volatile. They want to have a specific institutional investor base so that the price will be stable. If those aspects are taken into account it may change the recommendations.
2) Some of the countries that have had the greatest success with attracting SMEs to the market, Australia and Canada, have intermediary banks handling small IPOs. Most traditional banks are not interested in this kind of transaction. Brazil has had about 10 small IPOs, but most were structured by the few local intermediaries the country has. We need to learn how these types of institutions can make money from these transactions so that they will do them. In Canada and Australia they make money through an ongoing relationship and secondary offers.

- **Arturo Giovenco** of Argentina stated that the new Argentina capital markets law implies progress in the legal framework, strengthening the enforceability of the 2001 CNV resolution and updating the law from its 1968 version. Second, the issue of CNV powers includes two provisions not mentioned in the OECD report: 1) the new law provides for the possibility that CNV can appoint an auditor with veto power over certain decisions of the board; and 2) it gives CNV powers to remove a board member for up to 180 days. This has been controversial, but CNV is working on a resolution for implementation, so it is important to keep an eye on what CNV will say regarding the conditions under which these faculties can be exercised.
- **Javier Diaz,** Vice President, Bolsa de Valores de Colombia, expressed his pleasure with the progress that Colombia has made since it consolidated its stock exchanges into a single exchange 12 years ago, but said that the problem of high market concentration may be even greater than the OECD report indicates: four or five companies make up 60-70% of the market's liquidity. He referred briefly to the Interbolsa crisis, which despite external appearances that made it appear as a "poster boy for corporate governance" on paper, it was fraudulent on the inside, resulting in a major market scandal that has created a challenge for re-building market confidence. Finally, Diaz suggested that the paper could address the issue of the use of preferred shares in Colombia, which seems to be a common practice in recent years, but which foreign investors always criticize.
- **Clara Eugenia Castillo,** Superfinanciera, Colombia, cited the importance of investor confidence and of educating investors. This has become particularly evident following the Interbolsa crisis in Colombia, in which investors were found to have no idea of their rights. If minority shareholders beyond institutional investors were better educated, they could have perhaps played a more significant role in the management of the company. Investor education can be a tool to gain control within the company in relation to corporate governance, and likewise to restore confidence and on the same note to bring about economic growth in the markets.
- **Paula Gutierrez Velandia,** Georgeson, Spain, suggested that the paper should capture better the complexity of the custody chain and the importance of the accuracy of the shareholders registrar, as it is important for understanding the ultimate owner of shares and for investors' ability to engage in companies and in cross-border voting.
- **German Concha,** Chile, expressed a concern about the idea of increasing requirements for non-listed companies in order to have a level playing field that would increase the incentives for the use of stock markets. He stressed the importance of considering the costs of regulation, saying that some medicines can be worse than the disease itself. He cited the US move to impose regulations through Sarbanes Oxley as an example that has resulted in some companies moving from New York to London and suggested care should be taken not to repeat this experience.
- **Yearim Valles,** CNBV, Mexico, suggested there is a need to complement the information provided in the paper with information on bonds in foreign markets, which are an important source of financing in Mexico, and also the role of financing by banks.

Session 2: Small and medium sized enterprises and their access to equity markets

Andres Bernal, Governance Consultants, Colombia

Mr. Bernal, the session moderator, highlighted the purpose of the session as being to understand the factors involved in ensuring better access of small and medium-sized enterprises to stock market financing, with corporate governance playing a role in striking the right balance of measures needed to support investor confidence.

Santiago Cuadra, Secretary General, Iberoamerican Institute of Capital Markets

Mr. Cuadra described the issue of SME financing as a critical one for Latin American economic growth and employment, since they represent more than 98% of all Latin American companies. Despite their critical role, they face a shortage of available finance, with less than 15% of available credit directed towards SMEs, at a much higher rate of interest than for larger companies. Factors limiting access to credit include high transaction costs; unequal access to information between the lender and the company; a low capacity to obtain and enforce credit guarantees; weak legal protection for creditors trying to recover funds; cultural resistance to more formalization of corporate practices and implementation of market regulation; macroeconomic factors; historical factors such as periodic nationalization and crises; and factors related to the origin of capital (foreign versus domestic).

Alternatives to bank financing remain insufficiently developed in the region. Many fundamental elements are still missing, including incomplete macroeconomic stabilization, the need for a revolution in the field of education, and sufficient access to resources that are adapted to each country's need. Greater flexibility is also needed on the supply side, along with transparency and good governance.

Capital markets can bring important advantages to SMEs, not only in terms of finance, but also because, according to empirical studies, companies that have entered the capital market have received improved consideration by customers and suppliers, and higher company valuation. On the other hand,, companies seeking access to the markets also face higher costs to meet the requirements, and there is a lack of standardization of products. In some countries, there exists a cultural resistance to sharing information and to products that may have a structure that is too complex for their needs.

Mr. Cuadra cited a number of successful experiences with development of financing tools for SMEs, but suggested that there is no single solution. Rather, a more compelling and interesting strategy is to offer a wide array of instruments and markets in order to offer a much broader set of financial products. He cited examples of funding initiatives in Mexico, Argentina, Bolivia, Chile and Brazil. Alternative markets for SMEs have been established in all of these countries, plus Costa Rica and Peru. Compared to initiatives in Europe and the US, they are quite small, but he suggested that Latin American countries will need more time to consolidate these efforts.

Mr. Cuadra concluded that for Latin American stock markets to develop further as a viable source of financing for SMEs, several conditions are necessary: 1) Significant public sector support, such as subsidizing the initial costs of gaining access to credit markets, and also potentially to exit the markets; 2) financial incentives can be helpful, such as tax breaks for using the markets; and 3) there must be an efficient regulatory and supervisory body, balancing the power of the investor and the burden of meeting adequate regulatory requirements. Institutions are needed to support the development of the institutional and human capital necessary to support SME development. Finally, he suggested that it is essential to promote standardization and transparency in order to improve factors related to risks. Across all of these elements, both the public sector and private sector intermediaries have a co-ordinated and simultaneous role to play.

Juan Munguira, member of the OECD Corporate Governance Committee Bureau, CNBV, Spain

Mr. Munguira focused mainly on the experience of Europe, noting the economic difficulties faced in a number of southern European countries that have resulted in a lack of availability of bank credit to finance current growth needs. Now, with the recent bank failures in Cyprus, it is not only the EU intervening, but creditors and private holders of savings are also being asked to share in the pain of the bail-out. The result will be that banks will need to begin raising the rates of interest that they pay to attract depositors, and this in turn will also increase their cost of lending. The bottom line is that markets which rely solely or in large part on bank financing are much more vulnerable in economic downturns, when this financing may not be available. A more diversified economy that relies also on capital markets (and venture capital) to finance growth will have a healthier ecosystem and will be more resilient.

Mr. Munguira also pointed to the strong links between different types of finance. As bank credit in Spain has become less available and more expensive, bond interest rates have also risen, making alternative forms of finance also more expensive. However, Spain is currently working to prepare an initiative to provide bond financing at a relatively low interest rate of around 7 percent, subject to meeting a few basic requirements.

Mr. Munguira focused particularly on the experience of the UK's AIM alternative market, noting its success in attracting listings from 28 countries throughout the world (including 22 listings from Latin America). He suggested as key reasons for its success: 1) balanced regulation; 2) a good base of international institutional and retail investors; 3) wide geographical reach and sector coverage; 4) provides access to an expert adviser network; 5) high visibility and profile; 6) banks will have a decreasing share of funding of companies in Europe; 7) there is a more liquid, active and transparent market for funding outside the banking system; 8) bonds might be a more efficient form of financing for mid-sized companies; and 9) More attractive legal regulation for issuers than the main market (Mr. Munguira's Powerpoint presentation provides a more detailed description of the differences between AIM and the main market of the London Stock Exchange, and the reasons that issuers give for listing).

He concluded by stressing the importance of balanced diversification of risk to reduce dependence on the banking sector. To succeed in developing alternative markets, the need for transparency, investor protection and for publicly disclosed balance sheets is essential to underpin confidence in the markets – this will be the basis for tackling the financial crisis faced in Europe.

Monica Villagomez de Anderson, Chair, Bolsa de Quito

Ms. Villagomez de Anderson noted that in Ecuador, the markets are particularly focused on serving SMEs because many of the largest companies are state-owned and have a social purpose, so that the universe of companies available to consider listing on the stock market is necessarily focused on SMEs. SMEs are defined in Ecuador as companies with between 55 and 95 employees, and gross sales of between 1 million and 5 million USD. Of 232 listed companies in Ecuador, mainly on the bond market, 102 are considered to be SMEs. Only 6% of the listed market consists of equities, with the remaining comprised by fixed income or bonds.

Ms. Villagomez stated that she was optimistic about the prospects for improving the methods of financing for SMEs, but felt that at this time, SMEs are more appropriately located in the bond market as an important step in their preparation to achieve profitability. She said that there will be a need to continue the process of education to move towards use of equity markets for SMEs, and to arrive at a stage at which Ecuadorian companies can also attract international investors.

Ecuador also has a second market for smaller companies that has lower standards based on self-regulation, known as "The Register of Unlisted Securities," or REVNI. There are approximately 32 SMEs listed on the REVNI market. Listing requires the consent of an advisor to ensure a certain level of information is provided to list, although with fewer requirements than on the main market. Recent reforms extended the term length for fixed and variable income instruments to 36 months, from a previous maximum of 180 days with ability to extend another 80 days. Previously, companies could stay on this segment for a trial period of acclimation without providing information, but under the new legislation, they are required to provide information during these 36 months.

Education programmes are critical to the success of any initiative or reform. In Ecuador, they have established a culturally rooted financial training programme called "mi PYME bursatil" or "my listed SME." The Exchange accompanies them through the training program to improve and formally implement their standards. Their experience has shown that intermediaries are voluntarily entering the market first through REVNI for a period of acclimation. The training programme has had good results, training 1,600 people, and in her view, should become permanent, and expanded to involve not only the Ministry of Production, which has been the co-ordinating Ministry, but also the Ministry of Economy. She concluded that SMEs have viable options for financing in Ecuador, and it's only a matter of formalizing them and organizing them.

Andre Pitta, BM&FBOVESPA Brazil

Mr. Pitta's Powerpoint slides provided detailed figures on the types of IPOs occurring through BM&FBOVESPA since 2004. Nearly all have been on the Novo Mercado and Level 1 and 2 listing segments, with 3% (4 companies) listing on the SME segment known as MAIS. Only 6% of IPOs were of a size of less than 100 million reais (USD 45 million). In fact, BM&FBOVESPA has ranked first in the world for largest average size IPOs during each of the last three years. On the other hand, it ranks only 25th in the world in the number of listed companies overall, well below its size and market value rankings. He noted that most Brazilian companies obtain the majority of their funding for investments through use of their own profits or through BNDES. Only a small percentage has come from bond or equity financing. And most of this financing has been reserved for larger companies. Only 12 out of 134 IPOs since 2004 have been for companies with market capitalization below R$ 700 million (USD 320 million).

Considering these circumstances, Brazil established a joint public and private sector initiative to work to foster development of SME access to the capital markets during 2012-2013. The view behind the group's work is that there will be new opportunities for SME growth in the coming period, and that traditional funding sources will not be sufficient to fund their sustainable growth. Companies will be looking for funding to invest in new opportunities, while lower interest rates will drive investors to riskier asset classes. The working group's recommendations were not yet public at the time of the Roundtable, but some of its findings could already be disclosed. The group assessed experience in seven countries: Australia, Canada, China, Poland, Spain, South Korea and the UK. Their main conclusions, available at http://www.bmfbovespa.com.br/empresas/download/Diagnostico-ingles.pdf , include a finding that in some other countries, demand for SME shares comes from local retail and institutional investors rather than foreign investors; that there is a market "niche" for specialized brokers and investment banks to play a role and promote the IPOs of SMEs; that different types of tax incentives for investors are important; that regulatory discounts are more important for very small companies (raising USD 2 million in capital or less); and that fixed costs involved in the IPO were not a barrier, but in fact, were higher in other countries than in Brazil.

While the final recommendations of the group were not yet public, Pitta suggested that BM&FBOVESPA is already benefitting from the work of the group, which has led to some recent listings and discussion of further listings in the pipeline. Next steps will involve announcing the group's

recommendations and working to implement them through changes in BM&FBOVESPA's "access" market (MAIS), and supporting of other complementary initiatives in the market.

