GC
LEADERSHIP SERIES

the evolving role of GENERAL COUNSEL

Ethics & Compliance in a Global Marketplace

A Roundtable Discussion

Keynote Speaker:

Jean-Paul Bisnaire

Senior Vice President, Business Development

and General Counsel

Manulife Financial

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ALM

the PANELISTS

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Co-Managing Partner, Choate Hall & Stewart LLP

Sharon Geraghty
Partner & Co-Head M&A, Torys LLP

Kevin J. Thomson
Senior Partner, Davies Ward Phillips & Vineberg LLP

H. Rodgin Cohen
Chairman, Sullivan & Cromwell LLP

TO THE READER:

The acronym PRIDE — professionalism, real value to customers, integrity, demonstrated financial strength, and employer of choice are the values that Jean-Paul Bisnaire says define Canada's largest life insurance company, Manulife Financial. As Senior Vice President and General Counsel to this enormous and diverse company, he certainly has his work cut out for him.

Over the course of 100-plus-years, Manulife has built a 20,000-person workforce with direct operations in 19 countries and territories, entering China, Shanghai and Hong Kong in 1897, before its U.S. entrée in 1903.

While most in the U.S. are familiar with John Hancock, one of Manulife's U.S. divisions acquired in 2004, many are not aware of the company's impressive track record. Manulife is the second largest company in Canada on the Toronto Stock Exchange; the second largest life insurance company in North America; and the 6th largest in the world by market capitalization. Funds under management by Manulife Financial and its subsidiaries were Cdn$426 billion (US$370 billion) as at March 31, 2007.

The National Law Journal, an ALM publication, in partnership with The Directors Roundtable is pleased to present the latest in our GC LEADERSHIP SERIES honoring Jean-Paul Bisnaire, Senior Executive Vice President, Business Development and General Counsel of Manulife Financial.

Manulife ranked first in *Canada's Governance Rankings*. We were thus delighted that Mr. Bisnaire joined us to provide a perspective on what a winning governance program looks like. Detailed and effective compliance programs, proactive regulation and embracing a culture based on ethics are clearly not abstract concepts to Mr. Bisnaire — they are alive and well and an active part of Manulife's day-to-day operations.

Joining us also was a distinguished panel of attorneys, all of whom work closely with Manulife and were generous with their perspectives from outside the Manulife corporate environment as its counsel. Not one of them failed to express awe at Mr. Bisnaire's extraordinary abilities.

John Nadas, Co-Managing Partner, of Choate, Hall & Stewart, shared his insight on complex litigation issues and the scope of litigation-related responsibilities that the general counsel of an enormous organization must face. Mr. Nadas also described the compelling interests and needs of a business with the absolutely compelling requirements of the litigation process.

Sharon Geraghty, a Partner and Co-Head of the M&A Group at Torys in Toronto, provided a comprehensive overview of the trends emerging in the M&A area, including substantial growth of private equity funds. Ms. Geraghty also noted the growth of shareholder vocalism, scrutiny of higher management's role in private equity transactions, and a backlash against private equity in general.

Kevin Thomson, Senior Partner at Davies Ward Phillips & Vineberg in Toronto, provided us with a perspective of the current northbound Canada/U.S. cross-border M&A activity, revealing how such activity has been red hot over the last three years and show no signs of slowing due to the strong Canadian economy, positive economic forecasts, low interest rates and healthy corporate balance sheets. Mr. Thompson also provided an interesting overview of Canada's approach to M&A transactions, its major differences and systems.

Finally, H. Rodgin Cohen, Chairman of Sullivan & Cromwell, discussed key aspects of cross-border transactions and offered intriguing insights on how protectionism and the U.S. legal and regulatory environment contributes to the limited number of significant cross-border deals.

The text of the panelists' comments, edited for clarity and brevity follows. The views expressed are those of the Roundtable participants and not necessarily the views of the firms or companies. We were fortunate to have the opportunity to hear from each of our panelists and benefit from their experience and insights. We learned a great deal from them and know you will too.

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From left to right: Jack Friedman, Kevin J. Thomson, John A. Nadas, Jean-Paul Bisnaire, Sharon Geraghty and H. Rodgin Cohen

MR. FRIEDMAN: Good morning. I'm Jack Friedman, Chairman of the Directors Roundtable. For those of you who are not familiar with our organization, we're a civic group that works worldwide with boards of directors and their advisors in roughly 20 countries around the world and 30 cities in the United States.

We're very pleased to co-host today's event with the National Law Journal. Our guest of honor today is Jean-Paul Bisnaire, Senior Executive Vice President, Business Development and General Counsel of Manulife Financial. We are delighted that Mr. Bisnaire could join us today and look forward to his insights of the challenges faced by the general counsel of a multi-national financial institution. Our distinguished panelist today are John Nadas, Co-Managing Partner, Choate, Hall & Stewart LLP, Sharon Geraghty, Partner & Co-Head Mergers & Acquisitions, Torys LLP, Kevin Thomson, Senior Partner, Davies Ward Phillips & Vineberg LLP, and H. Rodgin Cohen, Chairman, Sullivan & Cromwell LLP.

It is now my pleasure to introduce, Jean-Paul Bisnaire (J-P).

MR. BISNAIRE: Thank you, ladies and gentlemen, colleagues and distinguished guests. I'm honored to be here in Boston, and it is a real privilege to be able to address you. As you know, Boston is the headquarters of John Hancock, which is Manulife's U.S. division. Many of you know John Hancock, but many of you do not know about Manulife, so I am going to provide some background on Manulife.

I will also share some thoughts with you about ethics in a global marketplace and doing the right thing. Manulife has taken a very disciplined approach to dealing with this area.The topic is close to the top of most people's agendas, if not right at the top, especially if you happen to be on the wrong side of what is right. Why do ethics matter to us? Simply put, we set the bar very high for how we see and conduct ourselves. Our vision is to be the most professional life insurance company in the world.

Our values are summed up in the acronym PRIDE. Dominic D'Alessandro, our president and CEO for almost 15 years, came up with this acronym when he first took on the role. The P stands for professionalism. We will be recognized as having professional standards. Our employees and agents will possess superior knowledge and skill for the benefit of our customers. The R stands for real value to our customers. We are here to satisfy them by providing the highest quality products, services, advice, and sustainable value, and we will ensure our customers receive excellent solutions to meet their individual needs. The I stands for integrity, which is really at the core of our culture and our ethics. We demand the highest levels of honesty and fairness in all of our dealings, and we develop trust by maintaining the highest ethical standards. Our president and CEO has said in various situations, but certainly in the Portus situation, which I will describe a little later, that he does not want to sell a product that he would not sell to his mother. I think that this really goes to the core of our culture. The D stands for demonstrated financial strength. Our customers depend on us to be here in the future to meet our financial promises. With the types of products that we sell, long-term products like life insurance, long-term care and variable annuities, we have to be here for the long term, and Manulife and John Hancock are definitely here for the long term. And the E stands for employer of choice. Our employees will determine our financial success, and in order to attract the best and the brightest, we have to invest in the development of our human resources and reward superior performance and make sure that they meet our standards of ethics and integrity, honest dealing and judgment.

As you know, Manulife is in the financial services business. We provide life insurance products, long-term care products, and wealth management services to millions of customers around the world. Our customers either trust us to deliver on our promises, or they will have their financial needs met elsewhere. So to us this is all about reputation, which is our most important asset. As a new lawyer I remember

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—J-P Bisnaire

one of my mentors saying: "You know, you're only as good as your last deal." I think that that can equally apply to the industry that I now find myself in.

We have earned trust over the more than 100 years that we've been in business by acting honestly and ethically in all aspects of our business. For us, doing the right thing is being proactive and taking control of our own destiny. It is not predicated on government edict through legislation, regulation, policy, or other initiatives, some of which lately have come as a real surprise, such as various Spitzer initiatives and the like.

