ICGN 2009 ANNUAL CONFERENCE AND GENERAL MEETING

"THE ROUTE MAP TO REFORM AND RECOVERY"

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Opening remarks

Jules Muis

Thank you chairman for your kind introduction; and - whatever time zone you are experiencing at present- good morning, good afternoon, good evening ladies and gentlemen. [the 'good nights' will have to wait till drinks are being served].

Just before getting on the plane from Washington to Sydney, I got the breaking news of the Pope having benevolently and usefully upstaged this Conference by his welcome publication of a thoughtful 44 pager on the rights and wrongs of the global financial system. Including, indeed, some penetrating views on the adequacy of the international financial architecture and how to put teeth into it.

The Papal tong-lashing is titled "Caritas in Veritate" or in more pedestrian Aussi-English "Charity in Truth"

Truth be told, the Pope is more charitable on the subject than what I have to offer here to-day. May be that's why he is the Pope, and I am here.

As a Dutch Catholic 'lite' myself, the thought of the Pope as an *ex ante* guardian of the Pearly Gates had occurred to me. But this pleasant surprise in the role of a financial gatekeeper stretches my religious imagination, however much I welcome it. It obviously is an index of the social distress perceived in our world as a result the crisis at hand.

From what I have read so far, his daring initiative strikes a fine balance in shaking heaven and earth.

And I am sure the Vatican's once-upon-a-time own earthly experience with its very own naughty bank must have offered useful food for holy thought.

In case you read in next week's newspapers that I was found hanging from Black Friar Bridge, rest assured that is totally coincidental to the remarks I make here to-day. It was just suicide.

It takes courage to invite a principle-driven Dutch accountant (with occasional rules-driven compulsiveness) to make the opening remarks about a sputtering-at-best globalization machine in temporary reverse. Add to that that this is all happening in the context of a profound questioning of what constitutes good governance and the implosion of the credibility of our very own self-professed gold-standard corporate governance models. Those that suggest the existence of micro checks and balances at the base of all corporate things prudential and sane; aim at protecting stakeholders – albeit some more than others - equitably, and fairly; and yet allowing the economic principle to flourish throughout.

These are, mind you, the same homegrown governance models many of us, yours truly included, have enthusiastically helped develop and pitch all over the world at corporate governance dog and pony shows over the last decade and a half.

I accept the invitation with trepidation and the usual humility of any Dutchman worth his North Sea salt.

For starters I'd like to remind everyone that a certain Abel Tasman created the grounds for a serious 17th century Dutch claim to globalization fame in this very corner of the world. Tasman's enterprising exploratory sailing ventures spanned the world and, however inadvertently, he also fleshed out the very first tangible global transaction right here 'down under', on the

flip side of his Amsterdam home port at the other end of the world.

In 1642, after first scouting van Diemenland – today's Tasmania – Tasman was blown off course by erratic winds which blew him and his men back East occasioning them to run into New Zealand, more specifically into what is now known as South Island. Tasman was cautious when he circled the new discoveries, a caution which proved prescient. The first time he tried to land a sloop it ran aground, taking Dutch colonial diplomacy with it. Four Dutch sailors were killed. One body was hijacked by the indigenous authorities and - so historic speculation has it - processed according to the best of local country-cooking traditions. Thus it is said that that the first meat ever imported into New Zealand was a dead Dutch sailor. Globalization in action!

This meaty transaction came when the Dutch Republic was at the very center of power of the Golden Age and despite the fact that they were just starting to recover from a major financial crisis of their own: the tulip bulb crisis. Tulipomania, as it is known, was a crisis precipitated by excessive financial leveraging, a new generation of toxic derivative financial products, perverse incentive systems, deregulation in convenient combination with self-regulation and an abundance of easy money, printed by Amsterdam's financial industry as if it were the US FED. The crisis was fed by a profound belief that there would always be another fool standing behind the last, never mind how far, a fool willing to offer just a little more than the last bid, whatever the circumstances. The whole thing has a familiar ring, doesn't it?

At the time - we read 1630-1640 - the mass delusion was fueled by the magic, the magnificence and the slicing and dicing properties of the tulip bulb abetted by a combination of overly clever packaging, lots of money and the nature of human nature.