General discussion:

Extensive general discussion by all Roundtable participants included the following points:

- The session Chair, **Andres Bernal**, suggested three issues for the discussion to address:
  1) How to balance compliance requirements in order to attract companies to the market against the need to ensure sufficiently high standards to attract investor confidence;
  2) How corporate governance can be addressed within the framework of corporate bond markets. Discussion of this issue is lacking in the region and is important because issuing bonds can provide a good transition towards use of equity markets; and
  3) Different roles played by different types of shareholders, some of which have a longer-term interest and others more short-term, which can influence the sustainability of companies.
- **Luis Valdivieso** of Peru questioned whether SMEs can truly get cheaper access to finance through the capital markets, since the banking sector in Latin America is currently healthier than in Europe. He later spoke on the issue of requirements for issuers of bonds and the priority that bondholders should receive as creditors in case of insolvency. He stressed the importance of disclosure, which shouldn't be put aside because of issuer concerns about costs.
- **Mr. Pitta** of Brazil responded that some of the costs that companies bear to meet listing requirements are costs that they would have anyway as their corporate governance systems matures, so Brazil's working group on SMEs did not find costs to be as big of a barrier as they had originally thought.
- **Luciana Dias** of CVM, Brazil said that the Brazil working group's recommendations are aimed at creating a critical mass of new SMEs on the market, because the group found that SME markets worked best where there was a large enough number of SMEs to support necessary market infrastructure, such as analysts, brokers and banks willing to handle these types of transactions.
- **Andres Oneto** of the CAF Latin American Development Bank suggested that multilateral institutions have a role to play in supporting SME access to finance on the capital markets, including through access to bond markets. Multilaterals can provide or train consultants to help companies, but this is not sufficient unless there are incentives and/or requirements in place for companies to adopt the necessary measures to support their access to the markets.
- **Francisco Prada** of Confecamaras, Colombia, agreed on the role of bond markets providing SMEs with a first step that may be looking towards an IPO in the longer term. He referenced a Colombian program that brings together 60 consultants that are supporting SME governance improvements. He suggested that corporate governance must be something less sophisticated for these businesses that they can implement on a day-to-day basis, ultimately generating cultural change for the company.
- **Rebecca White** of the Inter-American Investment Corporation (IAC), a branch of the Inter-American Development Bank, suggested that employers must have the right incentives to adopt these improvements in corporate governance on their own accord, or else they will not be sustained. She also suggested that we should not expect these companies to implement all corporate governance principles in one "big bang," but rather more realistically in phases.
- **Mauro da Cunha** of AMEC, Brazil, emphasized the critical importance of the Brazilian National Development Bank, BNDES, in financing corporate investment needs. He said that as long as

BNDES provides interest rates at below-market subsidized levels, it will be cheaper to go to BNDES for funding, and capital markets will not develop for SMEs.

- **Paula Gutierrez Velandia** of Georgeson suggested that holders of bonds may need to be more flexible in their demands of SMEs, as some corporate governance requirements may put them at a competitive disadvantage. At the same time SMEs that institute corporate governance need to go beyond the most basic standards, as it will not be sufficient to claim that they are "somewhat" transparent.
- **Monica Villagómez de Anderson** of the Quito Stock Exchange cited figures that led her to conclude that SMEs can get lower-cost financing through the stock market than they are able to get through banks in Ecuador.
- **Alvaro Clarke** of Chile noted that SMEs can also gain access to finance through institutional investors such as mutual funds who may specialize in certain sectors such as technology investment. Adding a sophisticated investor to the ownership structure increases the firm's value, helps improve their operations, and also makes it easier for them to access debt markets as well. Secondly, he noted that in Chile, companies accessing the market are quite large, but that experience with the Alternative Investment Market in London shows that access to capital markets by smaller companies should be feasible.

Session 3: State ownership in Latin American capital markets

Richard Frederick, Moderator

Mr. Frederick introduced the session topic by noting that State-owned enterprise governance is very difficult to get right, involving the intersection of two forms of governance – political and commercial governance. Where these two cultures meet, you often have turbulence of decision-making on investment. What happens when you add outside investors, a new owner from the private sector? If there is a cause for under-performance of SOEs, it's very often a cause of governance. He highlighted four important points from the Roundtable paper on this topic:

1) In seven countries, there are 560 SOEs, but only 34% wholly owned by government. 66% are partially owned. Among those, only 7% of the total, or 40 firms, were listed.
2) Corporate governance challenges differ depending on ownership form; whether the additional owners are listed shareholders, strategic investors, or other governmental owners makes a difference in the governance challenges.
3) The 7% that are listed are small in number but very important, probably the most valuable companies owned by the state.
4) Mixed ownership can have significant advantages, bringing about efficiency improvements, while the state can maintain control of the enterprise. Mixed ownership does not have the same negative political consequences as full privatization.

Mr. Frederick suggested that the session should address questions including the perspective of the state, of investors, the implications of different forms of ownership structures (strategic vs. listing); and what are the solutions – how do we get it right?

João Nogueira Batista, executive director of Brazil's takeover panel (CAF)

Mr. Noguera Batista principally sought to address the question of whether corporate governance is effective in SOE listed companies, and shared doubts and difficulties as well as positive experiences that he said leave him without a clear answer.

Mr. Noguera referred to positive experience at Petrobras, where he was the chief financial officer for a period beginning in the late 1990s, when the initial decision was made by the state to list Petrobras shares on the market. At that time, Petrobras was virtually insolvent and had undergone a period of terrible management and faced a financial, liquidity squeeze. For fiscal reasons, the government could not fund the expansion plans of companies such as Petrobras, and capital was greatly needed. The President at that time had no aspirations for re-election, which may have made it easier to take action to list the company and in effect "shield" the public enterprise from state intervention or changes that could occur with a change in government. Workers were allowed to use part of their employment funds to invest in Petrobras shares: 300,000 shareholders were added, retail plus foreign and institutional investors. Professionalization of the company was undertaken, independent board members were elected for the first time, following extra efforts to get shareholders to come to the annual general meeting to vote, because there was no tradition of doing so.

By 2001-2002, Petrobras had three independent board members, and had transformed its bylaws to the point that it would have been eligible to meet Level 2 listing requirements of the Novo Mercado (though it did not list at that level). Management hoped that 300,000 workers with economic, not only political, interest in the company would give enough protection from negative political influence from any government. Looking back over the last 10 years, did it work? He stated that he sometimes thinks that it hasn't, but his stronger belief is that it has helped, and that Petrobras could have been in a worse situation without this experience. For example, Petrobras has developed very active investor relations, and has become much more transparent. This greater transparency has made it clearer that problems relate to what is happening at the controller level rather than at the company level.

He noted that the law enacted to list Petrobras includes a provision allowing the government to protect the public interest, which has been interpreted very broadly, which has kept shareholders from filing legal challenges to decisions such as, for example, selling gas at a loss. The question, he said, is whether it is really in the public interest, or rather should it be interpreted more narrowly, as it could be argued that the public interest would best be served by ensuring that the company is run profitably with dividends for all shareholders including the government. However, shareholders have not found an effective way to prevent the state from acting contrary to the company interest. The best hope is electing independent members to the board.

General discussion of the Brazil case

- **Mauro da Cunha,** executive director AMEC, Brazil, suggested that some SOEs like Electrobras have suffered more than Petrobras due to intervention of the state. He stated that Article 238, which refers to the right of the state to act in the public interest, includes very specific language concerning "the public interest that led to the company's creation," so does not constitute a blank check. However, the Superior Court has ruled against minority shareholders in the case of one Petrobras subsidiary (Petroquisa) to allow wide discretion for the state to act, even on the grounds of national security. Lower courts have also repeatedly dismissed investor complaints related to SOEs. He asserted that if the state has unlimited discretion, there is no point of having SOEs in the market because the government is just moving however it wants to. He noted the importance of clear signals from the regulator, as has occurred in Chile with the Enersis case, to protect minority shareholder rights.
- **Mr. Noguera**, while again asserting that the deepening of Petrobras' investor base has helped the company, suggested that CVM could play a useful role by moving to "contain" the interpretation of the public interest.

- **Luciana Dias** of CVM, Brazil noted that CVM is constrained by law to address the specific elements of the law relevant to a case. Most recently it was asked to consider whether the Petrobras shareholders meeting could be suspended and was not asked to address the question of public interest, but CVM has established precedents on what constitutes actions in the public interest.
- In response to a comment that there appears to be some ambiguity in the Brazilian market regarding the enforcement of property rights, **Mr. da Cunha** stated that the problem is that there is not an active political constituency to support development of the capital markets, and that the political weight in favor of capital markets is "zero".
- **Marcello Bianchi,** OECD Corporate Governance Committee Chair, noted that in Italy, listed SOEs represent 40% of market capitalization and that the government in its ownership role has demonstrated an interest to extract a high level of dividends, sometimes neglecting the companies' longer-term needs. He asked whether the government in fact can have a stronger short-term interest than other controlling shareholders?
- **Mr. Noguera** responded that the concern is that political interests are given greater weight in decisions than the level of dividend payments. While the headline that Petrobras shares fell more than 60% in the last few years creates some difficulty for the government, for the majority of the population, that doesn't mean much. It is only a concern for the 300,000 investors in the company.
- **Mr. da Cunha** added that in fact, last year minority shareholders received a higher dividend than the State, because of how the bylaws were written to protect minority shareholder interests.
- **Mr. Valdivieso** commented that in order for governance to be effective, there must be a separation of commercial and social objectives, and to place the burden on the treasury to pay for achievement of social objectives.
- **Simon Wong** referred to experience with listed SOEs in some Nordic countries and in New Zealand, where the commitment to commercial interests is so clearly signalled that minority shareholders wouldn't ask for protection because it is not considered needed. He asked the speakers if they felt they could envision such a scenario in their countries. **Mr. Noguera** responded that he felt it would take a long time and many reforms, including political reform, before Brazil can have a political motivation to commit to commercial objectives.

Alberto Mauricio Bernal, Legal Director, ISA, Colombia,

Mr. Bernal spoke of ISA's case as a listed state-owned enterprise, which serves as the parent company of 36 companies doing business in eight countries, primarily in energy transmission, but also telecommunications and road infrastructure. ISA was created as a 100% public company in 1977, expanding to international operations beginning in 1995. The step of issuing shares on the stock market was taken in 2000 with the objective of building the support of the Colombia people, through an "ISA shares for all" programme. They currently have 70,000 shareholders. But to attract shareholder interest, it was important that the government as controlling shareholder issue a declaration concerning protections for minority shareholders. This declaration which has been in place for10 years now includes a commitment by the Colombian government that one of the members of the board should be chosen by the largest ten minority shareholders of the company. The declaration also includes a liquidity requirement. In 2001, a code of company governance was implemented with various norms and practices of good corporate governance, including a code of conduct and an anti-fraud code. ISA is now a public services company with the strategy of a joint venture state entity with 61.57% state ownership. ISA is also part of other

public entities such as Ecopetrol, an SOE of Medellin with a free float of 31.44% and the private participation of some 43,000 shareholders.

Mr. Bernal suggested that one particular recent initiative may be seen as a break-through, concerning appointment of independent members. Although ISA has a board with fourteen members (7 principal and seven non-principal), a consensus has been reached to have four of these to be designated as independent, following the standard established in Colombian law that mandates 25% of the board members to be independent.

The perception from within the company is that more could be done to better represent the interests of minority shareholders on the board of directors. But, undoubtedly, ISA's board of directors is an efficient board, maintaining superior technical and professional standards. Central to this is its evolution as a company group, and the economic success that has ensued. If a minority shareholder did perceive a level of injustice, it is important to remember the requirement that states that minority shareholders will have one member of the board that is elected directly by them. Since the first public offering in 2000, ISA share values have risen from 850 to 8000 Colombian pesos, and the company is delivering important dividends. But, the perception that we have is that the shareholders are still waiting for something more. They don't just want a high stock valuation or dividends, but they also want to be included in the decision-making processes that occur at a strategic business level within the board of directors.

In response to a moderator question, Mr. Bernal suggested that the key to ISA's success is the government's decision to change the company's vision to become more entrepreneurial, rather than simply providing public services for the transmission of energy.