Before discussing our approach for managing reputational issues, I would like to clarify who, or what Manulife is. You will see immediately that we operate in the most sophisticated markets in the world, as well as in the not so sophisticated markets, which can present challenges in managing our approach to ethics. We operate in the U.S. as John Hancock. I love seeing that sign on the top of Fenway Park. Congratulations, by the way, on the Red Sox sweeping the Yankees. My condolences on being beaten by the Blue Jays. Manulife is the second largest company in Canada on the Toronto Stock Exchange, and until recently in Canada was known internationally as one of the most successful unknown stories. So when we merged with John Hancock in 2004, it was an easy decision to adopt the highly recognized name and the valued brand of John Hancock for our U.S. companies. It also demonstrates our commitment to John Hancock and the Boston community.

Roughly 75% of our business is located outside of Canada. About 50% is in the U.S. The rest is in Asia. In all we have direct operations in 19 countries and territories. Our Investments and Reinsurance operations are global in scope. Funds under management total Canadian $414 billion at year end. We are the second largest life insurance company in North America and the 6th largest in the world by market cap. While the U.S. is our largest operation, Asia is our fastest growing with exceptional opportunities ahead.

Our prospects in Asia are exciting. We have operations there in ten countries or territories. We were originally in China, Shanghai and Hong Kong in 1897, before we entered the U.S. in 1903. How many companies can say that today? In China we have more city licenses, 17, more than any other foreign insurance company. We are also located in Japan, Hong Kong, Taiwan, and in the ASEAN countries of Singapore, Indonesia, Philippines, Malaysia, Thailand, and Vietnam, some of which can present their own ethical challenges.

The company's metrics are impressive, with a 10-year cumulative annual growth rate of 18% for revenues and 23% for earnings. Over the last 5 years our growth rate has been 45%. The John Hancock merger is a large reason for this 5-year record because the two companies were a natural fit. A number of our key products hold top three market shares. Finally, we are one of only two public life insurance companies worldwide with operating insurance subsidiaries rated AAA by S&P.

Like other companies, Manulife has had a number of transformative events in its history that has brought us to this position, including demutualization and the John Hancock transaction. It's a nice place to be, but it puts us under a very intense microscope. It has raised expectations in how we conduct ourselves in terms of corporate social responsibility, commitment to the communities we operate in, and other elements that make up the "balanced score card," all of which fall under the corporate governance heading. But it also goes without saying that there's been a tremendous sea change in governance, much for the better, some not (such as section 404 Sarbanes Oxley (SOX)), and in some cases with unintended consequences, causing some companies to delist or privatize. I think some of the members of the panel in their remarks will talk about the trends in Canada and the U.S., concerning private equity and, as Marty Lipton might put it, the eclipse of the public corporation. I'm sure Rodgin Cohen may have some comments about that as well.

Every Sunday we turn to the *New York Times* business section to see what Gretchen Morgenson is saying on governance, most of the time about excesses in executive compensation and lack of compensation disclosure. But Manulife really does care about governance and about Governance Metrics International (GMI) and ISS scores. I suspect it is not just because we like excelling and want to be seen as leaders. It is also because we understand that the environment that we operate in has changed and reputation really matters. Reputation risk, or as some would say "headline risk," is now factored into all of our risk management analyses - from product design to relationships with third parties. We have to consider how what we do will affect our many stakeholders - retail and institutional shareholders, rating agencies, regulators, employees, customers, and communities.

At Manulife, we have been fortunate to have been recognized for our governance program by many organizations that assess governance policies and practices. For three out of the five years of its rating existence, Manulife has ranked first in Canada's governance rankings. It would be disingenuous to say that we do not take some pride in this recognition, but it would be an exaggeration to say that it reflects the full story of the effort required to be well-governed. It is complicated and requires commitment of the whole organization, starting at the top with the Board, the Chair, the CEO, and senior management, in particular the senior management who lead our various business units spread across the globe. People have talked about the tone from the top. When you take a look at our organization, which is very decentralized on a territorial basis (for example, a Canadian Division, U.S. Division and Asia Division), within those divisions we also have various businesses with their own CEOs. The way we look at it is the tone of the top rests with every one of those CEOs in the various business units.

To underline the importance of ethics to us, our Board's Mandate basically starts with a section headed Culture of Integrity and Ethics. Doing the "right thing" starts at the top of the house with the Board. The Mandate's first provision states that the Board shall satisfy itself as to the integrity of the CEO and the executive officers. It does not say that there are any special accommodations available and there are none. This is a one-size fits all approach. There are no exceptions. Once exceptions are made it is a slippery slope. Later in my remarks I will share with you a couple of cases where we were challenged in these areas.

The Board has an oversight role, not a management role, and the Board's committees help to fulfill its role in those matters. In our case, the Audit and

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Risk Management Committee, the Conduct Review Committee, and the Corporate Governance and Nominating Committee fill very important roles in terms of our governance. But ultimately, organizations are about people and their behaviors, including that of the CEO and the other chief executive officers of our businesses. That's why getting the people part right is critical and the selection of the CEO and their oversight of senior management is the most important job. More than anyone, these people set the tone and promote the culture of integrity. There is no question at Manulife as to who sets the tone, or what it is. Promoting this culture is also factored into our annual performance appraisals.

The idea of setting the tone of integrity from the top is well recognized by most, but as Ben Heineman, GE's retired chief legal officer wrote in the April issue of the Harvard Business Review, which I highly recommend you read, by the way: "It's time to shift this debate about corporate integrity from Board oversight of the CEO, to how the CEO and top company leaders can most effectively fuse high performance with high integrity at all levels in a challenging, fast changing, and at times hostile world."

I'd like to spend a few minutes discussing how this is done at Manulife. The board delegates and relies on management to put in place appropriate policies, processes, monitoring, and controls. Ben also states what we all know to be the case that: "This is a grinding, complex day in, day out task that is difficult in the best of circumstances to do well." Legal and compliance roles at Manulife are embedded in the business units, and one of the reasons we do that is to ensure that people in those roles know what the business units are doing. As I said, we are highly decentralized. If they are not in the business units, how can they provide the advice that they need, or the proactive and reactive kind of compliance oversight that our businesses require?

The privilege of carrying out the day-to-day tasks of compliance falls on the Global Compliance Chief, who is a senior officer of the company, who reports functionally to me but also reports directly to the Audit and Risk Management Committee. Periodic reports are provided to the Audit Committee by the Global Compliance Office on the state of compliance.

Some of you know Jim Gallagher, who has the "privilege" of being our Global Chief Compliance Officer to deal with the SEC or any other regulator who comes knocking at our door, which hopefully isn't anytime soon. One of his responsibilities is to assist in projecting the ethics tone set by the Board, the CEO and senior management deeper into the organization. This is particularly important in a highly decentralized environment with a business unit approach to organizing resources.

The Global Compliance Office coordinates the development and approval of our ethics-related policies and practices, puts it in place, and manages related controls, monitoring, follow-up, etc. For example, he coordinates compliance with our key ethics awareness communications and the annual sign-off by every employee, including the CEO, of our Code of Business Conduct. As well, every year all of our employees, including the CEO, must complete an online Q&A session on the Code relating to real-life ethical challenges an employee could face. We also have an ethics hotline. But all this is not dissimilar to procedures of many other companies subject to SOX.

The Global Compliance Office also oversees the activities of all of our compliance officers in the company worldwide. This requires structure, people and resources. Ten divisions and other operation Compliance Chiefs report directly to the Chief of Global Compliance and the businesses they serve. We also have 300 dedicated compliance staff worldwide. These resources are expected not only to help our businesses manage existing regulatory risk but to anticipate how those risks might develop and change. Proactive compliance is an essential means by which we self-govern.


Jean-Paul Bisnaire/Manulife Financial

In addition, we have an internal audit function, which also reports to the Audit Committee directly and to me functionally. Our Chief Auditor heads this up. He also meets regularly in camera with the Audit Committee. This function constantly tests processes to assure compliance with various aspects of the Code of Conduct, such as information security, privacy, anti-money laundering, regulatory compliance processes and personal trading protocols. Recently as part of SOX, our auditors reviewed the appropriateness of handling breaches of the Code of Conduct with the expected confirmation that any breaches are being handled appropriately.

Internal audit is also responsible for evaluating compliance with company policies such as our Global Reputation Risk Policy, which assures, among other things that appropriate due diligence takes place in establishing business relationships.