In the nearly 400 years since then, dire financial calamity has struck numerous times - same characteristics, same essentials,

same sour and dour denouement. Financial crises virtually always wrap themselves around something people can identify with. The only truly distinctive feature of most financial calamities is the choice of weapon: tulip bulbs, silver, mortgages, dot.com illusions, real estate, intractable financial products.

[Even that exception has its exceptions: Ironically, in 2004, hundreds of investors in the Netherlands saw some $100 million plus go up in smoke and mirrors or more literally into 80 mailbox companies located on distant bikini islands. To complete the irony, this all happened within a year of losers having invested in, believe it or not, ……the colorful prospect of investing in unique and exquisite tulip bulbs….].

In keeping with the tradition established by Tasman, I will throw you a few bones of my own – not without contention - to get to the heart of some of the questions facing us at this Conference. Brutally postulating – and not just for the sake of argument - that today's crisis is the cumulative effect of governance failure first, corporate, micro, macro, public and private sector; before seeking any other excuses.

Let me needle that statement a bit further by pulling an old favorite horse out of my own stable: I contend that the public and private sector [now more than ever] are two wings of the same good governance plane, that both are equally essential for keeping our economies aloft and financial fragility at bay.

Trying to continue to address corporate governance issues in isolation, self-contained and based on business as usual, will be as disastrous now as was ignoring the broader operating environment of corporate governance in the past. Micro governance cannot be addressed in a vacuum; we cannot just look at the other macro actors in the financial architecture as

self-propelling independent variables whose dysfunctionality, if any, is of no possible concern to us.

I have long and strongly argued for the good governance community to look at financial market oversight bodies and to actively address their proper functioning and accountability constructs as essential for the good governance debate. We must do this if only to avoid spinning our wheels when we try to introduce real change; this critical assessment is a precondition for giving corporate governance practical traction, and it is even more necessary mid-crisis, with the emergence of a whole new species of corporate player: the ones who are prone to systemic risk and considered too big or crucial to fail.

If this smells like socialism, as my nervous market driven American friends sometimes tell me, let me put you at ease the way I put them at ease: "Don't you worry: it ain't socialism; it's communism. It is communism by default rather than popular acclaim; our own fault, and no one else's.

We can only recuperate from this knee-jerk pendulum swing away from normalcy once we have defused the time bomb of the trillions of dollars legacy problems still ticking under our financial industry … or quietly moved to national balance sheets. And then we've not even accounted for the ongoing window-dressing of balance sheets by our politicians busy short-sightedly tweaking into sweet nothingness the reality check that goes with fair value applications in financial reporting.

Let's now look at what difference all our own good governance efforts to introduce viable corporate governance codes have really made in instilling a sense of quality, orderly process, checks and balances and urgency. Or, to put it in investor friendly bottom-line terms, what have they accomplished in the way of preventing or mitigating this unique crisis curiously spawned right in the professed Holy Grail of American and European Corporate Governance Codes, certified "Appellation COSO and/or SOx Controllee". What hope do we have left, if any, of preventing a next systemic crisis?

In keeping with another local tradition of our host country today - let me boomerang an answer.

The good governance community has hardly made a start in trying to answer the questions the crisis raises about its own good efforts. Despite all our good, missionary intentions in the past, we may well conclude that we have been counterproductive; that we have turned well-intended good governance codes into convenient fig leaves and smokescreens for the actions and inactions of the unscrupulous, the pretenders, the greedy. On whose behalf we have, unwittingly perhaps, run the department of optical effects. Think of all the Governance and Executive Awards bestowed on the too-big-to-fail corporate crowd just prior to the government, investors and tax-payer bail outs.

16th Century king-philosopher Erasmus, author of the 'Praise of Folly' could not have set the scene for our aggressive agenda any better, perhaps more witty. He effectively called for a soul-searching exercise into the roots of what governance is really about? Why are we where we are? Should we perhaps admit we may have lost our way? Which new direction, if any, must we take from here?

I will limit my own contribution to the debate to listing some of the exotics in our challenges; to some of the issues hardly discussed or discussable in normal times because they fly in the face of vested wisdom and/or vested interest. They offer in times of crisis – under pressure everything becomes more fluid - possible new vistas and more viable solutions.