Asked about the influence of politics on board decisions, Mr. Bernal asserted that politics does not really enter into board decisions. He noted that the Ministers of Energy and Mining serve on the board, along with other government officials, but that they act in a technical capacity. He stated that there has never been a perception of political influence, and that the moment the board touches upon issues which may involve a conflict of interest between the company and the interests of government, the government officials on the board must withdraw themselves from the meeting. This approach has been maintained through changes in government and in the appointees to the board. While Ministers will change and may bring new ideas, they must remain dedicated to the same vision and the same values that were in place before. ISA's board of directors also performs an assessment of its own members, meaning that government officials on the board, despite their status as majority shareholders, are not immune from evaluations. The evaluations are based on well-formed indicators and a performance evaluation based on maximizing efficiency as it relates to clients, and by other members of the board.

General comments on the Colombian case

- **Ana Fernanda Maiguasha** of the Colombian Central Bank commented that the state has different roles and sometimes it encounters these various roles within the company. The government must act as regulator through the financial superintendency, and as policy maker, and must develops policies within the areas where ISA conducts its business, so it may be precarious that the state has a portion of shares of ISA and these shares are represented by public sector interests, such as the deputy minister, so that these interests are now part of the conversation of ISA.
- **Alvaro Clarke** of Chile noted that Chile used to have problems when ministers served as board members of its largest SOE, Codelco, because when Codelco workers went on strike, the first thing that the labor minister did was to join the strike himself. But the minister had to also recognize financial incentives. He stated that it is not easy to differentiate the roles of the state

when they are manifested within the same organization. He asked whether the separation of roles in relation to ISA is very well institutionalized already or is this still a work in progress?

- **Mr. Bernal** said that the truth is that ISA's board of directors is often presented with these types of conflicts of interest between ISA's interests and the interests of the Colombian state as the regulator of public services as mandated by the Commission for the Regulation of Energy and Gas (CREG), under the Ministry of Energy. The president of the CREG is the Minister of Mines, who is also on the ISA board of directors. Obviously situations of conflict of interest will arise in this context, leading to the board members removing themselves from the discussion. In such a delicate situation, it would be very difficult for the minister, or his vice minister in his absence, to represent the CREG's position. If this minister raises such delicate topics to the company management, then the government officials who have direct conflict of interests, (e.g. in relation to their roles as public credit ministers and mining ministers) will leave the room so that the discussion can be held openly in their absence.
- In response to a question on how ISA separates social or public interests from business or commercial interests, **Mr. Bernal** said that the company's regulations and vision both are based on the responsibility that the company has for providing a public service. The board of directors obviously needs to represent all shareholders, but its principal responsibility must be to ensure that its public service provision is both timely and efficient. Other interests will still be important but they will be secondary.
- **Maria del Pilar Camargo Espinosa** of Ecopetrol noted the similarity between the cases of ISA and Ecopetrol, which has 88.5% state participation. She added that in Ecopetrol's case, the role played by the board Chairman, who is independent and high level, is quite important. She said that when the board begins to discuss political issues, the Chairman generally reminds them or asserts that these are topics that should not be discussed in the board of directors, to ensure that it is run well. On another aspect of the discussion, regarding the influence of changes of government on the company, she stated that Ecopetrol has had an entrepreneurial strategy for more than 90 years, so there has been a certain stability to the company's business strategy and goals and a belief that this should not change with changes in government.

Jessica Andrade, Director of SOEs, Ecuador Ministry of Planning and Development (SENPLADES)

Ms. Andrade stated that for the government of Ecuador, SOEs are instruments through which to achieve public goals, responding to public policies and legislation. They have been created in two forms: to manage natural resources and to provide public services. Twenty-four of Ecuador's 27 SOEs have 100% state ownership, while three have mixed ownership. These include Pacifico, Rio Napo in the petroleum sector and Mariscal Sucre in the mining sector. In the case of the refinery Pacifico, Petroecuador owns 51% of its shares, while 49% are owned by PDVSA, a Venezuelan SOE. Petroamazonas owns 70% of Rio Napo's shares, while the remaining 30% are held by PDVSA. And, in the case of the large mining company Mariscal Sucre, Ecuador's National Mining Company holds 51% of its shares, while the remaining 49% are owned by another Venezuelan state-owned enterprise.

The growth opportunities that stem from this framework are a function of the Organic Law of Public Enterprises, created on the 15th of October, 2009, which sets out the general functions for Ecuador's 27 public enterprises. However, Ecuador actually has another 203 public enterprises when including the municipal level, run by autonomous, decentralized governments, primarily dedicated to providing

sanitation and trash services. An additional category of company governed under the law of the Superintendency of Companies includes 45 companies with state ownership

In respect to the state's role as owner and overseer, the state has basically sought out strategic alliances or strategic partners, and this has allowed the creation of subsidiary companies. These related contracts or strategic alliances are not solely for the purpose of diversifying the risks associated with normal business operations and capital, but are also the most effective way to gain access to knowledge and technology, and the best mechanism to increase technological productivity.

Ms. Andrade suggested that Ecuador is still seeking to increase transparency and access to information. She also suggested that it is important to institutionalize the roles between owner and regulator, and to mandate the business goals of efficiency and profitability, as well as public interest.

With respect to the challenge of maintaining interactions between the public and private sector, the goal is to ensure fair competition and a level playing field. This is a huge challenge, particularly because the Organic Law for Public Enterprises requires companies to meet special mandates in some areas, making it difficult for them to compete as if they were private companies in some arenas.

Regarding market regulation, she said that without a doubt, within Ecuadorian public policy, companies have transitioned into public companies with the precise intent of regulating markets. In the case of the company Ecuadorian Airline Company Tame, when it entered the market, it did so at lower prices. For example, return trip flights to international destinations, like Lima to Brazil or Argentina, were all at lower rates. So one of the effects of creating public companies in the case of Ecuador has been the regulation of markets. But not in the terms laid out in the OECD paper, but in a way that has been favorably embraced by the people of Ecuador.

She asked Roundtable colleagues whether they consider it to be appropriate, in the long run, to have public companies, whether joint ventures or 100% publicly owned, to act in a regulatory capacity in the markets? Not necessarily to distort competition or to distort the markets, but just to enter the market as regular companies.

Responses to Ms. Andrade's question on SOE regulatory intervention in the markets

- **Alberto Mauricio Bernal** stated that rather than having an SOE take a direct regulatory role in Colombia, there is a state entity that establishes the laws and also determines the format and function of various companies in corresponding sectors. So perhaps the other side of this question is, what is the monopoly power that may result from state companies? In the specific case of public service providers in Colombia, this sector is absolutely competitive. While ISA maintains virtually the majority of the market share, there is no doubt that the market is absolutely open to participation of other public service companies and also to other investors. ISA's state ownership does not mean that ISA maintains a competitive advantage over other companies on the market through its capital acquisition.
- **Andres Bernal** stated that Colombia has an open market that enables any person to establish an energy production or transmission company of domestic or international origin. However, the government of Colombia wanted to maintain its ownership in the case of ISA and Isagen, another energy company with majority state ownership, in order to ensure stability in the energy sector. However, they are not in a position to be able to influence market prices.
- **Patricio Pena,** Ecuador Corporate Governance Institute, suggested that there are two schools of thought around the concept of regulation. The first is to work through a regulator and regulation of

a particular sector, which in the case of Ecuador is spelled out through the constitution, giving this right exclusively to the executive power. The second school of thought concerning the concept of regulation is when the state, through state-owned enterprises, intervenes as an economic actor in the market through its business activities, which in turn impacts market prices. The underlying theory is that if the SOE plays a direct role in determining market prices, the resulting prices will be more beneficial for consumers. Corporate governance is important in considering these dual roles, but we have not been accustomed to incorporating principles of corporate governance in managing the dual role of the state's regulatory body and regulation of markets as an economic actor.

- **Mr. Valdivieso** of Peru asserted that there is an inconsistency in having the regulator involved in SOE board decision-making in Colombia, and that this restricts competition. Although the previous speakers suggested that anyone can open a holding company or a transmission plant, or an energy transmission company, he questioned whether this would constitute fair competition, noting that someone on the SOE board of directors also has the power to set all prices in the market. He suggested that this approach cannot simultaneously guarantee good corporate governance practices and competitive behavior to maintain the best prices in providing public services to the population. The only way to have effective corporate governance in public enterprises is to completely separate all of these roles: the regulatory part, the price-setting part, and the financing part, so that they align with market standards.

Discussion of Ecuador case

- **Richard Frederick** asked Ms. Andrade what are the particularities that arise from having another state owned entity as co-shareholder? He noted two relevant cases from other countries -- a state-owned petroleum company which had a different state as a shareholder with whom agreements were made to purchase petroleum from the other country and those were decisions that were made politically. He asserted that there was no opportunity to make good business decisions; it was simply a done deal that couldn't be questioned. Another one was an electric company that also had 2 states as the owners and agreed to jointly engage in construction projects because it was politically expedient.
- **Ms. Andrade** responded that in all the cases of jointly owned Ecuadorean SOEs, Ecuador still maintains the majority of share ownership and the majority of appointees to the boards, so it maintains control, but that decisions nevertheless have always been reached by consensus. There have not been any disagreements or conflicts when making decisions regarding business strategies and operations for these companies. From her perspective, the role of the state as a business does not go against its role as a provider of public policies. They have always strived for improved efficiency and better performance for public companies in order to generate higher profits. In fact, they have improved their technique for the extraction of oil. For example, since last year, Rio Napa has increased its rate of oil extraction from 70,000 to 73,000 barrels per day, and Petroamazonas has achieved similar goals through improved production techniques. The consensus achieved at the board has benefited these enterprises, while they have not experienced the struggles or conflicts that could have arisen with private sector business partners. Finally, she added that they also are looking into ways that Petroamazonas and PetroEcuador could be listed on the stock exchange. Currently, none of Ecuador's state-owned enterprises, including those of autonomous and decentralized local governments, are listed on the stock market, but they believe that this is an

especially important goal for the two companies that are in the oil industry so that they can continue to develop and reap their full potential. They believe that the act of being publicly traded will promote best practices for corporate governance.

- **Monica Villagomez de Anderson** of the Quito Stock Exchange underlined the interest and challenge of developing SOE IPOs and the influence this may have on improving corporate governance standards, but asked how advanced the plan was and what impact this may have on the Ecuadorian state's majority and the share held by PDVSA of Venezuela. She also asked about the possibility of establishing a holding company to manage SOEs in Ecuador.
- **Ms. Andrade** noted again that the two companies being looked at, PetroEcuador and Petroamazonas, are 100% state owned, and that PDVSA does not compete directly with PetroEcuador for business with the refinery Pacifico or with Petroamazonas for Rio Napa. She reiterated that it is only under study at this stage and no conclusions have been reached. Concerning the possibility of establishing a holding company to oversee SOEs, she revealed that SENPLADES had approached Ecuador's President with a proposal to reform Ecuador's oversight structure, inspired by what they had learned in recent international fora on this issue, considering the examples of Brazil, Peru and Chile. She stated that Ecuador had looked particularly at Chile's System of Public Enterprises (SEP) model, and had signed a co-operation agreement with Chile to exchange knowledge and experience on this topic. The idea would be to create a technical secretariat that is in charge of all public enterprises that the Ecuadorian state now has. Directors of boards would continue to be a part of this, but implementation of principles of corporate governance is beyond the ability of directors alone. While a decision has not been made, SOEs would not necessarily need to conform 100% to international standards. The result may be a hybrid, because Ecuadorian legislation does not allow application of 100% of the principles of corporate governance, but there would be a need to reform the legislation or hopefully Ecuador's own principles of corporate governance.
- **Mr. Valdivieso** supported the holding company model with active state participation, as is done in Malaysia. This model involves a separation between political decision-making power and company decision-making power. In other words, the state would allow an investment bank to manage its activities in order to best achieve its objectives. If the state says that it wants to have a profitability level of 12% this year, then the companies that could not contribute to this profitability would either be liquidated or restructured or enhanced. But, this would be done by the strict criteria of the investment bank. He suggested that the holding company should also appoint independent directors. This may diminish some powers of the holding company, like financial decisions or long-term investments of the different companies. However, there must be separate and independent regulators of prices, similar to the model in place in Peru. Peru has done this with FONAFE (its SOE ownership entity), and the next step would be to move into active management by an investment bank.