John A. Nadas/Choate Hall & Stewart LLP

Where appropriate, the internal auditors assist in fraud investigation to determine if controls should be strengthened and to design tests for disclosing the existence of similar frauds in the future. Finally, internal audit is responsible for ensuring adequate controls are in place to meet the objectives of the anti-fraud policy framework, which strives to identify, detect, and prevent fraud. And then to complete the picture, we also have an Investigative Services Group, which is available to work with our compliance chiefs around the world when needed to help make sure our legal and compliance staff has reliable facts and information to work with.

Now with all these dedicated resources to compliance and ethics, one might say that employees are well advised to do the right thing. Our reputation is too important. Too much goes into protecting it to tolerate damaging transgressions. This is true, but protecting our corporation's reputation, acting ethically, is not about creating a "police state" or a "tick the box" approach to good governance. It's really about culture, a culture of integrity. Having people in your organization who have impugnable judgment and who do not need to be constantly reminded of what it is to do the "right thing." However, irrespective of the competence of management and the sophistication of our systems, the fact is we live in a complicated world, and these things will be road tested one way or the other, and it has happened to us in two high-profile cases — one in Canada in 2005 and the other in Indonesia in 2001. I will run through them quickly. I think the lessons learned and takeaways are self-evident.

In Canada, there was a third-party hedge fund called Portus. Probably no one from the U.S. has heard of it. Certainly my Manulife/John Hancock colleagues have heard a lot about it, but it is a situation that garnered enormous attention in Canada. This hedge fund raised almost $800 million in a matter of a couple of years. A Manulife distribution subsidiary referred our customers to the Portus hedge fund, and our customers ultimately invested about one-third of the $800 million invested in Portus. Portus was not what it was disclosed to be. People thought they had invested 100% of their monies into a high yield product when only a portion of their funds had actually been invested. One might characterize it as a Ponzi scheme.

Once it came to light that there were issues, securities regulators launched investigations of the product and Portus' sales practices and its disclosures. The result was the freezing of all Portus assets and its ultimate bankruptcy. Manulife's response was very quick. Within a matter of weeks and without regard to any regulatory issues or customer demands, our CEO stated we would "do the right thing." And he used those words. He issued a press release right away that said: "Don't worry customers, we're going to stand in your shoes." The bad press about Portus continued for another month, and our CEO said: "Not only are we going to stand in your shoes, we're not going to force you to wait." It has actually been three years, and there still have not been any distributions from the bankrupt estate. He said: "We're not going to force you to wait three years, maybe four years. We are going to buy you out now and we will return your monies to you with interest." And our CEO did that within six months of the event happening. One hundred percent of our customers took the offer, and we made them whole.

Many stakeholders, including our customers (who are obviously very thankful) and the court dealing with the bankruptcy situation, applauded us for handling the situation the way we did. It has enhanced our reputation. It has actually been very good for business in terms of additional contracts and relationships that we have been able to build as a result of the actions we've taken. But we learned huge lessons because we did make mistakes. We must be much more thorough in pursuing our due diligence on third-party relationships. Many financial institutions will have third-party relationships given the way the industry is evolving in terms of outsourcing, white labeling of products, product manufacturing, distribution relationships, etc. It also taught us a lesson as to the importance of integrity.

Another example that I mentioned is Indonesia. We entered into Indonesia in 1985 through a joint venture with a local group and the World Bank, in which we owned 51%. The local group went into bankruptcy due to the Asian economic meltdown of the late 1990's. Manulife purchased the local group's interest in the joint venture through a government-sanctioned auction after trying unsuccessfully for some two years to negotiate with the local group to arrive at a settlement. Subsequently we were treated to the consequences that can arise from a compromised judicial system. We faced a number of spurious

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>
> *—John A. Nadas*

claims by supposed third parties with severe repercussions.

The joint venture was declared bankrupt by the Indonesian Commercial Court, even though it was one of the few financially solid financial institutions left in the country. One of our staff was detained for several weeks by the police without charge. Others were threatened and denied permission to leave the country. This harassment triggered extensive support from the Canadian government, including our Prime Minister, the Indonesian government (as opposed to the courts and the police), other governments, the IMF, World Bank, Asian Development Bank, and many others. We also received tremendous support from U.S. industry colleagues in the U.S. government. The crisis garnered worldwide media coverage, including the *New York Times*, *Wall Street Journal*, *Far Eastern Economic Review*, as well as extensive local coverage. We stopped counting the number of articles at 1,000.

Throughout we hung tough to our principles and refused to be drawn into or give into the elements of a compromised judicial system, such as bribery and coercion. We refused, not because of public law such as the Foreign Corrupt Practices Act, but because of our own sense of ethics in doing the right thing. We solved the problem by shining enough light on the system rather than having our ethics yield to the system. We also were not intimidated to exit the Indonesian market. We were determined to prevail and we did. While Indonesia at the time was a very small piece of Manulife's global operations, the reputational risk was anything but small. It was important for us to make a statement, and today Indonesia is a very important part of Manulife. It was viewed very favorably, and still is today, as to what our response was in Indonesia. It was even helpful in terms of us getting regulatory approval of the John Hancock merger. We demonstrated that we are an honest company, and we maintain the respect of our regulators, customers and employees for so doing.

These cases demonstrate by actions the importance of setting the tone from the top. But it is also important to take steps at the front end to help mitigate the risks of things going wrong, and if they do go wrong, to understand what went wrong, so it does not happen again. A former Chair of the Ontario Securities Commission, not as illustrious as the Securities and Exchange Commission, but very important in the Canadian marketplace, said: "…while business organizations go through many crises, very rarely do they go through the same crisis twice. This is because, as in nature, companies adapt quickly and typically go to extremes after a crisis — they throw up a fortress of internal rules, controls, and procedures to fix what went wrong in the first place. That way they build the kind of immunity to whatever felled them."


Sharon Geraghty/Torys LLP

It is obviously better never to go through one, but unfortunately some crises like ours in Indonesia are not within your control. However, we should do everything possible to ensure we do not face a crisis of our own making. A proactive approach can protect us from future crisis. For example, in some countries where we operate, the rule of law in business ethics is, shall we say, a developing concept. We have found it far more productive in some of those environments to give instruction to our employees on our own Code of Ethics, our own global standards, rather than expect them to accept the dictates of a foreign jurisdiction, even the Foreign Corrupt Practices Act. It is more important to put integrity in the context of what Manulife standards are expected.

I was at a session last week with Rodgin, and he talked about U.S. legal imperialism. The Foreign Corrupt Practices Act, I think, falls under that. Do not get me wrong. We certainly instruct our employees on the Foreign Corrupt Practices Act. But in some developing economies where a local employees' sense of business ethics may be at odds with our own, giving instruction on what it means to live by our company's rules resonates more than the demands asserted by some far off country. Taking that instruction directly to those employees is the kind of proactive compliance I expect from our company.

"Shareholder vocalism' is a big element in Canada because we have some very large private equity pension funds and institutional investors with significant influence who are quite willing to step out and challenge transactions that they feel were done at too low a price."

—Sharon Geraghty

You may have seen the October 10th, 2006 edition of the *Wall Street Journal*, in which Warren Buffett, who has such a good a way of capturing the moment, was quoted as saying in reference to how he wants staff at Berkshire to behave: "…let's start with what is legal but always go on to what we would feel comfortable about being printed on the front page of our local paper, and never proceed forward simply on the basis of the fact that other people are doing it." The article was reporting on a memo he circulated to staff that he started off with the following: "The five most dangerous words in business may be 'everybody else is doing it.'" Thank you.

MR. FRIEDMAN: Could you comment on the reality of a lawyer working with businesspeople?

MR. BISNAIRE: Well, I think it's really important for senior counsel to have a rapport with the Chief Executive Office or "C suite" as we call it, so there's a real working relationship between senior management and counsel. Senior management needs to understand that we just don't create or raise issues but that we are there to help solve problems and find a way so that the business objectives can be met. And if the objectives can't be met, then everybody will understand why, so that another strategy can be pursued. It is really important for the lawyer to be part of the senior executive management team and not seen just as an advisor.

MR. FRIEDMAN: Or a listener who's saying, "Gotcha — you're going to do something illegal."

MR. BISNAIRE: Yes. We do have a lot of outside law firms who act as that ultimate legal advisor. Senior in-house counsel has to be both a businessperson and a legal advisor at the same time.

