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Lunchtime

ROUNDTABLE

BOOK LAUNCH

**TRANSNATIONAL
SECURITIES
REGULATION**

Book Launch “Transnational Securities Regulation. How it Works, Who Shapes it” | By Antonio Marcacci | Springer

14th December 2022

Abstract

Antonio Marcacci's new book on transnational regulation of securities markets was celebrated with a panel of international experts discussing its contributions to understanding IOSCO's role in financial regulation. The panel, comprising academics and regulatory practitioners, praised the book for filling a research gap and providing insights into IOSCO's influence, the interplay between national and transnational securities regulations, and the dynamics of regulatory power. The discussions raised questions about IOSCO as a model for other regulators, the integration of public and private law in financial standards, and the organization's evolving influence in light of regional developments like Brexit and the rise of Asia in global finance.

Full transcript

Dr. Maren Heidemann: [00:00:21] Hello, everyone, and welcome to this book launch of ours. The London Centre of Commercial and Financial Law is presenting Doctor Marcacci's new book, "Transnational Securities Regulation". We can already welcome our panel today, whose members are joining us from all over the world. We are very pleased and very proud of that. They are actually joining us from different time zones. We just found out it's not too inconvenient for anyone, since our time zones are not so far apart. May I just welcome immediately Professor Mads Andenas, to give us a few words of welcome and perhaps an introduction of this new book series. First is our third volume, which comes out first. And, Mads, would you like to say a few words?

Prof. Mads Adenas: [00:01:19] Yes, please. The book series is very much Maren's doing. It's a book series with Springer, which allows us to deal with financial and commercial law issues, also of this regulatory field. We are all extremely interested in the interactions, which you find, then, between the regulatory and the commercial private law. One of the issues which has been a bit nebulous is the IOSCO and the international securities regulators. To a large extent, it's true to say that it has been very U.S. dominated. But the EU is becoming an important actor. And, although it's standing in this transnational regulatory area is yet to consolidate, it would be interesting to see how the EU would manage as a regulatory force to influence what goes on at the international level. From an EU point of view, there's a new, interesting perspective. For those of us who follow what goes on in the UK, part of the Brexit dividend was this very generous deregulation of all of the regulatory restrictions which had been imposed, as the British story would be, on the UK, on the London market by the EU, and that this was something which then should be done away with, or rather, taken away; should just be taken away, be removed, and it would then improve the UK or rather the London financial market immeasurably. The governor of the Bank of England spoke out yesterday, the day before yesterday, and made clear that many of the regulatory rules which had been introduced after the 2008 regulatory or financial crisis, definitely were needed.

Prof. Mads Adenas: [00:03:48] And he argued that one thing was financial stability, but also that these regulatory rules were important to secure; maintaining these regulatory rules, this regulatory regime, was important in order to maintain the competitiveness of London as a financial center. And of course, the problem, again --if you look at it from the

UK point of view-- is just to have the regulatory capacity to promulgate rules: the idea that you can just take away a whole layer of rules and promulgate something which is different, alternative. Not just deregulate without anything to put in its stead is extremely difficult, of course. This UK experience, now, is something which brings the international regulatory dimension in with an even stronger force. Because if the EU disappeared, almost deregulate, the restrictions which would be there would follow from the international regulatory level. This is not something, now, which hits us with full force in the European context. What are the consequences of the regulatory standards agreed to at an international level? IOSCO is extremely interesting. So that Antonio Marcacci speaks about this in terms of a Brussels effect and by polarity, which I think are useful concepts which will allow us to continue the analysis of what goes on. The idea that, whereas in many previous rounds, for instance, when it comes to the beginning of capital adequacy rules, you had these bilateral negotiations between the UK and the U.S., and then in later phases, the EU would exert its influence and there would be exchanges with the U.S.,

Prof. Mads Adenas: [00:06:20] although very much has happened then as a matter of purely internal U.S. considerations, that IOSCO, then, is transformed into a more truly international regulator. It needs more study. I think it's obvious to anyone that Marcacci's book is a very original and interesting examination of a topic which has received too little previous examination, and certainly not in this depth and detail. It starts with a new field of scholarship, or a new area of scholarship, and it is a very good beginning. Hopefully, we can provide a forum for continuing this scholarship and developing more scholarship. Dr. Marcacci has not intended this book to be an endpoint. It is a beginning. And it is the very best beginning indeed. So, many congratulations to Antonio for his book; to Maren who has been the editor and the driving force for the book series and organizing this seminar, and welcome to all of you. And Maren, of course, just to add a sentence regarding the centre. Seminars like this is what the centre does, and is doing increasingly better, allowing for a transnational forum on these commercial regulatory issues and doing it on a truly transnational basis. A strong European focus, of course, but in no way excluding a strong international dimension. Thank you very much and welcome to all of you.

Dr. Maren Heidemann: [00:08:29] Thank you, Mats. Yes, indeed. So if any of you have a suggestion of what we should put on as a seminar, please let us know. Next, I would like to give the floor to Doctor Comporti, because he will need to leave early. But before I do so, may I just welcome the audience and repeat that we have material uploaded in the webinar

chat box. The audience may download the discount flyer, as well as the programme of this event and the poster. There are several files, because I made a mistake with the first programme that was uploaded, so I uploaded another one because I don't know how to remove them. So please help yourselves to the discount flyer.

Dr. Maren Heidemann: [00:09:23] We now have the pleasure to listen to Doctor Carlo Comporti. He is an officer of the Italian supervisory authority on securities, whose abbreviation is CONSOB. Of course, all of you are familiar with that. Thank you so much for joining us today, Doctor Comporti. Would you like to share a few words with us?

Dr. Carlo Comporti: [00:09:50] Sure. First of all, good afternoon to everyone and thanks for inviting me. And I do apologize for having to disconnect shortly after. My apologies for this. I must admit, I have been in touch with, and I had a number of interactions with Dr. Marcacci when I was outside of the regulatory arena, given my previous interactions with IOSCO and my previous experience as a regulator some time ago. Now that I'm back in the regulatory arena, since a few months ago, I can truly appreciate the work that has been done and the profound research and the outcome that has been put forth, really in such a successful way by Doctor Marcacci. I will limit myself to a few very brief points. The first one, which Professor Andenas just mentioned and that I concur with, to my best knowledge, this is the first comprehensive study and analysis of IOSCO. There may have been, occasionally, here and there, some allusion of researchers that were referring to IOSCO, but I have not found or I was not aware of any such, let's say, holistic review of the organization, its interactions, its functions. That in itself is remarkable. That, of course, started in the context of this series of translational regulation, and the book clearly opens up and from the perspective of IOSCO describes the evolution of international architecture within IOSCO, its position.

Dr. Carlo Comporti: [00:12:14] But the international architecture, particularly in the current set-up, was designed after the crisis of 2007 / 2008. From that perspective, it's a window that opens to considerations and analysis well beyond IOSCO. That is my first point on the innovative part of this research. The second point --and I don't want to take any space from Isabel, who is much better prepared than me to talk about IOSCO and the recent evolution of IOSCO-- but just to underline, for anyone, an assessment of how IOSCO, in recent months and years, has taken a space that in the past was also very important, from the very first key foundational document, the principles that were a sort of mirroring document

to Basel and then as an insurance, the evolution and the space it has occupied on priority topics. If you look at the Financial Stability Board agenda and activity, you can assess how IOSCO has been, or is currently instrumental in addressing the key priorities for financial stability at global level. So that is also another, a second reason to take a look at the current function of IOSCO, given the important role it plays at a global level.

Dr. Carlo Comperti: [00:14:21] From this perspective, the analysis of transnational regulation also helps in one of the traditional dilemmas: that these bodies, apparently from different angles, are being criticized for their lack of legitimacy. I think that the analysis clearly helps to show the strengths that had been put on the construction and the governance and the process in order to at least mitigate some of these concerns regarding accountability, democratic accountability, I would say. That is the second point I wanted to make. A third point is that the book in itself, as already mentioned, covers a wide range, a wider spectrum of activities starting from regulation, but also that which is the most recent evolution of these standard-setters and the entire financial architecture. It is not just about adopting or forming new rules. It also ensures that these are subsequently implemented and routed first into the regional, and then cascading into national regimes. So the way in which the rule-making has been associated with the monitoring of implementation --not just regarding IOSCO but also the Financial Stability Board and others in the sub- and other mechanisms-- is fundamental.

Dr. Carlo Comperti: [00:16:17] And the book clearly describes this set of actions which, as I said, are instrumental to ensuring that the rules are effectively implemented. A fourth point regards another spectrum of the issue which is ensuring that once the rules are adopted, once they are implemented, there must be another important pillar available which is cooperation. And believe me, I will leave it on a day-to-day basis. The multilateral IOSCO MMoU is the basis for facilitating the exchange of information between global regulators, something which would otherwise be very difficult. Must I elaborate on how finance, and I would say now, recently digital finance is globalized? Must I underline the importance of having such an instrumental tool to ensure that authorities rely on each other and exchange information? Of course not. So just to point out, also from that perspective, how the book is shedding light on something that is extremely important. In concluding my remarks, as a regulator I greatly appreciate all the immense and profound work done. It helps to really understand better, also from the insider perspective, the mechanism and trying to improve by way of the comments that were made, thus making it even more useful in those areas

where this is needed. So I can only congratulate Doctor Marcacci for his excellent achievement. Thank you.