Overall general discussion and conclusions

- In response to a question about institutional investor perspectives on SOEs, **Mike Lubrano** of Cartica Capital said almost all of the companies they invest in have a controlling owner, so before deciding to invest, they assess the controlling owner's interests to see if they are aligned, and whether they will have an open door to speak their minds, since they are an active owner. In cases

where the state is the controlling owner or at least influential, they have always decided that the investment would be too risky.

- **Mauro da Cunha** said that in Brazil, SOEs are such an important part of the market and of benchmark indices, that most investors will buy their shares.
- **Jose Luis Estrada,** Asofondos pension fund association, said that for the cases of ISA and Ecopetrol, there have been very clear regulations for the governance of their board members, including permitting pension funds to participate as an independent member that can be appointed to the board.
- **Rich Frederick** concluded as moderator that among the points he took from the discussion are that in some cases governments need outside investors; and that listed SOEs have benefited from having outside investors, particularly in terms of influencing transparency. However the discussion also revealed manifold problems with listed SOEs, one of them being difficulty for minority shareholders to achieve recourse when they feel their rights are being violated. There was a general issue regarding the interpretation of law and good practices, with lack of clarity of how to handle some regulatory decisions; and concerns about the vulnerability of SOEs to politics. But some cases were cited in which rules and regulations were clear and respected, which provided some basis for optimism as well. Finally, he recommended wide circulation of the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* as something that could be useful for politicians and government officials as well as market participants.
- **Daniel Blume** stated that he found the discussion to be particularly rich because of the involvement of so many different interests, and suggested that the summary record of the discussion could be useful to share with the Latin American Network of State-Owned Enterprises, which so far hasn't included significant participation from the markets in their deliberations, to benefit from the insights provided.

Session 4: Break-out group discussions

See summaries provided under Session 6.

Session 5: Related Party Transactions

Mike Lubrano, Cartica Capital, consultant to OECD (US), moderator

Mr. Lubrano briefly summarized the work of the Roundtable and its Task Force on Related Party Transactions since 2011, including the Task Force's report and recommendations issued in December 2012, as well as the issues discussed at the Task Force's meeting of June 19th (the Task Force report and the Powerpoint presentation are available on the OECD web site). The report identifies five components of a sound RPT framework: requirements for adequate and timely disclosure of transactions that are material; the board has primary responsibility to ensure fair transactions; certain transactions merit consideration and approval by shareholders; the quality and independence of auditors and valuation experts; and effective enforcement and ability to seek compensation for damages.

Priorities of participating countries for continuing work included: 1) collecting, sharing and analysis of data on RPTs; 2) completeness and consistency of disclosure; 3) materiality thresholds; 4) attention to RPTs in economic groups; 5) company-specific policies; 6) RPTs in the context of state ownership; and 7) interest to learn from experience beyond the region.

Mr. Lubrano also reported on the results of a survey of a small number of Latin American companies (eight respondents) including Companies Circle members and other companies from the region to supplement the experience and perspectives of Task Force members. While these companies are generally more engaged with corporate governance issues than the typical Latin American company and therefore were not considered to be a representative sample, they nevertheless provided the Task Force with more concrete experience and perspectives on RPT implementation.

Only one of the responding companies stated that it was their policy to avoid RPTs altogether, while others considered RPTs common and potentially beneficial. All respondents agreed that RPTs should be conducted on market terms and disclosed according to IAS 24 standards. All respondents used their board as the primary body for reviewing the fairness of RPTs, and in some cases board committees were involved. Only one respondent actually put an RPT to the vote of shareholders, in the case of a merger. Most respondents were members of an identified company group which had a single over-arching RPT policy, but in some cases such policies were adapted to the special requirements of a particular group member (for example, with respect to differing requirements of sectoral regulation). Two respondents stated a preference for conducting business within the group (i.e., group members are encouraged to do business with other group members). One noted that on occasion RPTs within the group occurred on unequal terms, but that in such cases, some form of compensation was accorded minority shareholders of the disadvantaged company. Another respondent reported a system for review of transactions that was specifically tailored to its ownership structure and the industry in which it belonged. Even with a small sample of eight companies, responses and approaches were quite diverse.

Mr. Lubrano then launched the discussion by asking members of the Roundtable whether the issues paper prepared for the Task Force asked the right questions, proposed appropriate best practices, or required further discussion. He noted that the Task Force's preliminary view was that further development of the work would be necessary before issuing any new recommendations. The Task Force would be interested to bring the issues raised by the group to the Companies Circle Working Group on Company Groups and the Latin American Network on Corporate Governance of SOEs for further consideration and development.

Giselia da Silva, CPFL, Brazil

Ms. da Silva reported that CPFL is committed to high corporate governance standards as a member of the Companies Circle and a large company listed on the Novo Mercado and New York Stock Exchange. CPFL is involved in energy generation, distribution and commercialization and has more than 40 subsidiaries. So RPTs are a part of daily life, between wholly-owned companies and companies with shared control, a quite complex structure. CPFL has more than 30 energy distribution companies which must remain separate due to sector regulation that does not allow their merger. They also have non-regulated businesses which provide services to the subsidiaries. CPFL provides energy services to 569 cities.

Currently CPFL is preparing for the listing of a second company of renewable energy within its group on the Novo Mercado, but before doing so, it has been working on a policy to guide buying and selling of energy by the company.

Ms. da Silva stated that a reliable and agile process of decision-making is a competitive advantage, considering the complexity of the group's structure. She cited five different mechanisms that contribute to a sound approach to related party transactions: 1) a shareholders agreement which requires the abstention of board and committee members from decisions in which they have a particular or potential interest; 2) corporate governance guidelines that define the mission of the Directors and company officers to protect aggregate company value; 3) an internal regime for the board of directors prohibiting loans or use of

resources of the company for their own benefit, or for the benefit of the controlling shareholders, as well as use of their position to obtain any advantage; 4) All transactions of subsidiary and concession companies must be approved by the executive officers of the holding company before they are reviewed by the related parties committee, followed by submission to the Board for approval; and 5) a written donations policy which helps to guide decisions related to possible contributions to political parties.

Ms. da Silva concluded that RPTs are not "bad" by nature and may aggregate value to the companies involved; and that principles for handling of RPTs are not enough – they must be materialized into processes and defined internal rules for handling of RPTs to support the cmopanies' decisions and as a reference for minority shareholders in their own decisions.

Hugo Caneo, Superintendency of Insurance and Securities (SVS), Chile

Mr. Caneo noted that Chilean regulation of the markets, overseen by SVS, includes a resolution mandating that directors and management must always take care to address the possibility of conflicts of interest, to understand this requirement and how it applies to each actor and director. The board is expected to advise about issues related to running the business and also may need to enforce compliance regarding related party transactions or other possible conflicts of interest that may arise throughout normal business operations.

SVS, under its responsibility for responding to these types of issues, has been focused on maximizing transparency and the free access of information for various actors in the market. Its goal is basically to ensure that all actors involved have as much knowledge as possible and that the market is at a nearly perfect level of transparency, so that all actors can make well-informed decisions. In this context, the SVS has implemented a legal mandate to ensure that this transparency and free flow of information exists in the market, establishing a principle of "comply and explain" based on certain internationally recognized principles including the OECD Principles of Corporate Governance.

Mr. Caneo suggested that SVS has created a certain level of controversy by implementing these standards, but said that they are good practices, and that they believe that all of the directors in Chile will seek to comply with these principles to the best of their capabilities and this will in turn establish acceptance of the law, which is in the best interest of the population of Chile. The market is not yet familiar with these practices but over time they will become public knowledge and will result in an outcome where the companies that do not incorporate these practices will suffer from lower valuations. At the end of June, SVS was scheduled to begin receiving responses from various companies, and they will provide comments regarding the law. SVS will be able to issue citations to any company that is doing something different than what it has disclosed.

Mr. Caneo expressed a hope that the comply and explain system will also institutionalize knowledge, so that good practices can be understood and sustained even when companies change management or ownership. There is also the possibility that these standards will be adopted by different superintendencies in Chile and that the good practices emerging from them will be broadened and followed by all companies who are issuing shares.

Boards play a special role in reviewing RPTs to ensure adequate information and proper disclosure, and in ensuring that they serve the company's interest as well as the interests of minority shareholders. Boards will need to be much more vigilant and much more cautious, as they always are, to interpret possible related transactions and determine and stop possible conflicts of interest. Induction and training of new board members is also important, despite their professionalism and experience that they bring to the table, to ensure that they are educated on the current operations that are occurring within all parts of the company.

Another concern with RPTs is their impact on free competition. Especially in a small economy, RPTs occurring within a company group can have a serious impact on competition, and even moreso for smaller companies. There is nothing wrong with allowing a group to have many types of operations that are related, but they have to be based on an economic rationale, because these transactions can produce a strong restriction of market access resulting in unfair competition. Chile has a regulation that is implemented through a form that companies must fill out informing of the competition effects of related party transactions.

SVS is also working on goals of transparency, adequate training, and providing adequate prior information. Once provided with adequate and timely information in a transparent manner, the market will be sufficient for an investor to act in his own best interest. Finally, he stated that related party transactions are not being presented properly, so that it remains important to focus on this issue to ensure that transactions serve the companies' interest and even more importantly, to support the country's economic growth. RPTs within corporate groups, while not necessarily bad, must be done in the company's best interest with ample transparency.

Luciana Dias, Commissioner, CVM, Brazil

The RPT Task Force made three recommendations in the context of Brazil's implementation of IFRS from 2009-2011 that established a comprehensive disclosure regime for RPTs, which resulted in much more information than previously. One of the recommendations was to improve the quality of disclosure. Since the Task Force last met in 2011, CVM has taken two important actions through two public hearings in which proposals were issued to improve both the quality of annual reporting as well as reporting on ongoing, relevant RPTs. The proposal is to require companies to detail all the transactions, the terms and conditions, why they were made with a related party instead of an unrelated party in the market, and to describe the decision- making process for the transaction. If this proposal is confirmed, that would establish a complete framework that addresses qualitative annual reporting, financial reporting as required by IFRS, as well as ongoing relevant transactions. A second proposal addresses disclosure to shareholders on mergers and acquisitions prior to the annual meeting, which will also benefit oversight of related party transactions.

A second task force recommendation was on improving co-ordination with the Stock Exchange. In December 2011, CMV and BM&F BOVESPA signed a memorandum of understanding and plan of work giving the Stock Exchange primarily responsibility to check if information has been delivered, with CVM to become involved only when the company does not respond to the stock exchange. In 2012 the Stock Exchange checked 16500 documents. Questions were raised to CVM for 2000 documents or 15% of the cases, and CVM had to act on 8%, or 156 documents. So the transfer of the workload to the Stock Exchange allowed CVM to focus on more material cases. We have been asking companies how they decided on those cases, checking the transactions against market rates, and checking if the service was actually delivered to the company, and have found this to be useful. Ms. Dias noted that time constraints would not enable her to address the Task Force's other recommendations in her remarks.

For the next stage of the Task Force's work on these issues, it would be useful to understand better how different countries and companies determine what's relevant and material; and what is a related party transaction – sometimes there are different views on this. Best practices in determining the meaning of those concepts would be very useful both for companies and for regulators.

Mike Lubrano noted that regulators in the Task Force have indicated they would find it useful to have clearer definitions of materiality, but in discussions and surveys with companies, it has also been apparent that what may be material for one company may not be for another, due to differing circumstances such as the nature of the business they are in or the ability to obtain good information on

what constitutes market prices. So there is some resistance to establishing fixed definitions of what constitutes materiality and concern about the work this could create for the board of directors.

Ms. Dias responded that even if there is disagreement on these issues, having increased knowledge of how materiality might differ from one company to another would be useful – more knowledge is needed.

Yearim Valles, National Commission for Banking and Securities (CNBV), Mexico

Ms. Valles said that CNBV considers their regulations regarding related party transactions to be robust, because they have worked very hard to incorporate international standards. They have not received complaints from investors regarding RPTs. The regulation regarding RPTs creates many different mechanisms and checkpoints to ensure that these transactions are carried out at market prices and to prevent abuses from occurring against minority shareholders. For example, there is a corporate practices committee of the board of directors that is responsible for defining the appropriate policies, along with the rest of the board, and for ensuring that the regulations regarding RPTs are carried out as they should be. Additionally, the audit committee reviews RPTs that have occurred during the past year and then writes a report at the end of the year to analyze these RPTs.