MR. FRIEDMAN: Thank you. We'll get back to some of these issues later. John Nadas, Co-Managing Partner of Choate, Hall & Stewart and one of our local panelists will be presenting next.

MR. NADAS: I am local. I am a managing partner at Choate Hall here in Boston, and I work in our insurance and reinsurance litigation practice group. Like the other members of the panel, I'm very pleased to be here to honor J-P. We're lucky enough to do some work for the company and it's nice to have an opportunity to honor him.

Because I'm in the litigation area, I was asked to comment on complex litigation issues that might be appropriate on this occasion. I considered a couple of substantive topics and decided that a better way to approach this was to step back and talk with you for a minute about the scope of litigation-related responsibilities that J-P has, and someone in a position like that has, as general counsel of an enormous organization.


Kevin J. Thomson/Davies Ward Phillips & Vineberg LLP

The litigation challenges and responsibilities that are faced, in a position like J-P's are vast, and should be of interest. I thought I would talk a little bit about the scope of the company, the many products and services it offers, the litigation environment in which it now prospers, and of course the role of the general counsel in that context. By way of disclaimer, although Choate does a lot of cross-border work, our work for Manulife in the litigation area is primarily domestic, so there may be a little U.S.-centric aspect to my comments. I hope you'll tolerate that and perhaps it's the case that some of my comments apply to their operations and risks around the world.

In order to understand J-P's litigation responsibilities, let's first talk a little bit about the magnitude of Manulife. You heard some of it from J-P, but it is, of course, a diversified financial services company offering financial protection and wealth management products through operations and to customers around the world. As I understand it, there are some 20,000 employees working with thousands of distribution partners, all in the service of literally millions of customers around the world. To get a further understanding of the size of J-P's overall responsibilities, understand that in addition to his litigation work, he also has the other parts of the law department. He is also in charge of business development at the company, in charge of compliance as you've heard, in charge of audit functions, and even IT. So when you put it all together it's an enormous set of responsibilities.

Focusing on the litigation side, I think it's probably fair to divide the litigation responsibilities and risks into those that arise from the core products and services from, on the other hand, those that don't. Much of the litigation, of course, arises necessarily from Manulife's millions of customers, the vast array of products and services that it offers, and the extraordinary network of distribution channels that it employs.

Remember Manulife is a world leader, truly, in life insurance. Manulife has a vast array of pension products and services in the U.S., 401K, and, and mid-market products. Manulife has huge offerings in mutual funds. It offers a wide variety of annuities, both fixed and variable. It offers group benefits and is truly a leader in long-term care insurance. In this litigious day and age, a company with such a wide variety of offerings, wide variety of services, there are many, many opportunities for disagreements, misunderstandings, and tensions with customers, as well as with business partners and distribution channels.

Moreover, a company of the size of Manulife also inevitably faces litigation risks that do not really involve their own products but arise simply from the magnitude of the operation and their presence in very attractive marketplaces. By way of example, consider that Manulife has a workforce of some 20,000 people. Necessarily that gives rise to the possibility of employment-related disputes. Manulife's investment and loan activities inevitably give rise to the risk of disputes with business partners. Its operations in some 20 countries necessarily give rise to a complex of regulatory and compliance-related risks, which J-P has just been talking about.

You can see, of course, that J-P is a leader with respect to architecture for compliance and governance programs designed to meet changing standards around the world. Manulife and J-P also encounter reinsurance disputes, historically in litigation, but increasingly in arbitration, which frankly I think can be a frustrating process. And of course, what J-P and the company do with respect to litigation is not all defensive. There are opportunities when offensive strategies need to be considered, and I'm sure that there's more.

But as you have heard from J-P, it's not just a question of addressing his litigation issues, but it's also a question of dealing with his internal business constituents concerning those litigation issues. He needs to serve as an interface between his business people and the outside litigators. He needs to get the necessary cooperation and assistance from the company for reasonable litigation requests. He must deal with the conceivable tensions between customer relations and business development on the one hand and dispute resolution on the other. And he needs to explain internally the requirements and to deal with the practical realities of litigation, for instance recent developments in e-discovery. In the process, J-P balances the compelling interests and needs of the business with the legitimate needs of the litigation process, and in doing so he serves as translator, I'm sure as arbitrator, and ultimately sometimes as dispute resolver.

So as the general counsel of a worldwide, diversified financial services firm, J-P has enormous litigation responsibilities and opportunities. Everyone in the room honors you, J-P, for your work and for your assumption of these very significant responsibilities. As we've heard today, you have managed to successfully navigate the frequently troubled litigation waters by protecting the shareholder, by setting and maintaining consistent legal strategy and positions, balancing legitimate interests internally and externally, maintaining and developing important customer relations, promoting the company's fine public images and in the end, of course, doing the right thing. We're all pleased to be honoring you today.

> "Another key difference is that in stock-for-stock bids and mergers, there is no need for the buyer's disclosure document to be declared effective by Canadian securities regulators before it is used. This can shave months off of the timeline that would apply to a U.S. stock for stock transaction that requires pre-clearance from the SEC."
>
> —*Kevin J. Thomson*

MR. FRIEDMAN: John, please provide us with some examples of the sort of litigation that a large financial institution might be involved with.

MR. NADAS: We have to figure out what's the appropriate instrument for dealing with the particular problem. Choate is fortunate in having been asked to help J-P out with employment-related issues on the one hand, with broker dealer relationships, and disputes on the other hand.

MR. FRIEDMAN: You mean, a customer who says, "I don't like what my broker was doing, and it's your fault?"

MR. NADAS: And issues relating to investment performance. My partner Brian Davis, sitting here, has done work helping them on the plaintiff's side with respect to investments that were made and recoveries that they were entitled to. There's a wide range of things, of course, that they must face. I find it just extraordinary to contemplate the many things that J-P's ultimately responsible for, and, takes charge of.

MR. FRIEDMAN: Thank you, John. Sharon Geraghty, Partner and Co-Head of the M&A group of Torys in Toronto, will be our next speaker.

MS. GERAGHTY: I'm delighted to be speaking to you today. Thank you very much, ladies and gentlemen, my distinguished fellow panelists and, of course, J-P.

I was, unlike John, allowed to choose my topic. Given that we're here to honor one of our country's most recognized and accomplished M&A lawyers, I decided to talk about an M&A development that we saw emerging as a trend last year or the year before and is now in full flight — that is, the emergence of going-private transactions and, in particular, private equity as a player in the public M&A market. We have had private equity as a big M&A player in the past, but until recently, private equity funds weren't taking over large public companies. They are clearly doing that now.

This is an endlessly fascinating subject for lawyers, but Jack told me I had only seven minutes. I do like symmetry, so I thought I'd identify seven trends for you to watch for in this area.

The first is the decline — which may be too strong a word, but I don't think so — of the North American public market. There are several reasons for this. J-P has alluded to some of them: SOX, governance pressures and pressure on quarterly earnings. Companies frequently come to us saying that they have difficulty effecting their strategic plans under a microscope. In addition, executive pay has become a

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>
> —H. Rodgin Cohen

bit of a hot button for criticism by public shareholders. Private equity is able to offer high compensation without the public scrutiny; so this is also causing a push away from the public to the private markets. As well, there's an understandable discomfort that public company boards have with significant leverage. It's not a discomfort that private equity firms have, and it makes the contest there a little unbalanced as well.

The second trend, of course, is the rise of private equity. There is just a huge amount of money available. Every time I look, I see a different figure quoted — these private equity funds apparently have trillions of dollars of capital to invest. And there is the multiplier effect of the funds being able to borrow on very generous terms. Nowadays, you can do acquisition loans with very few covenants, no amortization and "payment in kind" provisions. So there's very, very easy money available, and that looks like it's going to continue, although the bubble may end at some point. As a result, investment banks are definitely and understandably aligning themselves to this clientele, and we're all looking to private equity as a leader in the M&A market.

The third trend that emerges from this is also not surprising — and that is, it's a seller's market right now. More and more money is chasing bigger and bigger deals. Obviously, that is affecting pricing. It's also affecting the terms of these deals. Auction transactions are rapidly becoming the norm. We're seeing interesting new developments: reverse break fees, ticking fees. I love these new descriptions. A ticking fee is an increase in price over time for regulatory and other delays.