Dr. Maren Heidemann: [00:18:09] Thank you so much, Doctor Comporti, for your introductory words which, of course, come from a national regulator. We also have the great pleasure of having Ms. Isabel Pastor here with us. She works at IOSCO as head of enforcement and cooperation. So we can now hear from a person from within this organization which, of course, is a major component of Antonio's book, and which certainly embodies the focus of his book which is why we may want to transnationalize this regulation for the sake of the international financial market in order to prevent any Eurocentric and isolationist tendencies that may be a part of national regulation. Ms. Pastor will also need to leave early so I'll give you the floor, please, Isabel. Would you like to say a few words?

Isabel Pastor: [00:19:12] Thank you very much. And a very good day to all of you. I'm joining you today from Guatemala, where I'm talking about IOSCO MMoU, by the way. Guatemala just joined IOSCO a week ago, and I'm here to discuss cooperation. I think it's a fantastic occasion to meet all of you and basically what I wanted to say is to congratulate very sincerely Doctor Marcacci for the excellent book that he has published. I am talking more on a personal level, but nevertheless, I have worked for a number of years in IOSCO, and when you're there, just basically doing things, I must recognize that sometimes we lack the time and the opportunity to think about what we do well, what we do reasonably well, what areas we can certainly improve. What are the issues, how others perceive us from the outside, what are the issues about. Well, many of the issues that Doctor Comporti has mentioned, which are absolutely critical for financial regulation, such as legitimacy and so on. I think having the opportunity of having such a comprehensive study on such matters is really unique. I must admit that I've read the book, but I'll really need to go through it several times in order to be able to grasp all the substance that is presented in the book and all of the various aspects. There are very, very interesting historic elements on some of the issues.

Isabel Pastor: [00:21:14] Because Doctor Marcacci has asked me to say a few words in particular about cooperation and enforcement, and Doctor Comporti has really covered most of the more important points about IOSCO, I would just say that I really appreciate the book in the sense that I agree: there isn't much published about IOSCO, which makes this

quite unique, I would say. I was pretty impressed by the section on international cooperation and enforcement, because this is something that IOSCO members do, I could say, very well. We have this instrument, the IOSCO Multilateral Memorandum of Understanding that Doctor Marcacci describes absolutely perfectly in his book. It's quite unique in its examination of financial services and international cooperation in a broader sense, not just in financial services. I think we need to promote it as well outside IOSCO, because it's really a very strong success story for IOSCO and its members. As Doctor Marcacci mentions in his book there have been, counting the entries this year, in the history of the instrument there have been more than 50,000 instances where the MMoU has been used by the members of IOSCO to exchange information on cases of investigations related to enforcement on securities regulation.

Isabel Pastor: [00:23:13] That is simply quite extraordinary. And this is something Doctor Marcacci understood straight away. It's very well written in the book. It's very well pointed out. And, in addition, the actual idea, as Doctor Comporti was saying, of the monitoring element, Doctor Marcacci doesn't exclude that section of the implementation of the cooperation instrument. Once again, I was quite impressed because it's something that not everybody would pay attention to. And I'm very delighted because this is the work I do. But I do it mainly within IOSCO. It's not very often that I am invited to talk outside the organization about the instrument. So I'm very happy to have you here. And once again, I think the publication is quite a major achievement in terms of putting IOSCO on the map and providing a lot of information for researchers and for future work. I don't want to take time from the rest of you, but my sincere congratulations to Doctor Marcacci, and I am very, very happy to see that there is a lot of reflecting to do about how we do things in IOSCO, and perhaps we ought to ask ourselves whether we need to rethink other matters that we could do better. So thanks to all of you, and very, very nice to meet you.

Dr. Maren Heidemann: [00:24:54] Thank you so very much, Ms. Pastor, for addressing us today, for having joined us and for your time, of course. I also wanted to briefly apologize on behalf of Professor Wouters. He has, unexpectedly, no internet connection and is unable to join us. He did advise us that he had to travel and he might not be able to join us. But we do have two members of our book series advisory panel here today. Professor Cherednychenko and Professor Michael Schillig have joined us on the panel. So they may also want to step in with their remarks. Professor Cherednychenko will give us a short presentation, but let's start now with Doctor Antonio Marcacci himself, to give us a brief

introduction of his book, the way he sees his book. And I see he has brought his own slides. Antonio, please; the floor is yours. Have you unmuted your microphone?

Antonio Marcacci: [00:26:11] Yes, right now. Thank you. First of all, thank you. Thank you everyone. Thank you. Thank you, first of all, to Mads and Maren for accepting my book in your series. I am pleased and really honored. Had someone told me a couple of years ago, I simply wouldn't have believed them. So, thank you. Thank you very, very much. The patience of seeing something finally being published. Thank you. And thank you to all discussants that have found the time to go through my book and join from different time zones and taking time to join today's book launch. I'm truly honored, and very, very happy that you could be here. So thank you to all of us. Well, this book is the result of quite a long journey, something I started to approach back in the days when I was a younger researcher, more than ten years ago. I never quit examining this topic. And then I said to myself that I should probably try to write something more coherent,

Antonio Marcacci: [00:28:00] and that is basically the result of three full years of work and research. The title, and the subtitle especially says many things. I wanted to examine two main research questions. The first one is basically an attempt --albeit in a very humble way-- to fill a gap. I had come to realize when I was studying at your school and its normative production, that it was very, very hard to find previous publications both in law and in political science; specifically on IOSCO. Though, as both Professor Newman and Professor Jordan know, and they have published extremely interesting pieces on IOSCO -- and they can see how many references I've made in the book-- I wanted to write one monograph on IOSCO itself. Especially after the 2008 global financial crisis, IOSCO has been growing a lot in terms of production and quality of standards. And then the second point was, everyone, basically most people think that the U.S. and the U.S. securities regulation has been the driving force for the global standard for trust and national security regulation.

Antonio Marcacci: [00:29:44] I wanted to double check if this was actually true or if it is still true. Brussels effect has been studied in different fields, below competition law and privacy law. I wanted to see whether the European Union as such, not just its member states, has been able to go outside its boundaries and also exert some influence on the transnational securities regulatory arena. So the book is basically divided in these two pillars, in two parts. The first part on IOSCO itself, and the second part, an analysis of the different kind of

influences that both the U.S. and the EU have been playing during the last few decades. There are some key points in the first part that I have detected. First of all, I would say that IOSCO is extremely interesting, and from a legal viewpoint, taking into account its legal nature, which I wanted to define as unorthodox. IOSCO is a private entity, legally speaking. It's incorporated in Spain as an association of public utility, but its members, administrative and securities regulators, come from different jurisdictions, nearly 95 jurisdictions around the world. This is a very unorthodox combination, which is in any case different, for instance, from its sister global standard-setters like Facebook, for example, which is hosted in the Bank of International Settlement.

Antonio Marcacci: [00:31:46] So within this world, IOSCO is in any case peculiar. And then also the way it works, although it is formally a multilateral organization, the way standards are discussed can be viewed as being developed in a mining, natural governance way. So, this is also extremely interesting because it's how an international cooperation also works. And then I wanted to look at IOSCO within the international financial architecture and came to realize that IOSCO actually constantly interacts with other international organizations and international actors. This kind of interactions are not the same. They're more political. For instance, the one involving the G20 or the Financial Stability Board, they are basically at the same level when we talk of Basel, for instance, and it's more cross-sectorial. But then also technical. And that's a very interesting because IOSCO must also cooperate with, for instance, the International Standardization Organization. Interactions are basically multifaceted. The rule making is also interesting, starting from the point of consensus and this endless effort to achieve, through diplomatic means, agreement on standards. Which is, I think and I feel, and also from interviewing senior personnel from IOSCO, an extremely important and huge endeavor.

Antonio Marcacci: [00:33:45] The chair of the internal committees of IOSCO and internal task forces plays a very important role. This is actually relevant when I talk about the influence exerted by the various members. It's also important to understand how the rule-making and the standard setting in IOSCO works, because private actors are always and constantly heard. So we have this kind of listening, at a global level, to private actors. Usually, private actors are associations of domestic industries, but not necessarily just those, or important global players, but I've also come upon some important comments coming from academia and basically everyone can submit comments to IOSCO. This is a very open and transparent way to involve private actors. As Isabel Pastor mentioned

before, and as Dr. Comporti mentioned before, the starting implementation monitoring and the cross border enforcement cooperation, both aspects, basically, rely on what can be defined as a reputational risk for national regulators. National regulators try to comply. They are willing to be cooperative with each other in terms of exchanging information and helping each other for cross border enforcement cases, but also in terms of implementing IOSCO standards.