Both the corporate practices committee and the audit committee have independent directors. Any transactions involving more than 10% of company assets must also be reviewed by someone externally in order to verify that these transactions were done according to market value. Transactions that make up more than 20% of the company's assets are subject to potential legal challenge by a group of shareholders. Material events must be disclosed as well. When an RPT, or any transaction carried out by the company, involves more than 5% of basic assets or equity, or more than 3% of profits, information on it must be released to the market at the time that the transaction occurred.

While it seems that CNBV has set clear parameters that are sufficiently robust, they also realize that good regulations may not always carry over 100% into practices. So the RPT Task Force recommended that they collect more information regarding the nature and extent of related party transactions, which CNBV has been working on constantly. Because 2012 was the first year that Mexican companies were reporting under International Financial Reporting Standards, they have tried to create a more comprehensive assessment of their annual reports with a special emphasis on related party transactions, to see how and whether the information is being reported in the manner dictated by CNBV regulations, and to determine if this information is useful for investors.

Although investors have not complained or cited this as an important topic in Mexico, it could also be because there isn't sufficient or adequate information available to fully understand the scope of RPTs. Some of the findings concerning RPTs are quite diverse, leading CNBV to think that it would be very difficult to establish one harmonized standard or comprehensive practice that can be applied to all companies, especially when considering company groups. In some cases, the RPTs are presented in a very complete manner, but in other cases reports were incomplete and barely even provided information regarding the sector in which the transactions were occurring.

Currently there is already a financial reform pending in Congress. Among the proposals would be to give CNBV more authority to bring about certain actions. This would allow the CNBV to mediate between various participants and probably also have more authority to intervene and have a much more active position than it has now. Currently, investors are left by themselves to sue a company for malpractice, and the Commission would only intervene in cases that violated the Securities Law. But CNBV could have a much more active position in this and in other issues to initiate actions that favor investors as well.

Ms. Valles suggested that Mexico has come a long ways regarding corporate governance, specifically relating to companies that are listed on the stock market. But, the best practices of corporate governance haven't been incorporated at a more general level. Standards are applied through the Securities Law and not more widely through the Companies Law. Reforms to the Companies Law would be very beneficial, especially for SMEs. A lot of other countries are also preoccupied with this because their SMEs are adopting standards of corporate governance as well, but Mexico may be a little bit behind in this regard.

She suggested that it could also be useful for the Task Force to continue to analyse corporate governance issues for company groups, because most regulation is oriented towards single stand-alone companies and fails to consider how the standards could become rather obscure when applied to company groups, subject to the interpretation of issuers. While in some cases, companies may be fully transparent and in agreement with what is desired, in other cases people could hide behind the fact that the rules are not well defined for them. So further work on this topic would be useful, especially because in Latin America the dominant structure is company groups.

General discussion on RPTs

- **Mike Lubrano** noted that the Task Force had also invited the participation of Ecuador's director of internal revenue, Carlos Marx Carrasco, to develop a better understanding of how tax policy may bear on related party transactions, especially the application of transfer pricing and allocation of profits between entities, especially since RPTs are one of the mechanisms used to move profits to achieve "tax efficiency" or "tax avoidance."
- **Richard Frederick, consultant (based in Spain),** asked about how materiality is defined, i.e., would requirements for disclosure of material transactions be triggered for example in the case of a CEO who sells a $350,000 Mercedes to a critical board member for $20,000. Respondents suggested that even if the transaction falls below quantitative thresholds that a regulator or company may establish for materiality, disclosure could still be required due to the fact that it involves a director. Issues of executive compensation are also particularly sensitive and may involve separate disclosure requirements.
- **Alexandre di Miceli** (Brazil) referred to CPFL's reference reform reporting on its RPTs and found that they reported between 350 to 400 transactions. He asked whether it could be a realistic solution to require companies to develop some kind of a summary report on the impact in aggregate, because it can be quite difficult to analyse and understand individually so many complex transactions.
- **Marcello Bianchi**, OECD Corporate Governance Committee Chair, thanked the Task Force for their work and noted his personal interest in this issue due to his position as a regulator in Italy. He said that his personal view, not yet confirmed by the Committee, is that it should consider adding a section in the OECD Principles specifically dealing with RPTs, and that the Task Force's recommendations offer good material to be considered in the Principles review. He suggested that both the Latin American and Asian Roundtables are ahead of the Committee in their work on this issue, partly because they have given it priority due to the prevailing ownership structures featuring controlling shareholders in these regions. But he said that it is also important for OECD countries, which in most cases also have controlling shareholders, and which are becoming increasingly relevant not only in continental Europe and Japan but even in the US and UK.
- Mr. Bianchi added that regarding the definition of what constitutes a related party, IAS 24 is not clear when there is not a single controlling shareholder, for example whether members of a controlling coalition have to be considered related parties. Italy's regulator, CONSOB, asked

members of the board as one of their duties to identify other related parties that are not defined by IAS 24, if the ownership structure is such that other shareholders have a significant influence. CONSOB has also developed a form to help guide companies regarding immediate reporting of material transactions. The main elements are the company's interest to enter into the transaction, the fairness of the transaction (not just whether it is on market terms because this cannot always be determined), the opinions issued by independent committees or advisers, and dissenting opinions of committee members, if any. This has been very helpful for the market in assessing these transactions. Third, he noted the challenges related to assessing the independence of directors. CONSOB has established it as the responsibility of the entire board to identify all possible relations that may be relevant to assessing their members' independence.

- **Patricio Pena** of the Ecuador Corporate Governance Institute pointed to the important role played by transfer pricing requirements in influencing related party transactions, and supported further exploration of this issue by the Task Force.
- **Simon Wong,** consultant (based in UK), referred to a couple of UK cases involving the sale of assets to a related party for which determining an accurate valuation was a challenge. To address minority shareholder concerns, it was agreed that they would have an option to reverse the transaction with the related party within a specified period of time. This provided additional protections and perhaps further opportunities for negotiation in case the asset's initial valuation was not considered to be a fair one. Secondly, he expressed a concern that the Task Force's work on RPTs involving SOEs may not give due consideration to the important differences between SOEs and private companies. He suggested that the character of the problem is very different. For family-owned enterprises, both the family and the minority shareholders want the company to grow, but the problem is how the spoils are divided. SOEs, on the other hand, may be addressing political objectives which are an entirely different concern. For example, if the government tells the SOE it cannot fire employees, how do they price that? SOEs also have transactions with other parts of the state, where determining what may be fair market prices may be more difficult. Defining who is a related party may also be difficult; some reforms seek to insulate SOEs from political influence, so determining whether a party is related may need to take into account the governance structures and their degree of political insulation.
- **Mauro da Cunha,** executive director of AMEC in Brazil, noted that the issue of the relationship between RPTs and anti-trust law and the impacts on competition is particularly relevant in the case of SOEs, which may be asked to set prices or sell assets at below market prices.
- **Mike Lubrano** thanked the panel and participants for valuable input to the Task Force's work, noting that many new issues had been raised for the group to consider, for example regarding standards for pricing, impacts on competition and the special characteristics of RPTs in SOEs. He thanked the Task Force and noted that their work would continue though written communication pending a future in person meeting.

Session 6: Reports on Break-out Group Sessions

Small and Medium Enterprise (SME) Financing: Corporate Governance Implications

Andres Oneto, CAF Latin American Development Bank

Although the principles of corporate governance were initially designed for listed companies, SMEs are not exempt from these recommendations. Moreover, when this group of companies makes up more than 80% of total companies on the continent, there is no doubt that their behavior affects the overall image and field of corporate governance in Latin America. And so, to strengthen the business system in the region, corporate governance principles are just as relevant for the success of a small company or sole proprietorship as for a medium-sized, second-generation family-owned company.

This session allowed analysis of the challenges faced by two SME financing sources, each one with a different business model, at the time that good corporate governance practices were applied and promoted in each company's operations. One perspective was provided by Bancoldex, a public Colombian institution with private ownership, operating as a development bank of the second layer, but which is authorized to operate through commercial banks and microfinance institutions, and which serves SMEs. A second perspective was provided by Lafise, a private equity fund administrator that operates in Central America and that invests in companies with less than three hundred employees and with sales/assets of less than $100 million US dollars.

First, both institutions offered an analysis, keeping in mind their objectives and priorities, of their reasons for wanting to improve the corporate governance standards for companies that they participate in, whether as lenders, shareholders or investors. And, in both cases it was clear that an assessment of each company was a necessary condition but not necessarily sufficient to reduce operational risks. Three multilateral development financial institutions also participated in this session, and noted that they have a mandate to promote sustainable development, so improving corporate governance standards is in their best interest in order to comply with this mandate.

Similarly, the role that each financing company must fill in order to promote better corporate governance standards in their companies was analyzed. It became clear that for both companies, corporate governance is a tool that supports the process of value creation. This improvement would be useful to a commercial bank in the timely repayment of loans and for a fund to achieve a successful exit strategy. They agreed that company adoption of corporate governance standards should not be an imposition forced on them, but rather a personal commitment that brings them benefits. In this sense, both institutions considered it important to systemize the assessment process of corporate governance, so that it would not be a simple checklist, but rather an iterative process that truly understands the reality and timeline of the company and can be a tool to improve company management. Hence, it is very important that the relevant officials of both banks and funds interact with companies to understand what is behind the principles of corporate governance and what is involved in their appropriate application for SMEs.

On the other hand, considering the limited resources that SMEs have, prioritization of elements of corporate governance was discussed. Among the priorities for banks, the discussion centered on strengthening the control environment, transparency and disclosure of information. From the perspective of a fund, it was considered important to improve the structure and operations of the board of directors and the rights of minority shareholders, transparency, strengthening internal controls, and finally better succession plans.

In terms of the instruments available to influence and support companies to carry out these corporate governance improvements, Bancoldex mentioned the goal of developing actions internally, so that each

bank should apply good practices within its own organization, as a way of leading by example. As for external actions, these are mainly centered on conducting business training workshops and promoting corporate governance among their clients. Lafise spoke of working hand-in-hand with the companies that it invests in, through the development of corporate governance protocols for family-owned companies, through contracting external consultants, and utilizing administration software for the Boards of directors, training the principal executives and members of the Board through business school courses on applying corporate governance for related party transactions, incorporating financial statements that are audited by external and renowned financial institutions, and the use of appropriate instruments (convertible debt or equity) based on the company's risk level and openness.

From the perspective of multilaterals, it was discussed that they should promote incentives for companies to go beyond the minimum requirements of corporate governance, which could include better conditions of operation. In turn, the discussion also included designing alternative financial instruments for SMEs, as well as to relax the requirements and conditions that must be met by the companies to be a bit more flexible, with the goal of reducing transaction costs in order to gain access to capital markets. To prepare SMEs to negotiate their value on capital markets, an evaluation of the framework of corporate governance requirements is important, which would also give them access to it, according to their own size, nature, and operating characteristics, so that the costs of these operations do not discourage SMEs from their goal of participating in this type of financing. Among the existing tools, distance learning platforms for corporate governance, such as e-learning, can support business executives to capitalize on corporate governance practices in the elements that are key for SMEs. These tools are currently available on the market. One of them is the joint development by CAF and IAAG which will be applied concretely to five commercial banks in Ecuador.

Finally, with respect to the methods of collaboration that allow block voting, from the perspective of capital issuers corporate governance is a way to evaluate companies. Bancoldex stated that in its role as a development bank it worked to raise awareness of banks and microfinance institutions to create the conviction that corporate governance standards are important both for them and for their clients. Lafise commented on their work with the chamber of commerce to create associations and the work with LAVCA which has been presented at annual working meetings with recent corporate governance topics. From the perspective of multilaterals, they referenced the Corporate Governance Development Framework that was signed by 31 development finance institutions, which mandates them to incorporate corporate governance into their operational evaluation processes and the evaluation of credit and investments, to assist in the exchange of experience and to carry out coordinated operations, including in the use of training tools.