We're also seeing narrower deal conditions. There's talk now in some transactions of actually abandoning one of the most sacred of conditions — the condition that no material adverse change happens before closing. I've yet to see a large transaction without that condition, but there is talk of that. The possibility of introducing a "go-shop" clause, which has rapidly become the rage, is being talked about in almost every transaction that I'm dealing with right now. If you're a target, the go-shop provides you with the opportunity to keep selling the company after you've already agreed to sell it. And we're seeing a lot of deal jumping — a transaction is agreed to, and then very quickly after the deal is struck, someone offers a higher price.

The fourth trend is a real shift in skepticism. The skepticism originally was about board entrenchment: you're just saying no; you're putting up too many defenses to transactions. Now the skepticism seems to be about jumping too quickly into a deal. Institutional shareholders are becoming very aggressive and actually challenging transactions. I heard someone coin a term recently: shareholder vocalism. That is a big element in Canada because we have some very large private equity pension funds and institutional investors with significant influence who are quite willing to step out and challenge transactions that they feel were done at too low a price.

The fifth trend is the increasing scrutiny of the conflict that management faces in going private transactions. This has become a real lightening rod. There is what I can only describe as a distrust of management when it's advocating a deal with a private equity fund — an immediate distrust because management is, in a sense, often acting as both seller of the company and buyer. That is because it's quite typical of these arrangements for management to stay on and receive, as part of the compensation arrangements, the right to invest in the equity. So there's sometimes a suggestion that management may prefer private equity funds as buyers; that they may not attempt to find strategic transactions with the same degree of vigor that they employ when searching out private equity buyers. There's even been a call in the U.S. — and we do watch what happens here because it's often just a matter of time before it happens in our country — to prohibit management from participating in these transactions. I don't know how you'd enforce that, but it's interesting to me.

The sixth trend I wanted to talk about is something that has emerged very recently, and that is the question of whether shareholder democracy really works. This issue arises particularly in voting transactions and it is very common for going-private transactions to be effected by way of a voting transaction rather than a tender offer. Our system depends on putting the question to the investors with the economic interest and allowing them to decide. It's clear, however, that the sophistication of Wall Street and the complexity of our market, is creating a real question mark over whether those votes can be taken at their face value. Hedge funds are very clever. They can, in effect, buy votes — using "record date capture," making sure they have the vote over the record date, or by engaging in securities lending, or by much more sophisticated slicing and dicing of the rights in the share instrument. And this is very troubling because these event-driven investors often have a very different economic interest or even a negative economic interest in the outcome, yet they may well play a key role in determining the outcome for those who have the real economic interest.

It's a troubling area. We may well need a new paradigm to deal with it. I know that regulators are thinking about it, but those whom I've spoken to are still unsure about how to deal with it. People talk about trying to bring enhanced disclosure in this area, and that in itself is difficult. But I don't know that it's going to be a complete enough answer. So we're seeing more radical suggestions out there — for example, should we have a minimum holding period before you can vote your shares? There is also a sensible suggestion of moving the record date and the voting date closer to each other. I also heard a proposal recently that you should have to certify when you vote that you have a substantial economic interest in the shares that you're voting. All very interesting and hard to implement. I don't think this issue is going to be resolved quickly, but I don't think it can be ignored.

And the seventh trend is a real backlash against private equity generally. I've seen a significant amount of negative press about the fees that private equity funds charge and the incredible wealth that they're generating for a few individuals. I've seen them referred to in press articles as "predators," "plunderers," "locusts." A well-known reporter, Andrew Sorkin, sent out a note seeking a new name for private equity, not surprisingly because they're so active in the public M&A market. He was looking for a different moniker, and the suggestions he received included "crooks and thieves," "a rat by any other name is still a rat." Even Judge Strine spoke in this vein recently when someone suggested that private equity funds really worried when there was a go-shop for their deal. He interrupted and asked if you can angst if you don't have a soul.

It's clear, on a more mundane note, that private equity returns are going to be squeezed. The funds are willing now to take lower returns. They're taking bigger percentages of the deal. They are bridging the equity and syndicating it later. So I expect we are going to see their returns reduced. We also know that the Department of Justice is investigating club transactions. We're seeing pressure over whether these club transactions should be permitted. So I think we can see that we're going to be entering a new phase in the coming months, and we'll all be interested in watching it.

I want to thank you again for including us in this event. My firm and I are delighted to be here to honor J-P.

MR. FRIEDMAN: Thank you, Sharon. I would like to introduce our next speaker, Kevin Thomson of Davies Ward Phillips & Vineberg.

MR. THOMSON: Thank you. I also was delighted to be asked to attend today's program honoring Mr. Bisnaire. I also was allotted seven minutes, so I will do my best to comply with that time constraint. I am a partner of Davies Ward Phillips & Vineberg. We

H. Rodgin Cohen/Sullivan & Cromwell LLP

are a Canadian-based law firm of approximately 220 lawyers. We have offices in Toronto, Montreal and New York. We are heavily focused in mergers and acquisitions and have one of the leading practices in Canada in that area. In 2006, Davies was the 15th ranked law firm in the world in GSI's M&A rankings by transaction value, and in the third quarter of last year, we led these rankings worldwide.

J-P was a partner at Davies for over 25 years before he was lured away to join Manulife in July of 2004. Before he left us he was widely regarded as Canada's pre-eminent M&A lawyer. We have been together through many battles over the years, and I can say without hesitation that there is no one I have practiced with or against who I would want to have beside me in a tough deal more than J-P.

My remarks today will be focused on matters of interest relating to northbound Canada/U.S. cross-border M&A activity. The M&A markets in Canada have been red hot over the last three years and show no signs of slowing. Many of the factors that are driving this activity in Canada are common to the U.S., and some are very different. The Canadian economy is strong. Economic forecasts continue to be positive. Corporate balance sheets are healthy. Profit forecasts are also strong. Interest rates remain at historically low levels, and there are few signs of inflationary pressures. Acquisition financing continues to be readily available from a multitude of sources.

Canada has very much of a resource-based economy. The Toronto Stock Exchange dominates listings of mining companies worldwide. Prices of commodities such as nickel, zinc and uranium are trading at record or near record levels. Gold prices and oil prices continue to trade at very high levels. Last year witnessed the completion of the three largest unsolicited takeover bids in Canadian history, all in the resource sector — CVRD's $19 billion acquisition of Inco, Xstrata, a former client of J-P, completed a $23 billion acquisition of Falconbridge, and Barrick Gold completed a $12 billion acquisition of Placer Dome. Virtually all sectors of the Canadian economy saw increased M&A activity in 2006 compared to previous years.

As Sharon described in her remarks, like the United States, a huge M&A driver in Canada in the last few years has been the emergence of the private equity buyer. It has become commonplace for boards of Canadian public companies to include consideration of private equity buyers in virtually every strategic discussion that is focused on change of control alternatives. As I speak, various groups of private equity buyers from both United States and Canada are widely reported to be circling another one of J-P's former clients, BCE Inc., in a transaction rumored to be in the $30 to $40 billion range, a price

Jean-Paul Bisnaire/Manulife Financial

that was thought unachievable by private equity buyers only a few months ago. Private equity buyers typically leverage acquisitions with substantial amounts of debt, often 75% or more of the purchase price paid. In order to service the debt, it is critical that the target generate substantial amounts of free cash flow.

A perfect acquisition target for private equity buyers was created in October of 2006 by Canada's federal government when it announced a new anti-tax leakage policy geared at winding down the entire Canadian income trust sector over the following four year period. A Canadian income trust is a variation on the real estate investment trust model. The structure is designed to exploit a gap in the tax system that allows the vehicle to avoid the double taxation inherent in a corporate structure in which profits earned by a public company are taxed at the corporate level, and when dividends are paid, the dividends also are taxed in the hands of shareholders.