Antonio Marcacci: [00:35:39] They perceive IOSCO and IOSCO standards as a way to prove to their peers that they are tradable. So the implementation monitoring and the results of the implementation monitoring have seen, for instance, the results of using public data, and those are published also by the International Monetary Fund. And I have seen growing implementation degree on the part of IOSCO members. I also try to provide a sort of a ranking, which is extremely interesting to see how, over time, some IOSCO members have tried to improve their implementation degree. What I actually find extremely interesting in the multilateral memorandum of understanding, is the way it works in terms of monitoring the willingness of the signatories to provide support to their peers. Basically if one member, if one signatory is found to be repeatedly unwilling to cooperate and is uncooperative, they can be kicked out. So we are still talking about, legally speaking, a private law tool whose members, whose signatories are public agencies that can be kicked out in case of being uncooperative.

Antonio Marcacci: [00:37:38] That was probably one of the most fascinating points that I found when studying at your school. The second part of the book is, instead, very much focused on both the U.S. and the EU and their influence. I wanted to do that, not just looking at the chairpersons, which, of course, chairing a committee means a lot in terms of influence that can be exercised, but also in terms of looking at the IOSCO single standards, and domestic regulation and legislation in the United States and the European Union. While the United States --the SEC in particular-- has been the driving force of IOSCO since the '70s, since IOSCO, actually before becoming IOSCO, was a Pan American conference of securities regulators. Of course, the U.S., the SEC, also because of the strategy of the SEC at that time, during the '80s, the SEC was very much interested in catching fraudsters for international cases of insider trading. So that was one of the biggest incentives for the SEC to push for IOSCO's growth. The EU as such, after the Lisbon trading and after the establishment of ESMA, has grown within IOSCO. Which one caveat is, we should never forget those that can be considered major powers.

Antonio Marcacci: [00:39:19] Basically, other jurisdictions that have, over time, chaired important committees. For instance, France, Portugal, the UK, Australia, New Zealand, Hong Kong. From time to time they come up and you can also see an influence coming from this even though the U.S., especially until the global financial crisis in 2008, was definitely the driving jurisdiction between IOSCO. I wanted to demonstrate four different categories of IOSCO standards: Horizontal Standards, Standards for Public Authorities, Standards aimed at Private Sectors, and Standards that IOSCO adopts in concert with other global standard-setters. The first one, by Horizontal Standards I mean those standards that do not look at one single topic, but cross different topics. It's a kind of a bill of health of an entire regulatory framework. In this case, the most important piece that IOSCO produced were the principles adopted at the end of the '90s. It's a yardstick; basically a benchmark for the entire world. IOSCO principles have been updated over time. Here we can see that while the U.S. played a very important role in the first edition, the first version of the principles back in 1998, after the crisis we see that the U.S. is, of course, still important, but we can see that something has changed. For instance, after the crisis, self-regulation wasn't viewed as one of the healing elements against market practices anymore.

Antonio Marcacci: [00:41:38] Another point I wanted to study was regulatory deference, which again, especially after the crisis, has become extremely important. Regulatory deference is basically when two different regulators from two different jurisdictions need to agree on which regulatory framework applies. It's not easy. It's very political. So it's not an easy job to do that. But here in the EU and the U.S. in their agreements, especially in the derivatives sector can be taken. IOSCO, in its recent work on collecting best practices in this field, we can see that the agreement between the EU and the U.S. is basically taken as a blueprint, as well as their proactive behavior in trying to avoid market fragmentations along regulatory boundaries. The second category is the most common standards that IOSCO adopts: its standards for public authorities. One of the topics that I examine is retail investor protection. Here, for instance, we can clearly see a shift from a more U.S.-shaped disclosure paradigm and a strong fight against fraud, especially for insider trading to a more EU-leaning administrative-like solutions.

Antonio Marcacci: [00:43:18] The U.S. itself has an extremely interesting interplay between private and public enforcement which is now easily reproducible in other jurisdictions. The EU approach on using administrative law solutions to protect retail

investors, especially in the last ten years, seemed to be more easy to use as a template for other jurisdictions. That is what I found in the retail investment field. Then, I think probably the most interesting case that I really liked, and I really enjoy studying are the kind of standards that are directly addressed to private actors. These are standards with a kind of a supervisory spirit and are basically standards that IOSCO has directly addressed to some specific and global private actors. Also with an implementation monitoring activity. That was amazing because for the first time, for instance, in terms of rating agencies but also some other cases like the financial benchmarks, IOSCO has carried out analysis of the implementation done directly by private actors. This is amazing. I think it's a kind of improper delegation, not in legal terms, but still a sort of delegation from domestic regulators to IOSCO.

Antonio Marcacci: [00:45:16] Although again, everything was soft and with no commitment. There is no certificate issued by IOSCO on the implementation level, on the part of credit rating agencies. But still, this activity is public, is known. And then for those CRA's that do not implement IOSCO code, well, there is a sort of credibility. It's a matter of image. Well, here, if we look at the substance of the code, while from the first set of principles and IOSCO CRA code we can actually see the influence coming from the U.S. and the approach that the SEC wanted to take, even though it never became law, but wanted to take at the end of the '90's. While after the crisis, after some criticism from Brussels, we can see a shift towards the wishes of the European lawmakers and regulators: the establishment of colleges of supervisors and inclusion of registration and oversight programs, for instance. This was pushed by the European institutions. Finally, the last category is a sort of a circle. Because of the crisis, many standards were agreed upon at the international level on derivatives, the reason for which was the crisis and many people correctly blaming risk management on derivatives.

Antonio Marcacci: [00:47:18] So regulation principles, at least, were agreed upon at the global level, even though the implementation of those principles has been done in quite a divergent way at the domestic level, which resulted in market fragmentation along regulatory borders. Here we see IOSCO being one of the major actors in terms of drafting principles at the global level. But then we also see IOSCO coming up at the end of this circle, with the two biggest jurisdictions, the U.S. and the EU, trying to find a solution to their regulatory collisions and the agreements on compliance equivalence on derivatives. Those agreements are considered a blueprint for regulatory deference. That is a topic I mentioned

in the case study in the first category. It's interesting to see, here again, the U.S. still a leading, or rather the leading jurisdiction, either as a first mover with domestic legislation regarding extraterritoriality, and as a promoter of global standards. So the U.S., in the derivatives field, is still the leading jurisdiction. But what was amazing to see is that the EU itself, clearly defining the level of standards for protecting European interests, was fully involved in the negotiation.

Antonio Marcacci: [00:49:15] This is probably the first case in which the EU institution, the European Central Bank, ESMA and the European Commission were basically talking to their American counterparts as peers in concrete terms: not just dialogue, but in concrete terms. Defining standards. This was possible also because the European institutions are backed by comprehensive legislation, which itself is backed by extraterritorial effect. That kind of extraterritoriality, which we see in the Dodd-Frank act, we can see something quite close also in EMIR. To my knowledge, at least of financial, it's probably the first time. So as not to forget the importance of single member states in the European Union, here we can also see the dynamics of pre-Brexit UK, both within as well as outside the EU, on the global stage. This is actually quite important because one of the conclusions that I reached is that the EU itself grew also because the UK was part of the EU. We now are approaching -- though still in the making-- a sort of internal bipolarity between the U.S. and the EU in their respective capacities to influence IOSCO standards. This is one of the conclusions.

Antonio Marcacci: [00:51:14] The other conclusion that I reached is that basically transnational securities regulation is currently the product of what can be also be defined as a club, which is formally incorporated as a private law association, but is made up of public law experts. I wanted to use the term "Transnational Privatized Regulatory Law", where the regulatory denotes the public élan, the public spirit, because IOSCO's Full Members are all regulatory public agencies, and the term "privatized" reveals the instrumental use of private law in lieu of traditional public law. I borrowed the term "privatized" from the Italian Ministry of Law tradition of privatization of public employment. The concept is that on the one hand, we have the public spirit. On the other hand we have the instrumental use of private law. Allow me to conclude with a look at The Way Forward. One aspect regards IOSCO itself. Will it be able to consolidate its standing and address national security in the international regulatory arena? Well, it's a question that will be able to be answered probably in this decade and in the upcoming years. I think that it depends greatly on the quality of its standards.