Corporate Governance Challenges for Company Groups

Luis Enriquez, Corporate Governance Officer, International Finance Corporation

Mr. Enriquez reported on the discussion held on corporate governance challenges for company groups, which featured lead comments on the work of a Companies Circle working group on this topic chaired by Maria Uriza of Grupo Argos of Colombia. Enriquez noted that most corporate governance analysis revolves around the governance of stand-alone companies, but many companies in Latin America have a different, conglomerate structure, involving relations between a majority-controlled company, which may be a holding company, with many associated companies. In some cases, the holding company may own 100% of the subsidiary, making the corporate governance issues more straight-forward. However, when the holding company has only partial ownership, the challenges may become more complex. For example, from the perspective of the holding company, how to ensure implementation of group policies and objectives, while also ensuring a clear understanding of how board members of the subsidiary should weigh their fiduciary duties towards the subsidiary company (and minority shareholders) versus the interests of the larger group. In this respect, the treatment of related party transactions is a

fundamental issue for company groups. Complying with regulatory requirements can also pose a challenge, particularly when different parts of the group may report to different regulators, for example, banking, sectoral or securities regulators, creating challenges for the group as a whole when requirements differ.

The discussion group was asked to divide into three smaller groups, and to respond to three questions:

1) What do you consider the fundamental problems of governance that exist in a company group?
2) What practices can you recommend to protect the interests of minority shareholders, both for the parent company and the subsidiary companies?
3) What methods, what public policies or laws, do you suggest to be adopted in order to regulate these company groups?

Mr. Enriquez suggested that the discussion and conclusions of the different sub-groups was in line with previous discussions of the Companies Circle working group, and noted that the Roundtable's input will be useful for the continuing development of the Circle's report on this topic.

Mr. da Cunha of Brazil noted that the discussion had also addressed concerns about moving from proportional to full consolidation of reporting on subsidiaries (related to implementation of IFRS 10, 11 and 12), which he said had dramatically reduced transparency of company group subsidiaries that are not fully owned by the parent company.

Ms. Vatnick also spoke in support of increased transparency of company groups, noting that there is little access to data on the composition of groups that analysts can make use of, and that better transparency could also benefit shareholders.

Corporate Governance Indices: the Benefits and Risks

Heloisa Bedicks, Executive Director, Institute of Brazilian Corporate Governance

Since 2001, eight stock exchanges around the world – including in Brazil, Mexico and Peru within the region – have launched corporate governance indices, sometimes as part of a broader environment, social, and governance initiative. **Pasquale di Benedetta,** from the World Bank, and **Andreas Grimminger,** from PGS Advisors conducted a comprehensive analysis of these indices for an IFC/World Bank study.

The six key findings of this study are:

1) Corporate governance indices can be an effective market solution in addressing legal and regulatory gaps, and in enhancing corporate behavior and a company's visibility.
2) Evidence suggests that indices based on binding listing rules like Novo Mercado in Brazil and STAR in Italy, allow greater access to capital than those based on corporate governance codes or other scoring mechanisms.
3) Investors recognize the importance of corporate governance in their investment decisions, and the difficulty in gathering related information especially in emerging markets. If set up correctly, CG Indices can be one tool to help to bridge the information gap.
4) Given the qualitative nature of CGIs, investors need to be careful to properly understand the building blocks and methodology an index is based on as information and expectation asymmetry may pose unforeseen risks.
5) In most CGIs, key challenges for investors remain: access to index information and rating methodology is limited, and company evaluations are rarely made public.

6) Virtually all CGIs have had strong constituent growth. However, most are struggling to beat the benchmark index. This often reflects the overlap of constituent companies and a lack of depth in the capital markets. However, Brazil and Mexico substantially outperformed the market.

The main points discussed during the session were:

a) There are some risks as CGIs offer a unique challenge for investors' expectations, as the underlying governance criteria do not always follow international standards.
b) The asymmetry of information can create false expectations. Investors may believe that they understand the CG criteria of an index based on notions from markets that they are familiar with, but the criteria employed in the indices can be very different.
c) The more transparent the index, the lower the information asymmetry investors face. Listing tiers are best practice in this regard as listing rules are disclosed and investors have greater assurance of compliance.
d) As an impact of the benchmark and demonstration effect, CGIs may end up improving the market as a whole and not just the companies that comprise the index.
e) The adoption of good governance practices by the Stock Exchanges gives more credibility to the indices.
f) The Pension Funds should require that their portfolio companies participate in the indices.
g) Skepticism was expressed about the reliability of self-assessments as a tool to assess practices.
h) Some concerns were also expressed about the difficulties encountered in nearly all of the countries that have attempted to develop CG indices and the negative effects that promotion of indexed trading may have on shareholder incentives to influence corporate governance in the companies in which they invest.

To finalize, the participants also suggested some follow up to the study as:

a) To extend the analysis of individual company performance to better understand what makes the index perform better or worse; and
b) To analyze if the companies that are part of the index have less recurrence of negative governance events.

For those interested in building CGIs, the last part of the study provides some steps that should be considered to build a successful one.

Session 7: Institutional Investors

Simon Wong, session chair, introduced the topic by noting the growing presence of institutional investors (IIs) and enhanced shareholder rights, resulting in increased expectations for them to behave as responsible and active investors, looking towards the long-term and helping to ensure good governance and, importantly, sustainable, strong performance. The problem is that all over the world, most IIs have failed to live up to this expectation. He noted that the EU, OECD and others have found that leading up to the financial crisis, IIs were largely absentee owners that had often encouraged short-term thinking and sometimes excessive risk-taking. Following this experience, some are thinking that companies should perhaps listen less to IIs; there is an increasing questioning of shareholder primacy. However, he said that he has not lost faith in the power and need for shareholders to play this desired role, but it will require reforms on things like their own infrastructure and how they deal with conflicts of interest. He noted that for Latin America, the 2011 Roundtable report on Institutional Investors and Corporate Governance had laid out a road map of recommendations to strengthen policies and encourage good investor practices. This Roundtable session therefore was organized to give three countries, Peru, Colombia and Brazil, an

opportunity to report on their responses to these recommendations, including their successes, challenges and path forward.

Peru Progress Report: Luis Valdivieso, Chairman, Peru Pension Fund Association

Mr. Valdivieso noted that Peru's pension fund regulations set out requirements encouraging pension funds to adopt sound corporate governance principles. This legal framework is supervised by the Superintendency of Banks, Insurance and Pension Funds. But they have gone beyond that to adopt internal rules and procedures regarding the requirements they impose on the companies in which they invest. These include requirements that the companies develop certain corporate governance rules and procedures. The Peruvian private pension system involves four funds managing USD 40 billion, including about USD 580 million to invest on a monthly basis. There are few IPOs or major infrastructure projects to invest in; they invest primarily in government and corporate bonds. There is also a 36% limit on investments abroad. So when they invest in local enterprises, they do it very carefully.

The Pension Fund Association has taken numerous actions to address the Peruvian Task Force's first recommendations setting out how pension funds should distinguish better-governed companies for investment purposes, and to formalize disclosure of their expectations for the companies in which they invest. They have developed guidelines for companies on how to disseminate information, require publication of ethics codes, internal regulations, to make their annual report available on the web and to the annual general meeting, etc. They have emphasized a limited board tenure, rules for election of board members, that boards should comply with certain requirements for carrying out their functions or face sanctions. For composition, they seek an even number of board members to incentivize reaching of consensus, and that board members not serve on more than four boards. They have been looking at remuneration emphasizing moderation, and restrictions on election so pension funds cannot elect their workers, managers or others related to the pension fund or the major shareholder of the pension fund. They have been looking at rules for borrowing to prevent directors from borrowing from the enterprise or having any other financial link to the company, except in the case of a board member for a bank. Pension funds look at how good the information is that they provide, whether they have an investor relations officer to support good communications with shareholders.

The second recommendation they considered related to how IIs should vote in general assembly meetings. The industry should consider disclosing their voting policies. Essentially they believe that the companies that they invest in should enumerate very clear rules for the frequency, duration, conduct and content of general shareholder meetings. A recent innovation is that the pension funds have agreed to send a single representative who can serve as a proxy for the four pension funds based on specific guidelines decided by the pension funds in advance of the meeting.

To improve the functioning of boards, they acted to improve the procedures for electing them, training and improving their performance. They have established a head-hunter to handle identification of board candidates, who is rotated every year to ensure their independence. Rules include that they cannot serve on more than one of the boards in which the AFPs invest, limits on terms, etc. They are encouraging them to attend corporate governance training and they are considering paying them to do so.

For the recommendation on internal governance of the pension funds, they do all of the same things that they require the companies which they invest in to do, such as publication of information on the company and its corporate governance on the web, and publication of ethics codes. Finally, looking ahead, they would like to develop a programme for training and evaluation of independent directors.

General Discussion of the Peru case

- **Gerardo Hernandez,** Procapitales, Peru**:** In Peru, they are specifically working on standardizing how to incorporate the elements of interpreting risk, particularly in the evaluations that must be done inside of all of the AFPs. The Superintendency is also working to update Peru's Principles of Corporate Governance. They are specifically looking to incorporate all dimensions related to the question of risk assessment. They also hope to review the entire framework to ensure that it addresses all important issues, such as related party transactions, the evaluation of board members, the election of independent directors, and so on.
- **Jessica Andrade,** Senplades, Ecuador asked what advice Mr. Valdivieso could give other countries with 100% state-owned enterprises, where all board members are government officials. For example, how does he view the case when the law dictates that a specific sectoral minister must be the chair of the board? SENPLADES provides representatives to all of the boards of directors, because they are the verification body, while the other members are chosen by the President of the Republic, generally someone who is related to the sector. It could be the minister of Coordination and Strategy, who is in turn chosen by the President, or someone who is an expert in the field of mining, oil, communications, and so on. With this technique of electing directors, it is very difficult to have directors who are obviously independent. But, what would he suggest for a better development of this type of election process? And what recommendations would he give to achieve an improved outcome in the headhunting of managers?
- **Mr. Valdivieso** responded that in Peru they still have public enterprises, but few of them, luckily, because in general they have not been managed very well. The experience regarding state-owned enterprises in Peru has not been very good. This is why a significant period of privatization occurred during the decade of the 1990s. There are a few public companies that remain, such as Petrolera, which is publicly listed on the stock market with shareholders since its IPO in 2007. When Petrolera came to the pension funds to discuss its intentions, the first thing that the AFPs said was that for them to invest in a public company that is currently investing 10% of its capital stock, they would need to see Petrolera's strategic plans, balance sheets showing profit levels for all recent years, as well as external auditors, independent directors, and all corporate governance practices in general. The truth was that they couldn't respond. The AFPs said that if you cannot meet all of the requirements and principles of good corporate governance internally, then we cannot participate. And, the more that you come to list shares on the market, the more difficult this will be. It is not that the AFPs didn't want to cooperate with the government development body, but rather that there needed to be a balance in the decision-making process, to bring in outside perspectives separate from the government, that the company did not turn into an instrument existing exclusively for a public purpose, but that it had a business objective as well. The suggestion given the previous day was to separate the management of companies through a holding company, but a holding company that is managed with investment principles. Although this may require some functions to be held by public actors, be sure to take away the political influence.
- **Matias Zegers, Chile,** asked about the task of developing and revising the process of evaluating independent board members and also the format of having an independent director report to the AFP. How is this consistent with core corporate governance principles like the responsibility to make all board members responsible to the topics that are being developed within the boards? The risk is that the independent directors would be delivering information not for the benefit of the

whole market but solely for the AFPs, and in turn, any member of that association. Secondly, how can a role be established for an independent board member when companies currently have ministers on the board? And how would he go about evaluating this independent board member when his/her function is necessarily different in that he/she does not belong to a ministry? Should they assume that they are requiring the same obligations and the same functions of these independent board members or not?