The government's October announcement has had a predictable effect. Enticed by the strong cash flows that characterize income trusts, private equity buyers from both the U.S., Canada and elsewhere are now circling virtually the entire sector, which at the end of last year consisted of 253 trusts with an aggregate market capitalization of almost $190 billion. For a U.S. buyer, Canadian public companies are an easy target relative to the pain and suffering often associated with acquisitions of public companies in the United States. In Canada it is virtually impossible to effectively embed shark repellant provisions in a public company's constating documents because of laws that make it easy for a predator to requisition a meeting of shareholders, to remove directors without cause and regardless of their term of office, to replace directors with a board more friendly to the buyer and to remove any shark repellant provisions that may be embedded in the target company's constating documents.

Many states in the U.S. also have adopted corporate legislation that is intended to assist companies to fend off unwanted change of control transactions. In Canada, the legislative focus has been very much in the opposite direction. The Canadian practice with respect to rights plans also greatly facilitates speedy change of control transactions. In the U.S., the SEC has no effective role in regulating the use of a rights plan by the board of directors of a target company to fend off an unwanted bid. Hostile bidders are forced to go through a long and difficult process to coerce the board into dismantling the rights plan so as to allow the bid to proceed. This process can drag on for many months and in some cases go on for longer than a year.

Canadian securities regulators take a very activist role in policing the use of a rights plan to fend off an unwanted change of control transaction. If a target board refuses to render a rights plan inapplicable to a bid, it is commonplace in Canada for the bidder to apply to the securities regulators for an order to dismantle the plan. In Canada, the law is clear. It is not a question of whether but rather when the rights plan has to go. Rights plans in Canada typically will be terminated within 45 to 70 days from the date on which a bid is first announced.

Another key difference is that in stock-for-stock bids and mergers, there is no need for the buyer's disclosure document to be declared effective by Canadian securities regulators before it is used. This can shave months off of the timeline that would apply to a U.S. stock for stock transaction that requires pre-clearance from the SEC.

Canadian M&A transactions that proceed with target board approval typically include deal protections in favor of the buyer that are substantially identical to what buyers expect for U.S. domestic transactions, including break fees in the range of 2% to 4% of transaction value, non-solicitation covenants and rights to match. U.S. case law regarding the fiduciary obligations of directors of target companies is generally considered to be a very good guide as to what is defensible and what is not in a Canadian M&A transaction. However, it should be noted that the litigious environment that often characterizes U.S. change of control transactions is very seldom seen in Canada.

Finally, if the deal exceeds the applicable size threshold, approval will be required under the Investment Canada Act. The standard to be met is whether the acquisition will be of "net benefit to Canada." Typically, obtaining approval involves negotiating detailed undertakings in which the buyer obligates itself to conduct business in Canada in a particular fashion for several years following closing, dealing with matters such as maintaining the Canadian workforce, research and development spending and similar matters. As a practical matter, a U.S. buyer in a non-sensitive industry should anticipate no practical difficulties in obtaining Investment Canada approval. In 2006, American buyers completed 77 acquisitions in Canada for a total consideration of $44 billion. Our expectation is that those numbers will grow substantially in 2007. Thank you very much.

> "It is really important for the lawyer to be part of the senior executive management team and not seen just as an advisor."
>
> —J-P Bisnaire

MR. FRIEDMAN: Thank you. Our final speaker is H. Rodgin Cohen, Chairman of Sullivan & Cromwell.

MR. COHEN: Thank you, Jack. It's a real pleasure to be here with you and my co-panelists to honor J-P. Among the many talents that a successful general counsel of a large corporation must have today, and one that, as you've heard, J-P possess in abundance, is the ability to advise his or her client on complex mergers and acquisitions. And the most complex M&A transactions of all are those that go cross-border. And so I'm going to be spending a couple of minutes today on several key aspects of cross-border transactions.

Now this topic seems particularly propitious today for two reasons. First, Monday saw the announcement of the largest ever cross-border transaction, the Barclays-ABN Amro merger for about $91 billion, which was jumped today at $98 billion, by a consortium bid. And second, JP guided Manulife through the integration of one of the most groundbreaking and successful cross-border transactions ever, which was the Manulife acquisition of Hancock.

Now there are obviously obstacles to a cross-border transaction that do not arise in an in-country deal. You've got differences in culture, legal systems and political systems, but these obstacles cannot fully explain the relatively limited number of significant cross-border deals.

So let me mention two other key reasons. The first is protectionism, and the second is the legal and regulatory environment in the U.S.

Protectionism remains a major retardant to cross-border M&A activity. In the last several years, we have seen a number of countries place a leading company in that country, or sometimes a not-so-leading, company, off limits to a foreign buyer.

Cross-border protectionism is justified on the basis of a variety of related policies. First there's the so-called national champion policy. The greater glory of the country requires that the country have a leading company in major industries. The second is that a particular company is just too important to the country's economy, whether based on the number of employees or fundamental role in the economic infrastructure. Third, we've got to protect our citizens, whether from improperly manufactured flu vaccine or a terrorist attack. And fourth is reciprocity. We won't let companies in your country acquire companies in our country if you prohibit acquisitions by our companies in your country. Now on the surface that seems fair and reasonable, but it can quickly lead to a downward spiral.

Of course, the purveyors of these policies deny that they are protectionist in intent. Consequently, you really don't see actual legislation or regulation banning cross-border deals. Instead, the protectionism is usually a function of regulatory discretion, denying an application, imposing unacceptable conditions, or making the approval path much smoother for a competing in-country buyer.

Now, U.S. commentators often find much to criticize in the protectionist policies of certain non-U.S. countries. But the adage about glass houses and throwing stones is relevant. It is difficult for the U.S. to maintain, with a straight face, that non-U.S. ownership of our 12th largest oil producer was essential to our access to oil supplies. Likewise, it was difficult to argue logically, albeit it wasn't politically, that ownership of ports by a non-U.S. citizen jeopardized our national security when the security of the ports was independent from ownership.

So let me turn from policy to practice. First, I would suggest that, in any cross-border acquisition of significance, there must be a thorough political plan in place at the outset, to determine feasibility and make it happen. This involves hiring the best advisors and making sure you touch all the relevant political bases. It means developing responses to likely attacks and initiatives to overcome them. Second, in a cross-border transaction, deal momentum and timing, take on even more significance than normal. If a proposal is enthusiastically and promptly embraced by the target's management and shareholders, it's a lot less likely to encounter political opposition. In contrast, if there's uncertainty at the target institution and resultant delay, then there's time for the political opposition to emerge. And this should really come down to making more than a normal effort to convince the target's management of the benefits of a negotiated transaction and not leaving a lot of money on the table. Third, make every effort to accommodate political concerns that are likely to arise by commitments made contemporaneously with the offer. You need to diffuse the political opposition before it arises. Commitments made to diffuse political opposition once it does arise are often too little and too late.

The legal and regulatory environment in the U.S. is so important to cross-border transactions because it applies to virtually every transaction that touches the United States. Even if you've got two companies that are headquartered outside the U.S. and that conduct their businesses principally outside the U.S., the U.S. legal and regulatory system become involved if either company has operations in the U.S., has a substantial stockholder base in the U.S., or is somehow otherwise immersed in the U.S. legal system.

I recently had a highly respected CEO of one of Europe's largest companies tell me that he regarded an investment today in the U.S. as more risky than in any other developed country because of the legal and regulatory environment. Even discounting somewhat for hyperbole, what he said rings true. It's not just the out of pocket expense or the extensive deployment of human resources, as costly as they are. Rather it is the unpredictability of our regulatory and judicial system and the pressure to operate with risk minimization as the dominant principle.

Now how does this environment affect M&A activity? In a variety of ways. There's a formal penal-

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> “[There] is a real backlash against private equity generally. I've seen a significant amount of negative press about the fees that private equity funds charge and the incredible wealth that they're generating for a few individuals.”
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ty box. If you've done the wrong thing, you can't do deals. There's an informal penalty box where regulators are telling you that you shouldn't do deals. Perhaps most importantly, the regulatory environment may have a chilling effect on transactions generally. Potential acquirers may be less willing to enter into a transaction with a target that has entered into an enforcement order or that even is the subject of an ongoing regulatory, much less criminal, investigation.

What are the key regulatory issues? I focus on financial institutions, and for them, money laundering is at the very top. But a key related issue which is coming very much to the forefront is OFAC compliance. I don't think I need to be a prophet to predict there's more to come in the OFAC area, and this will lead to a clash of legal systems.