Antonio Marcacci: [00:52:50] The more IOSCO can adopt standards with a supervisory spirit --and there is a fourth, upcoming article of mine on sustainable finance in ESG, in which I express my belief that this is the direction that IOSCO is taking, and I attempt to demonstrate why-- so the more your objective is that of producing standards where the supervisor is spirit, the more IOSCO will be able to consolidate itself. This point of consolidation is connected to the second way forward that I foresee, which is, will the current internal bipolarity consolidate? Or will it be overcome by a tripolarity or even a minipolarity? This is an even bigger question. We need to see, for instance, the regulatory capacity of the EU now that the City of London is no longer there. Also a point regarding IOSCO itself: a shift towards tripolarity or minipolarity could make IOSCO weaker, because achieving consensus between two major regulatory powers is easier than with three, four or five. The most important thing is to adopt meaningful standards. Not just adopting high-level principles that, basically, do not bring any added value, but meaningful standards. That is the challenge that IOSCO is now facing. And with it also transnational securities regulation. Thank you.

Dr. Maren Heidemann: [00:54:47] Antonio thank you very much. This is fantastic. If you would kindly unshare the screen we can go back to the joint views. We now have four panelists who are each prepared to give us a brief presentation. I just realized that I actually managed to get my program files mixed up, and see that Professor Newman's biography is not included on the programme. My apologies for that. But I would now like to give the floor to Professor Abraham Newman, from Georgetown University. He is a professor in the Edmund A. Walsh School of Foreign Service and Government Department. Antonio invited him because he is keen to emphasize that his book, especially the way he writes, is meant to appeal to different scientific disciplines, not just law. So let's step out of the area of law for a moment, and into political sciences. May I please welcome Abraham who will speak to us now, I hope you are able to. Yes. Thank you.

Prof. Abraham Newman: [00:56:13] Yes, thank you very much.

Dr. Maren Heidemann: [00:56:15] I am sorry about the programme. But I couldn't find it on my computer. I've messed it up.

Prof. Abraham Newman: [00:56:22] No worries at all. Thanks again for the invitation. I want to congratulate Antonio again for a really wonderful book. It was an amazing overview of the organization, its details. And it also does an amazing job of looking at more recent developments, including the 2011 reforms, enforcement cooperation, the peer review system. I was just really impressed, and I recommend it to everyone. The comments I have, I just want to maybe make five points that come out of interacting, reading Antonio's work with. In a former life I was a transnational financial regulator scholar. I still do that, but I published a book in 2018 that looked very much at these issues from a political science perspective. It was entitled "Voluntary Disruptions", and Antonio very nicely references it frequently, which I very much appreciate. These are things which, as I was reading Antonio's book, resonated with me, and so I would like to just point those out. One of these regarded motivations. Why are these regulators cooperating? What is driving them to start these types of organizations? One of the things that has come out of my own research, and which I found interesting in the way Antonio told the story, is their defensive responses to extraterritoriality.

Prof. Abraham Newman: [00:57:54] Governments, particularly the United States government, is applying its law beyond its borders. My more recent work, which is about the weaponization of interdependence, is very much focused on exactly this; secondary sanctions and what's been going on as far as the way Europe and the United States have attempted to respond to Russia's advances in Ukraine. This all involves the application of internal laws being applied beyond national borders. One of the stories that is described in this book is how France was part of a group of regulators who were worried about U.S. extraterritoriality; the type of things Antonio mentioned about the '80's and the U.S. government overreaching beyond its borders. And they thought, well, maybe if we could collaborate, we could convince those pesky Americans that we are able to take care of ourselves. Sometimes these extraterritorial efforts are a way to shore up domestic rules and also to buffer against interference from foreign regulators. I have some work on the area of foreign bribery where I show a similar pattern in which domestic regulators start to increase their enforcement. Why? Because the U.S. is sanctioning them under foreign bribery laws. Whenever we think about "soft law", and why are regulators being so nice with each other and cooperating,

Prof. Abraham Newman: [00:59:22] there's often what I would call the shadow of hierarchy. Which is in the background; which is that somebody else might attempt to rule

over you. Which is very annoying. So the best thing to do is to collaborate with your partners. That way it mitigates the risk of extraterritorial interference. The second thing I wanted to bring out was what I would call the "how it works" story. How do these trans-governmental networks work? Here, Antonio has this phrase in the conclusion where he writes "they're private clubs of public experts". Sometimes people call these things networks; there are different words that are used to describe them. But I think that description is really important because it underpins the double headedness of these actors. They are not their own thing. You know, people think about like IOSCO is its own thing. It's really a set of regulators that are national regulators. They are experts in the sense that they regulate things, but they're not experts in the same way you might think of, for example, the German government has a council of experts on many different policies. These are regulators. They are legal actors who can enforce things in their domestic economies. Oftentimes it is asked,

Prof. Abraham Newman: [01:00:41] how is it that these guys have legitimacy? Should they have legitimacy? Well, they are actually public law authorities that are in their national jurisdictions, that are then working together to think these things out at the transnational level. But they're more than just what sometimes in political science may be called an "epistemic community": like-minded experts in an area. They're actually public actors. I also think that sometimes when we get too focused on the organization IOSCO, we tend to forget about who IOSCO is comprised of, and that is all these public actors, these regulators. And that's going to matter when it comes to power. and questions on how that power gets used. The third point I wanted to make is another point that comes out in Antonio's book, which is about how IOSCO is a platform for embedding the preferences of major actors in the international system. He has another phrase which I think is great, where he says it's the "playground of regulatory powers". And so we often get, I would say, anesthetized by this idea that these are "experts"; a community of experts, and they're just looking for the neutral best practice that we should be doing. Bbut no! These are national regulators. They want the French system. They want the U.S. system.

Prof. Abraham Newman: [01:02:03] They want the whatever it is. And they're trying to fight it out. Now, of course, they do it in a congenial way and they have consensus practices. It's not like they're the clubs running around in these bodies in Madrid or whatever, but they are trying to get their structures imposed because we know that these standards that they get adopted, that other organizations force countries to adopt, have consequences. It's not as if

these are just weak signals. So, in the book, and in my own work, I've told the story of insider trading, how the U.S. really pushed that through the IOSCO system. That's one of those really weird things where people often think of it as, oh, it's really nice that insider trading laws are being spread across the world, but they really disrupted capitalist systems in many countries. If you go to a German regulator --I'm in Berlin this year-- they've adopted insider trading laws. But there's a lot of tension with traditional German banking systems, because German banking is based on insider trading, basically, according to the United States. So it's not that these things are an easy fit, and they have really disrupted capitalist economies across the world. Okay, the fourth point I wanted to get out is about the unanticipated consequences of these organizations.

Prof. Abraham Newman: [01:03:19] And this was the main point of my book that I wrote with Elliot Posner. Once they start to make these private, transnational law rules, they really have unanticipated effects that can have important consequences for states and for regulators. The example that comes out in this book that I think is really important is the interaction between the IOSCO principles, which were basically a set of rules on how regulators should regulate themselves, and the IMF standards process that came out of the financial crisis. IOSCO had these principles that were mentioned in the book. I wrote another piece in which I call it bricolage. Basically, they were trying to compete with Basel. They were trying to create their own legitimacy. They needed a set of principles that would govern how these regulators act and look. And then all of a sudden there's this huge financial crisis and the IMF says, oh, we need to be able to evaluate countries' national economies. Let's take every transgovernmental actor's principles that they have. And it turns out that these principles really do not assess the macro stability of a country. They really are much more like a guidebook of how regulators should structure themselves and collaborate with each other, not about the systemic importance or stability of a securities market in a country. And so this copy and paste formula,

Prof. Abraham Newman: [01:04:39] where you take the IOSCO principles, you inject them into the IMF standards process, and then countries are ranked by the peer review system is a crazy outcome that we now live with. In his book, Antonio shows very well how it has become a peer reviewing system based on standards and principles that really were not invented for this purpose. The final point I would like to make is about how IOSCO has evolved, how it has reformed over the years, and what is the purpose of this reform. And here again, I think what Antonio's book shows is the way in which actors are struggling

between the competing demands of managing more voices, since there are more players in IOSCO than there used to be, and reasserting control; a way for powerful states to maintain their power. There's a really great book by a woman named Lora Ann Viola, about closure of the international system, which I would recommend on this point, because she makes the argument that a lot of times, as organizations expand, as they try to become more equitable, what they do is they create inequalities. I think what Antonio shows in the change of the composition of the technical committee and the different subcommittees, is really the powerful states are often trying to maintain their control even as the ranks of the organization change.

Prof. Abraham Newman: [01:06:10] So what's reform for? I would say it goes back to that playground of regulatory power that we mentioned earlier. The final comment is just some challenges that I would love to hear Antonio's comments about what does it mean? The first is the elephant in the securities market room for Europe, which is Brexit, as the greatest technical expertise in Europe on these issues was in the UK. If you compare the SEC, which has over 4000 employees, to the French regulator, which has maybe 500, you just can't compare the amount of expertise in the room from these organizations. And the EU often relied on the UK to provide this. So, where is Europe's hopes, in this post-Brexit world, of really influencing these organizations? The final point is about crypto. Where is this organization placed? Is it placed? After the Sam Bankman-Fried collapse, we know these organizations are really broker dealers. They're functioning as broker dealers, and they're not really well regulated. You hear the Basel committee making a lot of reports and noise about this. But will IOSCO play a role in this space? Can they reassert their relevance? And with that, I conclude my remarks.