- **Mr. Valdivieso** responded that the law does not allow the AFPs to require evaluations, nor can they assess them. But they can ask the company to require assessments and make them public to all of its shareholders. In other words, there should have been self-evaluations that follow good corporate governance practice regarding the performance of the board, and an external assessment of what the board has done, and this should be made available publicly. The AFP does not want to participate in the business objectives of the board of directors; all they want is to ensure that solid corporate governance practices are in place so that the company can flourish and be profitable. But, even though they will not involve themselves in the management of the company, they still want the company to have everything it needs so that if there is a failure, it can be found and corrected as quickly as possible. If an issue is discovered through routine board member evaluations, it's easy to address it. They are not demanding to be included in the process; they want the company to have a procedure, and for it to be done well.
- **Paula Gutierrez Velandia** of Georgeson asked about the percentage of free float in the companies they invest in. A second question is, who decides how to vote within the pension funds? Is it the portfolio manager or someone who is especially equipped to do this? And when they vote, what percentage more or less is voting against the management of the company or do votes generally support the management of the company? Finally, what is the historical profile of how votes go regarding certain issue areas faced by the board of directors and do they generally use proxy advisors?
- **Mr. Valdivieso** responded that they have more or less 20% participation in the companies in which we invest. There are three or four in which we have less than 5%. But, on average, there are 17 companies where we have the right to elect board members. The highest amount of disclosure that we have is 37%, but we usually fall between 33% and 37% disclosure. In those companies, they nominate 3 members to the board of directors. Second, he noted that to exercise their voting rights, the representatives of the AFPs elect among their four funds, one candidate to represent the interests of all four funds.
- He added that they are trying very rigorously to implement is a ban on block voting. When a board looks at the topics up for vote, each item should be discussed one by one, on their own merits. There are cases when votes go contrary to company management. There are also cases where the votes support company management. There are cases where the votes are in favor of removing company management. They just went through the process of removing a manager of a foreign company, where they actually changed the foreign manager. They brought in an independent manager who was a specialist from another country in order to represent the board on a new dimension. So it is very important to examine the composition of the board. The truth is that when you start investing in a company, it is likely to find that the board has certain good practices and certain bad practices. So you start to tackle the bad practices, which can be a very difficult and gradual process. In general, they like to have a medium-term vision to allow time to promote positive changes. Mr. Valdivieso said that he organizes two annual meetings with the independent

directors that they have elected, and that they use these meetings to update them about what is happening in the industry and what is happening with the new principles of corporate governance, so that they can be familiarized with what is going on and so that they will know that their role is to provide them with support and to let them know what practices we would like to be implemented. Then they try to stay within these dimensions, to stay updated about their interests regarding affiliated companies and also try to keep them updated about the best practices and how they are evolving. Now they are beginning to implement other mechanisms as well, because what they have now is still not sufficient. So they remain in contact with universities, with think tanks, and other institutes, so that they can interact with professionals who have other, useful experience.

Colombia Progress Report: Clara Eugenia Castillo, Superfinanciera, Colombia

Ms. Castillo thanked the OECD for the opportunity to present the advances that Colombia has made regarding the role that institutional investors have in strengthening the corporate governance practices of issuing companies, and for the OECD decision for Colombia to enter into an accession process to become an OECD member.

Superfinanciera performed an evaluation that included eight issuing companies in which IIs have the most participation as well as the four private Pension Fund Administrators (AFPs). All of them belong to financial groups, two to local financial groups, and two to foreign financial groups. Currently, Colombia's pension funds have roughly USD650 million in assets, the majority of which are in the private sector. The focus was on issuers in which the AFPs and fiduciary societies owned shares. What they wanted to show is the difference that has been made, on some level, as a result of the major implementation of the Roundtable's 2011 recommendations on institutional investors.

In 2007, Colombia issued the Code of Best Corporate Governance Practices for the entire country, along with instructions from the financial superintendency requesting that the results of the issuers' self – assessments of their corporate governance practices be taken into account in the AFPs' investment decisions. This practice took place between 2007 and 2010, after which Colombia adopted the multiple fund scheme.

Regulators, aware that the multiple fund scheme allowed AFPs to take higher levels of risk, and taking into account that the AFPs did not comply with the instructions dynamically, concluded that there was a need to make substantial revisions. And so, a decree was made within the AFP multiple fund scheme to provide instructions on the various elements of performing proper evaluations.

According to the decree, before taking an investment decision, the AFPs have to evaluate aspects like: the clear allocation of roles among governance bodies; disclosure needs to be transparent and should also include financial documents and address risk-taking; and full disclosure needs to be made regarding related party transactions and methods of protecting minority shareholders rights, as well as methods for preventing conflicts of interests between shareholders, administrators, and employees. These minimum criteria are being implemented in the AFPs now in order to evaluate their investments. Following good practice, these criteria are being published on the AFPs' website.

Further, last year they legally implemented a procedure for proxy voting, in order to facilitate the participation of foreign investors to invest in Colombian securities. This will help to expedite the policies aimed at increasing investments in MILA. However, proxy voting is not currently allowed for domestic investors. But they have begun to consider making this an option for domestic investors as well. This will also be very important in terms of facilitating the ability to exercise ownership rights. Basically, in terms of what has been discussed in the working groups, in order to exercise ownership rights, they need to find

in the issuing companies a specific declaration stating that it has been easy for institutional investors to exercise their ownership rights internally.

However, the experience of institutional investors regarding issuing companies continues to be negative. Basically, what the institutional investors indicate is that despite the fact that Colombian law mandates that the issuers provide information with fifteen days prior notice, what is actually happening in practice is that information regarding issues like the composition of boards of directors is often only being provided with one or two days' notice before board meetings. This is a challenge that they are seeking to address through the revision of the Country Code, to adopt better practices on the international level regarding the call to deliver information in advance.

The regulation in Colombia establishes that institutional investors have to assist to the general meetings of shareholders of the issuing companies where its participation makes up at least 5% of the company's shares The reality is surprising: institutional investors exercise ownership rights in 78% of the issuing companies where they have participation, even if their ownership is below 5%. Institutional investors have actually been exercising ownership rights on the basis of other criteria as well, for example in relevant decisions being made in general shareholders meetings, evaluation of the sectors, appointing the board of directors and the financial auditor.

Currently institutional investors exercise their ownership rights in 55% of the issuing companies where they have participation. They consider this a good level, but still needing improvement. As a result of the evaluation performed, they found that the AFPs appoint their representatives to the general meetings of shareholders depending on the topics to be discussed in the meeting. However, there are some minimum requirements about the representative's profile.

There are some basic, minimum requirements that should exist for policies dedicated to exercising ownership rights. Essentially, IIs should always participate in votes on material decisions. IIs can never abstain from a vote regarding changes of governance bodies, priority representation of bond holders, company reorganizations, liquidations, new issues of capital, capital diminution, financial investment policies, and in general any decision that may affect the company and therefore the interests of institutional investors. IIs are there to ensure that the company is being run efficiently, and to ensure profitable dividends for their investors. In the case of AFPs, IIs are only permitted to abstain from voting in situations constituting a conflict of interest, or when they have not been provided with the necessary information to make an educated decision. In cases of abstention, they need to document why.

Another significant aspect that they have advanced on is communication between institutional investors, by creating shareholder agreements. They believe this is of utmost importance, but that they also need to promote this issue further. They have found IIs to be most involved with the evaluation and election of independent board members (members that cannot be linked to the AFP or a group that belongs to the AFP), and the election of a financial auditor, which must be an external auditor in Colombia. She invited José Luis Estrada to elaborate further on this topic.

Jose Luis Estrada, Asofondos Pension Fund Association, Colombia II Task Force

Mr. Estrada said that Asofondos represents an industry that is, by certain standards, in adolescent form, that has been growing at a slow rate. But their numbers are impressive, especially considering that the Colombian labour market is not yet fully formalized.

Currently they administer USD55 billion, which is less than Chile, whose AFP capital accumulation represents 65% of their GDP, compared to 20% of GDP in Colombia. IIs as a whole hold 20.8% of the Colombian Stock Exchange's market capitalization, with the AFPs holding about 13% of stock market

capitalization. Their goal has been to implement regulations concerning corporate governance and they are satisfied that, in the little time that they have had, the regulations they have implemented have been strictly carried out.

He cited two main messages:

The first message is that AFPs are in effect strengthening the role of minority shareholders. This has been driven mainly by recent Colombian legislative reforms. With the financial reform that was passed, a mechanism was established that allows multiple funds (multifondos) to take various forms characterised by different risk levels. This means that some higher-risk funds can have a higher proportion of equity and this in turn has increased AFP participation in the market.

The financial superintendency and the regulatory body took on a substantial task in their effort to raise the standards of corporate governance through recent regulatory initiatives. Faced with this task, they issued rules that were admittedly not popular initially, causing many conflicts between pension funds and issuing companies, due to the numerous requirements that were instigated. This was a significant burden, and they began to feel somewhat like they had become unattractive investors. The AFPs had to verify that they were electing independent board members, and as this happens very quickly, there wasn't a lot of time to go through the verification process for five or six board members, after going through all of their qualifications. So it can be quite a burden.

The adoption of these standards in practice has quickly increased shareholder agreements with the objective of uniting the participation of the pension funds to elect a member of the board of directors in the various issuing companies. These shareholder agreements have created a framework for transparency on the stock market.

The Colombia Stock Exchange has 81 issuing companies, and the AFPs participate in some 32 of them, including more or less 14 in which the AFPs have the possibility to elect a member of the board of directors. They have participated actively in the nomination of these board members, and they believe that one of their challenges is to participate in electing board members in more than just these 14 issuing companies, but in all of the companies on the stock market in which they are active investors. They consider that the process has been slow but they are advancing, and in general agree with the report made by Mr. Valdivieso on Peru.

Ideally, through the act of nominating a member of the board of directors, this member must respond to what is missing on the board, what they hope to achieve on the board. Therefore, he cited what Peru is doing in terms of board professionalism and hiring of head-hunters to support board nominations, and suggested that Colombia could also advance in this sense. One of the biggest challenges that they will face will be the ability to exercise ownership rights within MILA, the Latin American stock exchange. He stated that the regulation currently is not particularly prepared to guarantee the exercise of these rights through MILA. While this has not so far been perceived as a significant need, he suggested that over time it will become a top priority.

Another main challenge is in relation to issuing companies that are currently listed on the local stock exchange but that have been constituted through external legislation. These issuing companies have particular laws regarding corporate governance and regarding the composition of their boards of directors which are not necessarily the same laws that Colombia's regulator and supervisor have. He suggested that a significant challenge will be to resolve these conflicts within the current legislation, especially for the regulator, because in some form the rights of institutional investors may be weakened.

Finally, the second message is that in effect corporate governance is influencing the investment decisions of the AFPs. The ways by which issuing companies manage conflicts of interest, taking into account the survey results against Colombia's comply or explain corporate governance code, are what determine whether issuing companies on the stock market have institutional investor share ownership. The topic of re-evaluating information is of course a very important issue, and the adequacy, quality, and timeliness of information continue to be the most important factors for administrators of pension funds. They are always asking issuing companies to provide better information and for it to be more thorough, and for them to provide more training to board members. Finally, they believe that they need to work on implementing better lines of communication with issuing companies, to establish forms of mutual communication that are much more frequent and better institutionalized.

Colombia general discussion

- **Javier Diaz**, Colombia Stock Exchange, stated that the Stock Exchange has taken the legal requirements in terms of relevant information to the market and upgraded them, so that they will create an index of 10-15 issuers as meeting global standards of investor relations to support better communications between issuers and the financial community.
- **Francisco Prada,** adviser to Confecamaras, Colombia, suggested that the most practical challenge for institutional investors is to appoint effective, independent members. He noted that Brazil's institute of corporate governance has established a database of board member candidates that could be a useful experience that other countries could also learn from, and that there is a role for corporate governance institutes to support this.

Brazil Progress Report: Mauro da Cunha, Executive Director, AMEC, Brazil

Mr. da Cunha noted that his Association of Capital Market Investors, AMEC, represents 60 institutional investors (IIs) with a portfolio of about USD$250 billion. He structured his presentation to cover Brazil's progress in relation to implementation of the Roundtable's recommendations.

For the first recommendation encouraging more involvement of IIs in the promotion of better governance, there has been a lot of involvement but through a bottom-up rather than top-down process. His view is that the government is not at all interested in the capital markets. The pension funds and ANBIMA, the investment bank association, could also become more involved. For mutual funds, which make up the majority of AMEC's membership, there has not been much pressure from the regulator or clients for them to become more active.

For the second recommendation that investors take into account corporate governance in their investments, Brazil has had some rules in place for some time, but the most important influence is again bottom up. BM&FBOVESPA trading is down 16% since 2011 as a whole, but the index for companies meeting Novo Mercado's higher corporate governance standards, IGC, is up 8%, an indication that shareholders are taking these factors into account.