Before closing, let me offer just three quick comments on points that J-P raised. First, why so much private equity? At least from the seller's side, I see the single biggest driver as the tyranny of quarterly earnings. The relief from not having to worry about that is a terrific motivator. Second, an important point J-P made often goes unrecognized. You can talk a lot about compliance. The point he made, which is so key, is compliance—I think I'm quoting almost exactly—is a grinding everyday function. It's not big principles. Tone from the top is critical, but it's everyday in the trenches. And, finally, a key answer to a number of the issues and problems I have raised is the commitment to ethics as a fundamental element of corporate culture, as J-P so eloquently stressed. In conclusion, I'm delighted to be here to honor J-P and I thank you for having me.


Sharon Geraghty/Torys LLP

MR. FRIEDMAN: We will now move to our next phase, which is the interactive phase. Since Canada is the home country of Manulife, let me pose the following to our panelist. What are the common questions, issues or misunderstandings you may have with American businesspeople, whether it's the regulatory system or anything else? What do Americans need to know about how Canadian business and government work?

MR. BISNAIRE: Canada is a very friendly country, not as litigious as the U.S. We do have class actions, but there are not very many of them. Kevin, I think, touched on the M&A world and most of the major differences and systems. Canada, in large measure, follows the U.S. in many initiatives, usually six months but sometimes years later. In terms of M&A differences, they are quite different and Canada is probably characterized as the most bidder friendly country in the world. So it depends upon your perspective.

MR. FRIEDMAN: Are there powerful unions or not so powerful unions in Canada? Is there anything that Americans don't understand about how businesses function?

MR. BISNAIRE: Canada has industries that are unionized, similar to the U.S. I do not really think it is any different.

MR. FRIEDMAN: How do the Canadians feel about American investment these days in terms of, buying up Canadian resources? Is there a reaction against American economic imperialism there?

MS. GERAGHTY: We're seeing a real sense of fear in Canada, now that our industries and our companies are falling into foreign, usually U.S., hands; that head offices, if they're in Canada, will not remain in Canada and will be head offices in name only. So there is a real tension there. What's interesting is that it hits the front pages a lot, and it is clearly discussed a lot. However, and Kevin touched on this, our regulation over foreign investment is exactly as Kevin described. It is not an impediment to most transactions, and I don't see the government reaching out to do anything about this, other than trying to encourage Canadian businesses and pointing to companies like Manulife who go against that trend.

MR. THOMSON: There was an interesting situation that arose in Canada about—I guess it would now be about three years ago, just before J-P left us where a large publicly traded natural resource issuer named Noranda put itself on the block, and the leading buyer, which ultimately signed an exclusivity agreement with Noranda, and it was publicly announced, was a Chinese enterprise. And for the first time that I can remember going back over 20 years of working in the large M&A industry in Canada, there was a public outcry in Canada about the potential acquisition of a great Canadian resource-based company by a foreigner, but the anxiety was all to do with the fact that the proposed buyer was a Chinese state-owned company.

Had that been an American company or a European company or an Indonesian company that wanted to complete the acquisition, it would have just gone through in the ordinary course. It was the fact that it was a Chinese government-owned agency which was intending to complete the acquisition that caused

From left to right: H. Rodgin Cohen, Jean-Paul Bisnaire, John A. Nadas, Sharon Geraghty and Kevin J. Thomson

the public anxiety. There actually was some talk about forming a parliamentary committee to review the proposed acquisition. The Investment Canada approval process was becoming quite politicized. Ultimately, for a number of reasons, the proposed acquisition just fell apart.

MR. FRIEDMAN: In the United States, financial institutions have to answer to not only the SEC in the financial area but also to the Federal Reserve board. Please provide us with some examples of the agencies that Manulife has to answer to and is it sort of in a national or provincial level?

MR. BISNAIRE: Fortunately on the financial services side, we have an organization called the Office of the Superintendent of Financial Institutions (OSFI), which is a federal government agency. Banking and insurance is principally regulated federally by OSFI. The provinces, which are similar to the states, do have some jurisdiction, but that relates mostly to sales practices. Solvency and franchise issues are the domain of OSFI. The provincial securities commissions also get involved, similar to the SEC. Canada does not have a federal securities agency yet, although there is hope that someday we might. Currently securities is regulated provincially through 10 separate securities commissions, all of which try to cooperate with each other but sometimes they do not do a very good job.

MR. FRIEDMAN: In terms of operating in the United States, what are some of the challenges you face in light of the fact that insurance is regulated by the 50 different states?

MR. BISNAIRE: We have been operating as Manulife in the U.S. for quite a long period of time. Over 100 years now, I guess. So it really was not a big shock acquiring John Hancock. It just significantly increased the scale of our U.S. business.

MR. FRIEDMAN: What are some of the operational challenges of integrating a large American company with a large Canadian company?

MR. BISNAIRE: I think one of the biggest challenges is creating what we call the one company culture, taking what Manulife was and what John Hancock was and making sure that we take the best of both and trying to come up with a one company culture. I think in hindsight the culture is probably more Manulife than it is John Hancock, but it is partly John Hancock. The culture needs to be inculcated into the employees. The merger of financial institutions must not only combine the businesses, it must integrate the people that you've acquired and the franchise. Getting everybody on the same page is critical.

The actual integration of the U.S. operations was not that difficult because John Hancock was much bigger than Manulife, so there really were not that many integration issues in terms of business overlap. We probably had more integration issues on the Canadian operations of both companies, given Maritime Life, which was a Canadian subsidiary of John Hancock. Maritime Life took quite a bit of

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Downtown Harvard Club in Boston, Massachusetts

time to integrate in terms of products, systems and back office. The last thing I'd say is, in any financial services company, one of the biggest areas of integration complexity is IT. A lot can be done within a matter of six months to a year. We are probably still working on IT.

MR. FRIEDMAN: Since life insurance is an important area of your activities and other insurance products and wealth management, what does the aging of the population in the United States and Canada mean to your business?

MR. BISNAIRE: I think it's critically important for any financial institution like ours to be focused on the retirement of the boomers. So we have set up particular groups to focus on that market. We have focused on it through our variable annuity products and our long-term care products. Over the next several months, and certainly coming years, there is going to be a lot more emphasis on that market. In terms of other trends, assisting individuals in some of the other areas where governments have failed both in Canada and the U.S., such as healthcare, social services and retirement may be important.

MR. FRIEDMAN: Let's turn to the deal-making environment, how is it possible to move quickly and efficiently in these deals when you're raising money in different countries? Do you have different agencies? I mean, what do you do? For example, you walk over to Washington, and you get your approvals, and then you walk over to Toronto or some province, and you get the approvals, and the whole thing drags on. How do you get all the approvals done when you do a cross-border deal and move quickly to coordinate all these different agencies and capital markets?

MS. GERAGHTY: I might comment on that. It sounds gratuitous, but here's how to do it: hire great advisors. Coordinating across a lot of different jurisdictions is challenging. And the way you overcome the challenges is what distinguishes great advisors from routine advisors. You really do have to drive to a solution. Find out the weak spots and focus on them. And be prepared to push and to take difficult positions. But I don't think there's any magic bullet in this. Huge amounts of coordination, huge amounts of execution skill and a willingness to drive people very, very hard.

> "We must be much more thorough in pursuing our due diligence on third-party relationships. Many financial institutions will have third-party relationships given the way the industry is evolving in terms of outsourcing, white labeling of products, product manufacturing, distribution relationships, etc. It also taught us a lesson as to the importance of integrity."
>
> —J-P Bisnaire

MR. FRIEDMAN: How big is the team, or who's involved with the team on a major deal? How big is a deal in terms of staffing of the different types of expertise that you're bringing in? Are these mega teams?

MS. GERAGHTY: We almost don't want to say.

MR. THOMSON: Recently, one of the things that has happened on significant M&A transactions is that it has become almost a matter of routine, especially for a Canada/U.S. cross-border transaction, for the SEC to launch an investigation to determine whether there was any insider trading going on in connection with the deal before it was announced. It literally has become almost routine. Within two or three days of announcing a transaction, a letter will come from the SEC saying, we would now like to get a list of every individual who knew about this transaction before the day it was announced. We want all points of contact. We want to know cell phone numbers, home phone numbers, email addresses, and the request list goes on and on.