Dr. Maren Heidemann: [01:07:42] Thank you so much, Abraham, for speaking to us. It is important to us to have different perspectives, from different angles and disciplines. Please make a note of your questions and comments that you may have, because I am now about to introduce Professor Cally Jordan. She is joining us not from Australia but from Canada, today. And she is another practitioner. She sees these developments from inside as a consultant and as an academic as well. That's also the brilliant thing about Antonio's book: it is written by an insider. So, Professor Jordan, we're looking forward to hearing from you. Have you unmuted yourself?

Prof. Cally Jordan: [01:08:33] Yes, I have.

Dr. Maren Heidemann: [01:08:34] Thank you.

Prof. Cally Jordan: [01:08:36] Can you hear me now? Good. Good morning. good afternoon, good evening, everyone, and thank you for inviting me to participate in this event. I was actually really quite pleased to be able to join you to because it gave me the opportunity to read Antonio Marcacci's book. It's always interesting to look at a familiar institution, a familiar topic from a very different perspective. I've been an IOSCO watcher. I call myself an IOSCO watcher. I've been an IOSCO watcher for about 35 years in various capacities. There is so much to say here, and so I was delighted to see that finally there had been the effort and dedication to produce a comprehensive volume on IOSCO. For my presentation today, I was asked to talk for about 15 minutes, and I thought I'd do an unorthodox presentation, given that we're talking about an unorthodox organization. I decided I'd make remarks in two categories. The first remarks, if you like, regard my personal encounters with IOSCO over the years, because I have been watching IOSCO for 35 years. I think this might give some interesting insights into the organization itself. My second set of comments will be directed at the book itself. And I've got a few comments there, some of which have been highlighted and touched upon by Professor Newman.

Prof. Cally Jordan: [01:10:17] My personal encounters with IOSCO began when I was a Wall Street practitioner. And as such, a securities lawyer looking very closely at pronouncements coming out of the SEC. In 1987, the SEC came out with a report on internationalization which caught my eye, and in it was IOSCO. This international report, in 1987, I believe was a direct consequence of the creation of IOSCO a few years earlier, in which the U.S. was a primary constituent. Looking at this report, and I still use this report when I'm teaching international capital markets. I still use this report as the starting point, because I really do think it was influenced directly by IOSCO and the creation of IOSCO. But it got me interested in IOSCO, and I started going to the annual meetings. Now, at that time, the annual meetings --and this is where you get into the club-- it was very easy for a curious academic, by then I'd moved from Wall Street to academia, to just wander into the annual meetings and talk to people and go to all the parties. And the parties were important. IOSCO was famous for its parties. I think the annual meeting in Venice is legendary.

Prof. Cally Jordan: [01:11:51] I asked what was the purpose of IOSCO at that point? I think that Professor Newman has touched on this. It began in the North American

Association of Securities Administrators, which was an association of securities administrators, which gathered annually to chat and talk and collaborate and informally exchange views on what was going on. But it was developed in the North American context where there were over 60 different securities regulators. So this was a way in which those securities regulators, those experts would come together and informally collaborate and catch up with each other. So the parties were really actually quite, quite important. I moved on to being an academic. My first course that I ever taught in an academic setting was international securities regulation. This was in 1991. This was a very long time ago. At that time, I started my teaching career at McGill University. That, of course, was the site of the secretariat for IOSCO. Paul Ghee was one of my first guest lecturers in my course. My most recent guest lecture, when I taught an iteration of this course last year at Yale, was Ashley Alder, who was chair of IOSCO for many years. And so IOSCO has been feeding into my teaching. But I've been looking at IOSCO from the viewpoint of an academic for a very long time now.

Prof. Cally Jordan: [01:13:33] And I continued to go to the annual meetings. The secretariat being based in Montreal was, I think, significant in a couple of ways. It showed why Montreal? Well, it was not London and it was not Washington. And I think that was why Montreal was initially chosen. It was a compromise, a fairly neutral place. The secretariat in Montreal, something we often forget, was comprised of three people: And that included the receptionist. It was a small office in a building in downtown Montreal. It had a reading room, because there was no internet at that time to speak of. I used to send my students down to the reading room at IOSCO to do their research because everything was hard copy. I even tried with Kluwer International to get the annual proceedings of IOSCO published so that there would be more information. This, I think, feeds into how closed and clubby IOSCO was. Information was not easy to obtain unless, like me, you were wandering around the annual meetings as a curious academic. My interest in IOSCO continued when, as an academic, I had more and more interactions with regulators. Again, through the annual meetings, I actually piggybacked on some of the Canadian regulators.

Prof. Cally Jordan: [01:15:07] The Canadian regulators were very influential and important in IOSCO, especially in the early days. The secretariat was in Montreal. Canada had two seats at the table, both Quebec and Ontario. Regulators were at the table. I joined the delegations of both Ontario and Quebec regulators to actually participate internally in IOSCO. I actually sat at the table at the technical committee, which was very interesting to

watch the interaction between the Europeans. I wouldn't say the European Union. ESMA didn't exist. There was very little pan European cooperation at that point, but between the European regulators, especially the French regulators and the U.S., regulators within the technical committee. Moving on, I stayed in touch with regulators when I moved to Hong Kong to work as an adviser to the Financial Services Bureau. And again, I participated in the annual meeting of IOSCO in Taipei, which was absolutely fascinating. By then, IOSCO had achieved a formality and had grown so much that it was no longer this informal chat club, but had become very formal. The Taipei annual meeting was absolutely brilliant, with Anthony Neoh, the head of the Securities and Futures Commission in Hong Kong, brokering that meeting to bring mainland China into the proceedings and into the meeting.

Prof. Cally Jordan: [01:16:48] If you can imagine the skill and the diplomacy which that required, it was absolutely phenomenal to watch that happening within the proceedings of the annual meeting of IOSCO. I was also living in Hong Kong in 1998 when the Objectives and Principles of Securities Regulations, published by IOSCO, June 1998 appeared. Two points here: those objectives and principles were an immediate response to the Asian financial crisis of 1997 - 1998. The second observation is how quickly they appeared in response to that crisis and how quickly IOSCO could respond to major events in the financial sector. From there, I moved into the multilateral financial institutions. I moved to the World Bank. This was 1999. I arrived at the World Bank at the time that the Financial Stability Forum had put together its 12 sets of international financial standards, which I call a "collection of convenience". This included the IOSCO Objectives and Principles of Securities Regulation, which had just appeared, and also included the OECD Principles of Corporate Governance, which are now the G20/OECD Principles of Corporate Governance, which is a different story. But with both of these these sets of standards, which I call a "collection of convenience" --and I've written about these in other places-- I was sent off to the IMF and the World Bank teams around the world to actually use these standards in the field.

Prof. Cally Jordan: [01:18:35] Now, this was a fascinating exercise; one which made me a permanent and perpetual skeptic of international financial standards. To see what was happening, the use of these standards, and of course, the IOSCO objectives and principles of securities regulations were never intended to be used in this fashion. In fact, they had been appropriated by the IMF, the Financial Stability Forum --the predecessor of the Financial Stability Board-- they had been appropriated by the IMF and the World Bank

without either of those institutions being members of IOSCO, or understanding what those objectives and principles had been originally designed for. And so again there were more annual meetings of IOSCO. This time, Stockholm is the one that I remember mostly. I was there in my World Bank capacity. It was at a time when the IMF and the World Bank were not members of IOSCO, although they were using the IOSCO Objectives and Principles of Securities regulation in the Financial Sector Assessment Program throughout the world. The tension there was whether IOSCO should have oversight and control of the use of the objectives and principles by these outside international organizations. Quite frankly, and as everyone has said, IOSCO is a club of technical experts, and these IOSCO objectives and principles were not being used by technical experts in the field in these initial exercises. This was a great concern to IOSCO in terms of how these objectives and principles were being used, because they were not designed for that purpose and they were not designed to be international financial standards.

Prof. Cally Jordan: [01:20:32] Over the years, these objectives and principles demonstrated a remarkable rigidity in that they did not change for many, many years despite the input from the exercises in the field of financial sector assessment programs. Instead there was this methodology which was created and the use of footnotes. Even going to "what is a security?". It was not clear what was encompassed in that word. It had to be tucked into a footnote. But these objectives and principles did not change. And that was something which I really did wonder about for a long time. I moved back into academia and brought in another guest lecturer from the Australian Securities and Investment Commission who told me, "Well, you know, no one wants to touch the objectives and principles because much of the soft law has been actually transposed into hard law through the Financial Sector Assessment Program in many places in the world. No one really wants to touch those objectives and principles. It would be a little embarrassing if we went back and said, 'Well, you know, we know that you have implemented hard law based on this soft law, but maybe we didn't quite get it right the first time around in the soft law'".