For recommendation three on formalizing and disclosing II policies related to corporate governance of investee companies, the biggest news is that Previ, Brazil's largest pension fund (representing 60% of Brazil's pension fund value), has updated its corporate governance code, and that the new code is a big improvement. Because of its size, Previ's actions have a multiplier effect. In the past, Previ referred to board members elected by its vote as its "representatives" but now the code talks about board members elected by Previ, which is a slight but significant advance. He said that sadly there has been no advance by mutual funds to formalize voting policies; many do have a voting policy but it is not specific enough to be meaningful.

Brazil has had a two-speed environment in relation to recommendations four and five on the exercise of voting rights. The large IIs, notably mutual funds, are still hesitant to participate. However, the large pension funds are very active, as well as some of the independent mutual funds, and this has made the most recent annual meeting season very exciting. Foreign investors have also become increasingly active, sometimes voting against management, which shows that voting is being taken very seriously. AMEC's impression is that there is more activism but not as high as they would like. The Electrobras meeting of 2012 was one such meeting in which many shareholders were quite active, but others were noticeably absent.

Bureaucracy, getting paperwork in order for voting, is very complicated, but the good news is that CVM is very active in trying to facilitate distance voting, including enhancing the ability of fund voting. However, not enough has been done yet; investors are still bumping into logistics problems. An AMEC on this topic was planned for October 29th, 2013.

Recommendation six on encouraging communication is evolving well among mutual funds through AMEC, which provides a forum for communication. Communication is active among the three largest pension funds, but less among others. They would like to improve communication between mutual funds and pension funds. Communication between IIs and companies is also improving, especially among Novo Mercado companies and those without controlling shareholders. However, a downside of this is the increased risk of insider trading. Some investors have a negative perception regarding the incidence of insider trading in Brazil, and this is something they are trying to address.

Mr. da Cunha said that there was not much to report regarding recommendation seven on board effectiveness. Brazil still lives in a culture in which board members see themselves as representatives of specific constituencies, without much thinking about the global composition of the board.

Regarding recommendation nine on accountability of management, they have seen great advances in CVM jurisprudence, which has shown the importance of management accountability. This has been helpful because historically it has been very difficult in Brazil to pinpoint the fiduciary duties of managers.

Regarding recommendation ten on II internal governance, there has been little improvement, but CVM has issued a circular reaffirming previous decisions saying that if you are a minority, you are not a related party. This had an impact on how some IIs frame their decision-making processes regarding AGM voting. Finally, on the ability to exit from the market, they have had significant advances of both mutual and pension funds, increasing their exposure to foreign investments.

In AMEC's opinion, they need to better understand the hurdles that investors are facing to active participation. After hearing Colombia's and Peru's reports, Mr. da Cunha proposed that Brazil could also benefit from establishment of a task force to review these issues, which AMEC would volunteer to lead.

Brazil general discussion

- In response to a question from **Alexandre di Miceli** about the role of mutual funds affiliated with financial institutions, **Mr. da Cunha** said that while it's no secret that their participation has been underwhelming, they are having internal discussions and he hopes that this will keep improving.
- **Giselia da Silva of CPFL Energia** noted an imbalance between requirements for companies to provide information regarding board nominations at least 15 days before the AGM, or in CPFL's case 30 days before, whereas there was a case this year where CPFL only heard about investor board nominations through the press just five days before the meeting. **Mr. da Cunha** acknowledged the need for progress and suggested that investors are learning, but also that

regulation is sometimes so complicated that it is difficult for investors to get a proposal ready before the meeting. He felt that both investors and companies need to get better organized to address this need, coupled with regulation that is more "friendly" to better board-building.

- **Paola Gutierrez Velandia** of Georgeson asked about shareholder agreements in Brazil and how they are handled to avoid coming into conflict with prohibitions against acting in concert. **Mr. da Cunha** responded that this has not been a problem for investors in Brazil because CVM has opted for a narrow definition of control so that minority shareholders can work together, including cases in which there was no controller and they managed to "overthrow" the board of directors without being considered to have acted in concert. But he said there is a flip side which is that there have been some problems with implementation of tag-along offers.
- **Heloisa Bedicks of IBGC** in response to an earlier question from Francisco Prada reported on IBGC's development of a database of board members, established about five or six years ago, with names of 600 professionals who can serve on boards of directors, to be used by investors to help them identify good board candidates. **Mauro da Cunha** added that AMEC is trying to improve the demand for good independent directors and IBGC is facilitating the supply side.

General discussion

- **Aldo Fuertes Anaya** of Peru welcomed the apparent good news regarding the activism of pension funds in promoting good corporate governance practices in the companies in which they invest. He suggested that the next challenge could be to improve corporate governance standards within the pension funds. They are well-linked to the management of company groups which could in one way or another end up being providers of financial assets that are eventually purchased by the funds. So the principal-agent relationship between the administrator and the affiliate may become problematic over time, and conflicts may arise. The challenge could be this question of conflicts of interests, and on the other hand, how to improve the levels of transparency regarding performance levels or the decision-making standards of the funds. This is the type of information that should be brought to the fund members, as principals, and to managers, as their agent. Perhaps another challenge for the AFPs could be to adopt international standards of good asset management or performance evaluations.
- **Luis Valdivieso** noted that Peru's AFPs had implemented requirements similar to those that they gave to the companies that they invest in. Moreover, the regulation of the superintendency of banks and securities is more demanding regarding the corporate practices of the AFPs than it is with the requirements that they give to the companies that they invest in. For example, they have independent directors on the boards of all of the pension funds. They have rules, so that if something is going poorly, if a pension fund opens up a mutual fund that belongs to the same company group (although pension funds don't normally invest in mutual funds that are held by credit banks), then an analysis will be performed. They can restructure the pension funds, break them down so that they separate the relationships, and then disclose these actions to the superintendency. They have semi-annual meetings not only for management committees, but also for managers who are not on the boards, such as investment managers, legal managers and marketing managers, and every committee that is working within a pension fund is brought together semiannually in order to fully disclose what they have been doing. They have adopted international standards but also, these international standards keep changing. This is why they are so invested in this subject, and why they participate with such interest. But considering the

diversity of IIs in the market, he suggested that there is a need to take a closer look at what the different types of IIs are doing.

- **A Colombian commenter** stated that Colombia's regulator has solved the problem of related investments with great efficiency. They have implemented a maximum percentage of related investments that is allowed, as a way to restrict them from occurring. If the pension fund belongs to an economic group, then it cannot invest in groups that are related to this. He suggested that further consideration should be given to developing the possibility for affiliates of the pension funds to elect a representative to the board of directors of the pension fund. This is a possibility that unfortunately has not been developed as much as it could be.
- **Simon Wong** agreed that financial links are a key issue. All the policies in the world may not help because there can still be subtle mechanisms to influence outcomes.
- **Ramiro Crespo** of Analytica Securities, Ecuador asked about independent board members. Between placing more stringent limitations and requiring independence, it is getting harder and harder to find directors who are well qualified and can bring a good business sense. He cited the example of Ecuador where the financial system had prohibited shareholders, or had limited shareholders, managers, and directors, so that they all had to be from within the financial sector and they couldn't have business relations with any other sector. And so, this significantly limits the ability to find directors because a businessperson coming from any other sector other than finance could not be a director in an institution within the financial sector. The question is also relevant for SMEs; is it possible to find a sufficient amount of qualified and independent directors for all of the companies who need them?
- **Luis Valdivieso** responded that they have not had any difficulties in finding directors. They have implemented an additional law which basically states that the director must have the right profile for the board to be a well-articulated board. They have had some problems with this, but they know when the AGMs will occur have six months prior notice and are able to start the process early. When a director's term is over and he must leave the board, his name will be placed on a roster. The goal is for this person to not re-appear again or have another opportunity to serve on the board. They are not lacking directors, but rather are trying to avoid situations where they have too many directors. In Peru there are people who traditionally serve on ten or fifteen boards of directors. There are directors that have been on the boards for nine years and are part of the financial activities, and they call themselves independent! So in reality, all of this has gradually been changing, and they hope that it will fully change.
- **Simon Wong** concluded that issues of conflict of interest still need to be addressed, and that he will be keen to see how some of these new policies are implemented.

Concluding session

Joao Noguera Batista, executive director of Brazil's takeover panel

Mr. Noguera reported on the impending official launch of the panel. The launch follows three years of discussion, including between AMEC, IBGC, ANBIMA (the association of investment banks), and Brazil's Stock Exchange, challenged by CVM, to come up with a self-regulating mechanism to deal with conflicts between shareholders involving corporate restructurings, delistings and takeovers. They now have a code that has been approved and will establish a panel with 11 well-known lawyers, businessmen and market experts. It's an important step forward based on voluntary acceptance by companies, similar to the Novo Mercado, so this will impose a challenge to convince Brazilian companies to become members of

the panel. Support from investors abroad and locally, and from OECD and IFC and everyone who has a stake in capital markets will be important to move companies towards acceptance of the panel. Very few companies move forward on the basis of vision and strategy, they move on the basis of economic interest, so investors will have to push. He suggested that perhaps in the future, the Roundtable could consider a Latin American takeover panel based on a self-regulated code.

Miguel Mora Hidalgo, Ministry of Economy and Competitiveness, Spain

Mr. Mora, speaking in his last Roundtable meeting as a government official prior to his retirement, provided some perspectives on his 10 years of Roundtable participation and sustained financial support from the Spanish government for the Roundtable. He noted that he has sometimes been critical but that countries in the region have advanced considerably. He has always pushed for more in-depth treatment of the issues. Formal solutions do not fully address the problems; there must be an understanding of each actor's interests.

Looking to the future, he suggested that the Roundtable must attempt to work further between meetings, to have better communication through preparatory groups, so that issues have been more deeply analyzed before they are discussed at the Roundtable. The Roundtable also has not yet dealt with some matters, for example, entrepreneurial forums of economic activity such as co-operatives.

Mr. Mora concluded by thanking the OECD for its work on the Roundtable, which he said has helped to improve the relations between Spain and Latin American countries, and that the government is extremely happy with the results.

Daniel Blume, Senior Policy Analyst, OECD

Mr. Blume summarized as main takeaway points that:

1) Roundtable speakers and participants provided many different elements to take into account for the further development of the report on Latin American Equity Markets. It will be important to work between meetings and for participants to provide further written input on developments and issues in their countries before circulating a new version.
2) A lot of interest was apparent among multilaterals and other institutions to follow up on SMEs, a much larger universe beyond listed companies that can benefit from better corporate governance.
3) In terms of SOEs, good input was received from the wide range of market participants that have high stakes in these issues, which should be transmitted to the Latin American SOE Network. The possibility of expanding the Network, which mainly involves only government owners and SOEs themselves, to bring in additional voices should be explored, including at a minimum communicating the Roundtable's relevant conclusions for their consideration.
4) The RPT Task Force's work should go forward with an interest in continuing to develop its understanding of company practices. The Task Force should continue to work on recommendations that could also feed into current exercises going on to update country corporate governance codes.
5) The Institutional Investor session showed that much progress is being made in the region in implementing the Roundtable's recommendations. For example, a few years ago, Chile was the only country in which pension funds used headhunters to identify candidates for board nomination, and now Peru has adopted the practice and Colombia is considering it as well, showing that good practices spread as market integration also takes hold, in this case among the three countries

involved in the MILA agreement. He welcomed Brazil's offer to establish an II task force and suggested that the reporting format of progress against Roundtable recommendations should continue at future meetings with involvement of additional countries.

6) A summary record will be prepared and issued, including first a preliminary summary of the key conclusions within one week along with presentations, and a more in-depth summary to follow.
7) Looking ahead, he noted that while the plan announced at the last Roundtable meeting was to move to a once-every-two-years format, there may be a special need to have a Roundtable meeting in 2014 due to the interest in having the region's input to the 2014 review of the Principles of Corporate Governance and Guidelines on SOEs. Some interest has been expressed from Colombian participants to host, but this remains to be confirmed. He also noted that the network of Latin American Institutes of Corporate Governance and Companies Circle also have full work programs ahead of them.

Marcello Bianchi, OECD Committee Chair, thanked the Ecuadorian hosts for such a beautiful setting and for an excellent meeting. He said that he would take many messages to the Committee from this group regarding issues that are not fully covered by the Principles, and he agreed that a Roundtable meeting during 2014 would be useful to provide another opportunity to review some of the specific issues being considered for revisions to the Principles.

Patricio Pena of the Ecuadorian Corporate Governance Institute thanked all of the participants, sponsors, and individual team members who contributed to the preparations of the Roundtable.