Above all, let us first agree, as we participate in this Conference, that defeatism is out and some measure of fighting spirit, it does not take much, is in. Any suggestion that crises, also a crisis of this magnitude, are just the manifestations of economic nature taking its non-preventable, non-predictable course will be kindly considered for the hogwash it is.

By my books, ours is for most part a man-made crisis, predicated on gross if not criminal negligence of some of our corporate

leaders and their oversight boards and agencies. It proved more predictable than predicted – none of the G8, G20, or G80 resolutions offer any diagnosis that was or has not been foreseeable, political wills willing. It is in its essence an un-orchestrated, unwieldy macro-Ponzi scheme, the cumulative effect of garden-variety micro and macro governance failures, made possible by a governance construct of evasive 'syndicated' responsibilities—no one clearly in charge, the inmates running the asylum. It was exported globally through the maze of mutually competing regulatory structures without the gatekeepers themselves having effective, systemic, results-based accountability structures. Our situation today makes the global and multilateral institutions such as the Financial Stability Forum, which were set up or revitalized during the East Asian crisis expressly to prevent crises of this gravity, look like brain-dead, toothless tigers.

This crisis, more than any before, should first humble us into the recognition that it does not seem to have made a difference what sort of corporate governance models countries have adopted, be it the US Macho Management Model, the UK Shareholders' Country Club Model, or the European Town Hall Rhineland Model. All failed broadly and deeply, whether as an initiator, an exporter or a blind importer— a la Caveat Emptor--of someone else's or even one's own toxic ware.

Equally, from a legislative quality perspective, it does not seem to have made a difference what democratic construct companies operated under, be it a fluid yet often stalemated Compromise and sometimes Compromising Continental European Parliamentary Democracy, a US Monetized Democracy or the Westminster model. [I have yet to decide whether we should label the no longer so gentlemanly British model a Monetized Parliamentary Democracy or a Parliamentary Monetized Democracy.]

Time for the my own 'Muisings' on selective fixes moving forward, in Articles of Belief format:

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1) **I believe that the proposition "might makes right" (for better and worse, by omission and commission) governs and will continue to govern our corporations and institutions as the dominant force in all that happens there. That we therefore have no silver bullet at the corporate level - and will never have one – that will reasonably assure reasonable compliance with the spirit of prevailing corporate governance codes in a substantive sense, however well-designed, and that denial of that fundamental truth will only lead us further into cloud-cuckoo land. We should accept the proposition as something akin to Original Sin or be prepared to always be surprised when it is too late.**

2) **I believe we can and will avoid a next profound *systemic* crisis only if we fundamentally change the language of macro accountability from open-ended, best-effort verbiage to systemic, results-based terms. In particular when we allow the bar to be put at the lowest level like seeking only assurance by oversight bodies to the effect "that there are no *systemic risks* that may *materially* impair the *orderly* functioning of the markets". All macro–gatekeepers and systemic corporate players should be required to include such a statement, duly qualified as the case may be, in their annual reports. This very Conference said so last year in Seoul. Was anyone listening?**

3) I believe that there is a wealth of untapped knowledge and insight bottled up in the houses of formal and informal micro-gatekeepers that can be translated into systemic-risks observations -red flags; and that keeping that information hidden from public view should be classified as a cardinal sin. Public accounting firms, the good governance community, the press, please step up to the plate!

4) I believe systemic risks, first discussed systemically some 20 years ago, will have to become lingua franca in all governance parlance, not only by default as at present but by design.

5) I believe it is difficult to make a difference at the individual level in mitigating or preventing mega financial implosions. But each of us certainly can make a real difference individually by assuring that when they do occur we find ourselves on the right side of the table. All it takes to make the world a safer place is a curiosity for things to add up and the courage to say at the right moment in the right company, whatever the consequences, "I don't understand, and I don't think anybody else here does either".

In closing, I'd like to quote Martin Luther King's insightful observation about what regulation can and cannot do. His distinction has been a valuable reminder for me throughout my professional career:

“Morality cannot be legislated, but behavior can be regulated; regulation will not change the heart, but it can restrain the heartless”.

We’d do well to start from there.