Prof. Cally Jordan: [01:22:01] Rather than changing the objectives and principles, there was a huge methodology and footnoting that went on. They were only really changed in 2010 with the addition of the eight new principles which were a result of the global financial crisis. I could keep going on my personal encounters with IOSCO, but I think I should skip ahead now to my comments on the book itself. As I said, I was delighted to have the opportunity to read the book. I myself did a major study on IOSCO in 2015 where I did look

at credit rating agencies. I looked at credit rating agencies in particular, because I knew nothing about those particular sets of standards. I knew enormous amounts about the objectives and principles, but credit rating agencies? Why? Why did I also come out with this? There is a very interesting story of why IOSCO did this. and it is in a study that I did over a period of two years, 2015 - 2017, called "The End, or the New Internationalism? IOSCO, Financial Standards and Capital Markets Regulation". In the process of doing that study in 2015, it brought me up to date to 2 or 3 years ago in what had been going on in IOSCO.

Prof. Cally Jordan: [01:23:42] What was remarkable was the changing role of IOSCO to become a standard-setter. And that, I think, is really where the story now picks up with Antonio's book. I've got 3 or 4 comments on Antonio's book. I'm still a little bit uncomfortable using terminology such as "securities regulation" in this context and in the context of IOSCO and internationally, because there is so much baggage in both those terms, "securities", and "regulation". I have said in my own writings that I see that IOSCO had the changing role, that IOSCO has developed into what I called a "quasi regulator"; taking its cue, I think, from the predecessor of ESMA, from the Committee on European Securities Regulators. I think the trend for IOSCO was to take its cue from CESR, the predecessor of ESMA, and to become this quasi regulator using some of the same techniques, such as peer reviews. But I think that using the terminology of regulation in the context of IOSCO is somewhat problematic. My second point is that I really did like the categories of the different initiatives of IOSCO --and this goes back to Professor Newman's point about motivations-- because there are so many different motivations and different starting points for the different IOSCO initiatives.

Prof. Cally Jordan: [01:25:31] They are not, as Professor Newman has said, or perhaps it was Antonio. I believe it was Professor Newman. These are not neutral best practices which are uniformly accepted as such. This is not how the standards are made. So you have to be very careful with the standards, with the other initiatives of IOSCO, to look into the particular motivations and the particular history of those standards. There are lots of different kinds of initiatives. So I really liked the fact that Antonio picks that up. My third point was just to emphasize that originally, IOSCO did not start as a standard-setter, and even the objectives and principles. As for the role of IOSCO, at that point it did not define itself as a standard-setter. That is really a product of the global financial crisis or the great financial crisis. It was only as a consequence of the GFC and the influences of its

participation in the financial sector assessment programs that it started to self-define as a global standard-setter. But that was not where it started. That was not where it started.

Prof. Cally Jordan: [01:26:58] The fourth point is on this unorthodox organization. The organization has grown organically. It was not set up as an international standard-setter, and it has grown organically. Its nature is very much a product of the North American Association of Securities Administrators. The use of a not for profit incorporation is simply the difficulties that common law systems --because it did originate in North America-- the difficulties of common law systems with legal personality, and also the importance at that time of its origins with of self-regulation. Thinking back to the early beginnings of IOSCO and all those wonderful parties, it seems trivial and frivolous, but it is not. I think that really the organizational core and motivation of IOSCO is an extension of the *lex mercatoria*. I know this will sound absolutely ridiculous, but I do have a paper on the *lex mercatoria*. The medieval *lex mercatoria* and the guilds and the trade associations and the way in which traders, you can look at those IOSCO parties as medieval fairs. But this, I think, is partly the explanation, from looking at it from a formal European perspective, that it may seem to be an unorthodox organization. But I do think that in this --I call it the "Lex Financiera"-- there is that strong tradition of self-regulation, the guilds, the traders, the practitioners, these associations that were important and are still important in finance.

Prof. Cally Jordan: [01:29:16] IOSCO is an extension or an elaboration on these associations. The focus on private and public law is a bit uncomfortable, I think, for a common law lawyer, to look at. It's a bit like putting a round --IOSCO is a round-- as a square peg in a round hole, but I understand it from the European perspective in terms of how important that distinction is. My last comment is on the European Union. Well, two comments. And then I know I must stop. I do think that there is room for perhaps another book there. But the absence of the City of London in the book was a little bit surprising, and Brexit. But that may be just the timing. And also Asia and China. IOSCO was chaired for a number of years by Ashley Alder, Hong Kong Securities and Futures Commission. I believe he will be coming to London very shortly to become the chair of the Financial Conduct Authority. But as for China, Asia and the City of London, I think those are two areas which have to be drawn into the development of IOSCO and how IOSCO goes forward.

Prof. Cally Jordan: [01:30:37] My last comment is on the EU as a regulatory model. I agree completely with Antonio's analysis of how the influences on the various standards --I

looked at credit rating agencies-- was shifting over time. Where you have strong European influences, though, in a very regulatory spirit, you may be alienating other systems such as the U.S. That may have appeared ten years ago in some rifts within IOSCO. But whether the EU will dominate in terms of model regulation for the world, I think that's a very interesting topic which deserves a lot more attention. In thinking of the market in crypto assets, micro-regulation of the European Union, way out ahead of the United States in terms of thinking about this in a systematized and effective way. But the problem there I see is the capital markets union, and why there are so many difficulties with the capital markets union. I think that would be the demonstration of an undercurrent which will undermine the European Union's ascending to a really dominant role as an international model. Thank you.

Dr. Maren Heidemann: [01:32:21] Thank you so much, Professor Jordan. I have no problems to unmute my microphone. That was fascinating. I'm wondering if we should get a little more into the roundtable spirit here. I can see Professor Schillig is here with us. He is on our advisory panel to our book series. I was wondering, do you have any comment, at this point, that you would like to make? Or is it too early for you?

Prof. Michael Schillig: [01:32:56] Hi, Maren. Thanks very much. The only comment that I want to make at this stage is really to congratulate Antonio for his great contribution to the literature on this topic. It's a very timely and important book, because so much that seems to be going on at the level of international standard-setters is opaque to many people. It's great to have a contribution that really looks into this and goes to great lengths to explore what's going on at IOSCO. I would also like to thank the previous speakers for their very insightful and thought-provoking contributions. I'm really just here as a listener, to get some new ideas and some inspiration, perhaps. This round table has been great so far. So I will leave my comments at that, if that's okay, Maren. Thank you.

Dr. Maren Heidemann: [01:34:05] Certainly. Just to explain, Professor Schillig is at the King's College, London, if you don't know him. And of course I'm very grateful that he has joined us today. He teaches financial regulation as well. We rely on the expertise of our panel to decide which books we should publish, and maybe send us new ideas of their own, or of their students, their colleagues. We have two more speakers to hear from today. Professor Olha Cherednychenko is at the University of Groningen in the Netherlands, where she heads the Groningen Center for European Financial Services Law. We also

cooperated with her last year a lot on a seminar series. She has published an edited volume in which Antonio Marcacci contributed a chapter, which I then read with a lot of interest. And then the final speaker will be Professor Hans Wolfgang Micklitz from the European University Institute in Florence. He was Doctor Marcacci's PhD supervisor. So it's a great pleasure for us to have these two speakers with us. Let me first give the floor to Professor Olha Cherednychenko.

Dr. Maren Heidemann: [01:35:30] Please, let us hear from you. Olha, have you unmuted your microphone?

Dr. Maren Heidemann: [01:35:42] The connection dropped. Well, may I ask Professor Micklitz to come on first? I'm sorry, but I think her connection must have failed, because I just saw her on the screen. But since we are running a bit out of time. It is already nearly 14:10 and I don't want to keep you longer than I said. So professor Micklitz, would you like to present first, then please?

Prof Hans W. Micklitz: [01:36:26] Yes. Thank you. Thank you very much again for the invitation. I can only concur with the congratulations. I think it's a wonderful book. It's a wonderful book for an outsider. I regard myself as an outsider. I'm not of the interlawyers community. Shall we go back to our first presenter? For me it's fine.

Dr. Maren Heidemann: [01:37:01] Professor Micklitz, your connection is a little unstable as well. The the audio. Perhaps when you speak, if you turn the video off. But Olha yes, please. Go ahead if you are now connected. The video has frozen. So we have connectivity problems here with both speakers. If I mute myself, I can't help at all. So it's better if everyone who isn't speaking to mute their microphones. Sometimes it helps to turn the video off to improve the connection. Professor Micklitz, I can see you. Can I also hear you?

Prof Hans W. Micklitz: [01:38:02] You can hear me, yes.

Dr. Maren Heidemann: [01:38:04] Because Olha's video has frozen. There's something not right. Professor Micklitz, would you like to go ahead?

Prof Hans W. Micklitz: [01:38:15] I can, yes.

Dr. Maren Heidemann: [01:38:16] Yes?

Prof Hans W. Micklitz: [01:38:17] Yes. So as I said, Antonio, my congratulations for the book. We have been discussing IOSCO for many years now. As I said, I'm looking in from the outside. I'm not a financial lawyer. I don't belong to the club of financial lawyers. My best self-description is that I'm a transnational lawyer looking into transnational laws through European eyes. And that's how I look at the book. We are currently working on an edited volume that concludes a five-year research on the external reach of European private and economic law, and the book is called "European Transnational Private Law". I think this strange combination is meant exactly to express how I perceived your book. From a European perspective with a transnational understanding, also developed in your book, Antonio which you refer to above all in this literature. There's nothing to add on this, just to recall my perspective, also and in particular through the private law lens, in my understanding, which is an understanding which is quite unusual as I combine private law and regulation. You may call it transnational private regulation if you want, but also in the combination of public regulation and private regulation. So I looked into it and when I read the book, at least when I tried to, I tend to study rather than to read, frankly, to go back to it here and there and verify, that you got all the details.

Prof Hans W. Micklitz: [01:40:35] My assessment of how I read the book is, it fits into this broader picture of transnational law. As my colleague Professor Schillig just said, it combines, and I think that's one of the added values of the book. It not only fills a blind spot, but the methodology that it combines the law in action together with any effort to give some flesh to the bones. Not just to describe endless rules, but to bring them into context and discuss what really happens in reality. IOSCO covers the whole range of what is discussed in transnational legal theory. You discuss the institutional setting, which means how the institution is built, including the history, the going together, the structure, the bylaws. You explain the decisional procedure of who is allowed to participate and under what conditions, and where the procedure and the input takes place, at the national or at a higher level. Also the content of what is going on. I think we spoke about it at length in the rule-making implementation and the enforcement. You even shy away --and I think that's highly appreciated-- from the key issues like legitimacy and accountability or democratic legitimacy. You add, in particular, through the research that you have undertaken through these multi random of understanding in particular regarding these new techniques of how soft law is brought into action you add a new layer to the debate.

Prof Hans W. Micklitz: [01:42:49] Also the theoretical one on what's going on here. We may have a couple of questions that have not yet been raised. I think the book, as we can see, is largely descriptive. It's not normative. It's trying to convey to the non-specialist a story of what's going on in this field and how these "non-body"-- as I tend to call it-- a non-institution is working in practice. But you don't explain some of the highly tricky issues. You mention them from time to time. Such as, where is the Global South? Where are the consumers, the customers? I'm sure that Olha will speak about it. You speak about the market participants, but these are the companies. So, there's a lot to say. And you don't mention or refer to the book "The Code of Capital" by Katharina Pistor that made so much noise and that we all studied. So maybe it's material for another book, but I just want to highlight that you are engaging a bit with the theory, but not so much with the normative facts which are currently gaining ground, in particular in Europe and in European law. Nevertheless, I have three questions to ask you.

Prof Hans W. Micklitz: [01:44:43] I'm sure we don't need to discuss them at length, but at least I want to raise them. The more interesting one is to what extent is IOSCO a model for other, international actors? Whether we see what's happening within IOSCO, whether that could also be used or is developing in other areas of the international transnational legal order, so to say. We all know and it is fairly certain that financial law and financial regulation is ahead of the curve. You can study this. I did so in detail. When comparing financial services with energy regulation or transport regulation or electronic communication, you can see that usually financial regulation is just one step ahead in thinking the problem through. That's one aspect that, I think, goes far beyond the book and it will hopefully enrich the debate. Then, to some much more concrete remarks, with a question. You distinguish between rulemaking, implementation, and enforcement. I'm wondering whether this is really true; whether this distinction works in practice. When public regulators themselves are involved in the standard-setting, then they are defining the standard that applies afterwards. I think you just reiterate a distinction that I would challenge, whether it holds true. The second that you may not be surprised from me, Antonio, is where's the private location? Where is the contract?

Prof Hans W. Micklitz: [01:47:04] I see a huge amount of rules that I break down, in my understanding, between top-down and bottom-up. So, top-down: you have all this moving towards implementation and enforcement that you describe. Where, again and again,

financial rules are far ahead of all of what we know from other areas of economic law, at least. And then bottom-up: we have all this rule making via experts that are, when you go deeper into the final chapters, chapters 8, 9, 10 and 11 in particular, where you can see that the regulations from above and from bottom-up is just becoming so dense that I'm wondering where is there place for private parties, for private regulation? Where does it take place? And that might not be frightening, yeah? But I'm wondering what's going on here from a more theoretical, conceptual perspective. So, what remains for the private law here, in this scenario where the actors are embedded in rules that are made in a co-regulatory spirit, where private and public entities are working together in an extremely influential part of the economy? So will I leave it here, also to give Olha the chance to speak. Thank you.

Dr. Maren Heidemann: [01:49:02] Thank you ever so much, Professor Micklitz. This is exactly our core question: how do we reconcile the link between public and private law? I know that Common Law, Professor Jordan, doesn't have this problem to the same extent. That is beautiful. But Olha is the expert who is able to give us a few answers on this. Olha, I hope your audio survives this attempt.

Prof. Olha Cherednychenko: [01:49:27] I hope it now works because something went terribly wrong with my internet connection. So I missed the comment of Hans. But I understand that it's more or less in the direction of the common law, that I also wanted to make, which is about, indeed, the link between public law and private law. But, let me first congratulate you, Antonio, on the completion of your fascinating book. I think that the origins of this study go back to the concept of the oxymoron European regulatory private law, developed by Hans Micklitz, of course. In your book you introduce this new concept which is transnational, privatized regulatory law. In a way, you try to give a new dimension to the discussion that has been, of course, conducted particularly in the context of EU law. You try, in a way, to take it to the international stage and discuss, indeed, securities regulation in a more transnational context while building on much work and many interesting discussions that we've had also with many of you in this room; Hans, Mads, obviously, and Maren, and yes, with you Antonio, of course. My comment, indeed, is this: in your book you build upon this foundation of European regulatory private law, but you also, in a way, step back from the private law side. The discussions that we've had in the past and which I think are still quite topical today, are about this relationship between investor

protection regulation, which is a kind of European regulatory private law for securities markets and traditional national private law.

Prof. Olha Cherednychenko: [01:51:40] You've also worked on this interplay between public and private enforcement. So this is still a very interesting area, I think. You give a new dimension to this transnational regulation. What I was wondering about when I read your book is how can we then connect these three areas? Basically, traditional national private law, investor protection regulation, particularly investor protection standards such as conduct of business rules, and the work of IOSCO, basically the transnational setting, which you discuss in your book, particularly in connection with European regulation and obviously U.S. regulation, of securities markets. But in a way, this first pillar of the discussion, which is private law, is not really present, or maybe implicitly so. What I was wondering is what the connection is between these three dimensions. National, private law, maybe not only in the context of the European Union, but basically it is also about common law, of course. It is about civil law countries, common law countries. This is the first pillar.

Prof. Olha Cherednychenko: [01:53:13] The second pillar would be what we call this European regulatory private law being investor protection law. And the third one being, what you call transnational privatized regulatory law, basically transnational securities regulation. You nicely point out that it is made by public authorities but as soft law. But these are public authorities. So how soft is this law? This is maybe a comment, but also a question to you about how you see the connection between these dimensions. It can be argued that IOSCO, of course private law, which has influenced in why. We can argue that conduct of business rules such as suitability requirements, information requirements, which have developed in national private law systems, they have influenced the MiFID EU conduct of business rules. And as you show in your book these standards in turn, they have influenced the international global standards produced by IOSCO to a certain extent. So this might be one link, one connection between all these three pillars. But there may be much more. Also, to the contrary: does the work of IOSCO also affect private laws, and how do you see this dimension? These are my all my comments, at this point.

Dr. Maren Heidemann: [01:54:54] Thank you ever so much, Olha. I'm glad this finally worked technically. So, may I just ask Antonio to respond to some of these questions?

Antonio Marcacci: [01:55:06] Thank you, thank you very much everyone. It's very inspiring. First of all, thank you for your kind words. I'm truly honored. Thank you. Thank you very much. I will try to reply. We don't have so much time, so I will try to go into overtime.

Dr. Maren Heidemann: [01:55:32] We're into overtime.

Antonio Marcacci: [01:55:33] Okay, we're ready. I will try to be brief. I think it was Professor Newman who mentioned the Brexit, which is the elephant in the room right now. The City of London is the European financial hub. The point that, for instance, the European Union and the UK government are still discussing financial services agreements, and ESMA is pushing back equivalence decisions for UK trading houses, this is obviously a big, big point. I think that this will actually affect both sides and their international standing; meaning, the EU as such, and the UK as a global, regulatory power in this decade. This will define their role, even within IOSCO. Although I think that, for instance, one strategy of the UK is to try to go global;

Antonio Marcacci: [01:56:50] trying a way to be present within IOSCO. I think this may happen. I need to conduct further research on that. But I think that, for instance, the UK will try to be more present within IOSCO now that it is outside of the European Union and cannot influence European Union regulatory production from the outside. Professor Jordan mentioned, and I think she's perfectly right, and as I mentioned a couple of times, the failure, or not-yet-successful outcome of the European Capital Markets Union is a big problem. That's why I'm hesitant, at the end of the book, to say, "Yes, we are already in a bipolarity situation", because I think that the European Union, from a financial perspective, is still trying to understand itself without the UK. The UK is in a worst situation being outside, and so is the European Union. It's a lose-lose game. Unfortunately, that's the way I see it from a financial perspective. Another very, very important point about Asia and Hong Kong. I try to mention, and it's very interesting, for instance, that IOSCO opened its second hub in Asia, and it's going in Hong Kong.

Antonio Marcacci: [01:58:27] They opened in Kuala Lumpur. It's interesting to see that because I think the Asian financial crisis at the end of the '90s played a role in that, also as a trigger of the principles. For Professor Jordan, I loved your publication on credit rating agencies. In my book, as you've seen, there are several references. I was very, very happy

because I actually had some impressions before reading your work. And when I read it, I said to myself, oh my gosh; and I understood that I wasn't just struggling through the darkness. It was inspiring and guiding. So it was quite interesting. And then, very quickly, addressing Professor Micklitz' point as to what extent IOSCO can be a model, I think IOSCO can be a model, especially in two fields. The first is the standards with the supervisory spirit. Because here we have a connection between a transnational, soft law body like IOSCO, and

Antonio Marcacci: [01:59:53] global market players. I know that it's very selective. Premium credit rating agencies. financial benchmark administrators. And I think the third one is the one for ESG ratings, which is different. It's a different kind of rating from the one for sovereign debt, the one that usually credit rating agencies already take care of. But I think we need at least a global level, some clarity. Greenwashing. I know, we hear about scandals all the time. At least I hear about it. I receive newsletters about people basically being fined for greenwashing. We do need global standards on this. I think the European Union itself will be playing a leading role, especially in this place for greening finance. Then, the distinction between rulemaking and enforcement. Yes, here we can see the different approach between the continental Europeans and the U.S. and the Americans. In the book I try to touch upon the point of how the European system, or the European interplay between private and public enforcement tools is, in a way, even though it is very different from the U.S. one,

Antonio Marcacci: [02:01:48] it's not self-sufficient, as you would say, but it might be much easier to transplant around the globe than the U.S. system. That's why I think that if the EU persists, is able to keep producing standards, valuable standards, meaningful standards. it can also be sort of a blueprint for the use of regulatory private law. Regarding consumers, I looked at the IOSCO comments. It's very technical. I have found some comments from academics, from private professionals working in the industry. But a full involvement of, for instance, consumer associations in IOSCO? We are not there yet. But yesterday I actually looked once again at the IOSCO comments as well, because I was actually wondering again about that, just yesterday. So it's something that I will definitely keep an eye on. To Professor Cherednychenko's point on the connection between traditional private law and investor protection regulation from a European viewpoint and IOSCO, once again. I see, for instance, the differences between the U.S. and the EU approach and the U.S.

Antonio Marcacci: [02:03:52] If we look back at the '80s, when the U.S. was pushing for IOSCO as a global platform to cooperate with peers of the SEC, we see that the SEC strategy was to fight insider trading. Insider trading in the U.S. has its roots in fraud, and it's something that is completely different from the European approach. As Professor Micklitz would say, the European approach is very much based on European regulatory private law, which is very different from the approach of the U.S. What IOSCO has been trying to do is to find a meaningful bottom line between different systems. Those are the difference that I see. The connection would be how, and it would be wonderful, for instance, to look at national case law and find references to IOSCO standards. I'm thinking about hedge funds, for instance, where IOSCO has been able to produce meaningful standards, deep standards; standards that are still not binding, but the content is so detailed that it's hard for national regulators to step aside. That would be something to address probably in another book.

Dr. Maren Heidemann: [02:05:35] Yes, Antonio, I think that's on the horizon. Volume II of this book.

Antonio Marcacci: [02:05:40] Yes.

Dr. Maren Heidemann: [02:05:41] Or someone else's contribution in continuation of this topic, adding the missing points. Because that's really the understanding that we have about the transnational element that we must always ask ourselves: What is this for? Why are we doing this? And of course, in my opinion, there are three elements. One is: do we want a global market? So the market players can have this global market? It's difficult enough with the national private laws and the limits that you then encounter with corporate laws and with property laws. And then of course regulators come in to provide these platforms, but are they there to protect the market, to make sure that no more financial crises happen? That is very prevalent with the EU. They want to enforce their standards. They want to set and enforce their standards. ESG, for example, is an important example of that. The transnational concept is where you have that one source of law, of guidelines, of standards, that the market players can look to when they cross national boundaries. So it's a very important activity that IOSCO is creating, this discussion. Is that the correct understanding that I got from Professor Jordan, that their being there, discussing together, having this forum and these regular meetings is actually an essential part of the evolution of

this international network. Would you like to quickly respond to that, Professor Jordan? I know we're over time, but...

Prof Hans W. Micklitz: [02:07:34] If they hold the meeting in Venice, I'll join you immediately.

Dr. Maren Heidemann: [02:07:41] Alright.

Prof. Cally Jordan: [02:07:42] The Venice annual meeting was legendary. That's all I can say. And I'm sorry I wasn't there. But no, I do. The organization, of course, has become much more formalized. but the aspect of that informal bumping into other regulators, exchanging in an informal, off-the-record kind of way, is an important aspect of IOSCO and continues to be, although the organization is much more formally structured now, of course. One of the initial motivators for IOSCO was to permit that forum because it was so difficult in a technical area like securities regulation, capital markets, financial regulation, to have international cooperation at a higher level. It was just too technical.

Dr. Maren Heidemann: [02:08:50] It is very technical, I think. That's an important point: that it's not easy for just anyone to understand the rules and the functions of of the rules, and therefore it will probably always be a niche discussion to have. And there are pros and cons to it. Mads, would you like to give us some closing remarks? We have spent all the time that we wanted to spend.

Dr. Maren Heidemann: [02:09:27] Can you give us some closing remarks for our book series?

Prof. Mads Adenas: [02:09:36] I think that this is extremely useful and interesting. The way that standard setting then develops in the IOSCO context is of immense importance, but also the way in which it is a forum for negotiations between the important systems, and how the standard setting can also resolve some of the conflicts. We know, for instance, that the U.S. and Europe really depend on this external forum. There's no way of resolving the regulatory differences. The U.S., for instance, is not likely ever to want to open up their regulatory system to any kind of outside renegotiation. So the only way that you can get some realignment or alignment is through developing fora like IOSCO, the way we've seen in various other areas by these other multilateral fora, if you like, such as the Basel

Committee and capital adequacy and, OECD with Fatt on money laundering and related issues. IOSCO has a much broader reach. It has an immense potential. Particularly now that we have this realization that narrow banking does not really exist in a regulatory context, this has the possibility to develop in a very interesting direction. So again, this must be supported, not only on the institutional issues, but of course as Antonio also does on the substantive issues. We need much more scholarship and more seminars like this one.

Dr. Maren Heidemann: [02:11:55] Thank you, Mads. That's exactly what we're going to do. Have more seminars like this one. I can't thank you all enough for being here today with us and sharing your thoughts on Antonio's book, which again, is the first one in our series, but it's really volume III and the other two volumes will hopefully come out rather soon, especially volume II. With this, I will conclude our meeting because we have used up all our time and, as I said, we will have a recording of this which I will send you the link to. And the complimentary copies of the books will hopefully be sent as requested. Don't forget, the discount flyer may be downloaded from the chat. I hope to see you all soon for another seminar. We'll be in touch, and you can visit our website for news on more events like this.

Antonio Marcacci: [02:12:56] Thank you very much again. Thank you.

Dr. Maren Heidemann: [02:12:58] Thank you everybody. Thank you very much. Have a good day or night or evening.

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YOUR SUMMARY IN THREE PARAGRAPHS

1. Dr. Maren Heidemann launched the book "Transnational Regulation of the Securities Market" which examines the role of the International Organization of Securities

Commissions (IOSCO) in shaping global securities market regulation, exploring the influence of major powers like the US and the EU, as well as the organization's legal nature, rule-making processes, and enforcement mechanisms.

2. The book highlights IOSCO's development from a club-like organization to a quasi-regulator, setting transnational standards that impact both public and private law, with discussions on legitimacy, implementation monitoring, and how IOSCO standards interface with national laws and private market participants.

3. Panelists from diverse backgrounds, including political science, academia, and regulatory bodies, contributed to a rich discussion around IOSCO's evolution, its role as a forum for negotiations and standard setting, and the organization's potential future directions, with attention to its informal roots and current formal structure.