In the last one of these I had to go through, the one surprise that our client got was finding out after the fact when we had to comply with this request, how many people at the investment banks engaged to work on the transaction had knowledge about the deal before it was announced. It is not uncommon for large international investment banks to involve up to 300 people in a significant transaction before it is announced. The numbers really are staggering.

MR. FRIEDMAN: Let me open this up to the audience. Mr. Bisnaire, I was wondering if you'd talk a little bit about your own background and some of your interests, because not every minute you spend is on business matters.

MR. BISNAIRE: Thanks, Jack. Let me think. I grew up in a very small town of 11,000 people and I went to fairly small universities, one in

Kitchener/Waterloo called Wilfrid Laurier, and then to law school at the University of Ottawa. Ottawa, the capital of Canada, isn't so small, but actually if you lived there you would think it was pretty small. All the civil servants, probably similar to Washington, go home mid-afternoon every day. And you could shoot a cannon down the main streets of Ottawa.

And from there I went to Davies, right out of law school and was there almost 28 years. So small town boy ends up in Toronto, practicing what I did. I consider myself to be very fortunate to have been at Davies. There were only 16 lawyers there when I arrived and I don't know how many lawyers were there when I left, but the firm still had the same feel, and I owe a lot to that firm. I had great mentors, many of whom were very different in terms of style and I kind of picked up their different styles. Took the best of the best I think, and it has served me well.

I have a family of four wonderful children. Knock on wood; all of them are doing incredibly well. All of them have been very athletic and so as a result, my free time is spent mostly following their athletic passions. You asked me what I do for vacation. There is one thing that I do which is inviolate, and that's a four-day fly-fishing trip, which I have taken every year other than a few years. The rest of my vacation is usually devoted to watching one of my kids ski race somewhere or something else related to family life.

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>
> —*John A. Nadas*

MR. FRIEDMAN: Do you recommend that they go into law or don't go into law?

MR. BISNAIRE: Well I told my oldest girl that she would be crazy to go into law. They may still pursue it. It may have been the fact that one them is pursuing a post-graduate degree and recently expressed an interest to go into law, which I questioned. But I think law is a very, very, good career and if that's what they want to do, they always have my full support.

MR. FRIEDMAN: You don't have as much, I assume, civility problems in the law in Canada as they do in the U.S., I assume.

MR. BISNAIRE: Rodgin and others could comment too, but certainly in the M&A practice area, having dealt with lawyers from all over the world, I think that there is a lot of professionalism and mutual respect for the lawyers working in that area.

MR. FRIEDMAN: Within Canada?

MR. BISNAIRE: Within the world. On the litigation side, litigators in Canada can be as aggressive as they are in the United States. I think that is just the nature of the practice.

MR. FRIEDMAN: Mr. Nadas, any comment on litigators? Since you started. I'm not talking personally about your firm or your immediate colleagues, but just in terms of how it's changed since you started out.

MR. NADAS: The pressures are building in so many disciplines, in the business world. But, you know, my experience litigating with under brethren in Canada is there's no difference there. We're all trying to do our jobs under a lot of pressure.

MR. FRIEDMAN: Are there any questions at all from the audience? Yes, sir. Go ahead.

MR. BISNAIRE: I think the question related to how an organization as large as ours ensures that there's consistent legal advice to the various business units. The second question is how the direction from the Board or senior management gets communicated down to the troops or down to the specific business units. I think it principally relates to the phrase: "communicate, communicate, communicate." One can never have enough communication about whatever we are trying to communicate in an organization as big as ours. In terms of the consistency of advice, I think it comes down to the quality of people that you hire, because we are providing legal advice to the business units as well as helping them out with their business problems. You have to have a good quality team in place in every jurisdiction and every jurisdiction is different. You have to have local talent.

MR. FRIEDMAN: How many lawyers does Manulife have?

MR. BISNAIRE: Roughly 130 lawyers, not including paralegals or other staff and not including compliance. So that's just strictly law. The lawyers are spread out across the globe, so in terms of communicating down, I meet every two weeks or so by teleconference, sometimes by videoconference. I meet with my direct reports to discuss various matters and to receive a report from each of them as to what is happening in their jurisdiction.

Everybody assists in helping others in solving their bigger issues. Sometimes we have compensation issues that we have to deal with. There are also frequent visits by me and others among the senior group to get a measure as to how good our resources are, and also getting feedback from the business units in terms of how they're performing. So I think that that is the best way to handle it, which I think covers both your points.

MR. FRIEDMAN: How do you work with outside law firms? What is your approach?

MR. BISNAIRE: Well my approach is that I value outside legal advisors, having recently come from the outside. I want to have a real partnering relationship with them, because if you don't have that relationship you will not necessarily get the value-added advice that you want or deserve. They are not just a service provider. They are somebody that hopefully you trust and they trust you.

MR. FRIEDMAN: I'd like to thank our speakers, and, our guest of honor in particular, and I'd like to thank the audience, because the roundtable in the end is the audience, and I want to thank you very much. I do think that your comments, J-P, and the other panelists have effectively presented the seriousness with which you take ethical issues in your international worldwide operations. I think you've done a very good job on that, and I thank you very much.

MR. BISNAIRE: Thank you very much, Jack. ■

Jean-Paul Bisnaire

Senior Vice President, Business Development and General Counsel,
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Jean-Paul Bisnaire is the Senior Executive Vice President, Business Development and General Counsel of Manulife Financial. J-P. is responsible for overseeing worldwide the functions of business development, law, compliance, internal audit, information technology and corporate secretary. Manulife Financial is a leading Canadian-based financial services group serving millions of customers in 19 countries and territories worldwide. Operating as Manulife Financial in Canada and Asia, and primarily through John Hancock in the United States, the Company offers clients a diverse range of financial protection products and wealth management services through its extensive network of employees, agents and distribution partners. Until July 2004 he was a senior corporate law partner of Davies Ward Phillips & Vineberg LLP.

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John A. Nadas is a Co-Managing Partner at Choate Hall & Stewart LLP as well as a member of its Insurance & Reinsurance Group. Mr. Nadas is a business litigator with diverse trial and appellate experience in state and federal courts.

Although Mr. Nadas has a broad background in complex commercial disputes, he spends the majority of his time representing insurance companies in a wide range of insurance coverage disputes, bad faith claims and disputes on behalf of reinsurers and cedents.

Mr. Nadas received his BA, *with honor honors*, *Phi Beta Kappa*, from Swarthmore College in 1973 and his JD from Cornell Law School in 1976.

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Sharon Geraghty is co-head of Torys' M&A Group. Her practice focuses on M&A, corporate governance and securities law, and she has a particular interest in going-private transactions and related governance and conflict- management issues. Sharon has led both domestic and cross-border acquisitions, takeover bids and amalgamations in both the public and private markets.

She is frequently interviewed by the media on M&A topics, most recently on hostile takeover bids and Canada's private equity buyout climate. She also writes regularly on M&A trends in Canada and the United States.

Sharon is recognized by the *Canadian Legal Lexpert Directory* as a leading corporate/commercial lawyer.

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Kevin J. Thomson is a senior partner in the Toronto office of Davies Ward Phillips & Vineberg LLP and a member of the firm's Management Committee.

Mr. Thomson has acted for bidders, target companies and board special committees in numerous solicited and unsolicited public take-over bids and privately negotiated acquisitions across a broad range of industries, including extensive transactional experience in the mining sector. He regularly works on multi-national transactions involving jurisdictions around the world, including the United States, various countries in Western and Eastern Europe, Latin America, South America, Asia and Africa and Australia. He also practises in the securities law and corporate finance areas, providing counsel on securities law matters, initial public offerings and private equity fund formations.

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H. Rodgin Cohen acts in acquisitions, regulatory, corporate governance and securities laws matters for domestic and foreign financial institutions.

Mr. Cohen has been engaged in most of the major U.S. bank acquisitions, as well as many significant cross-border bank and other financial services acquisitions and securities transactions. Mr. Cohen also has worked on a wide range of bank regulatory and investigative matters with four U.S. bank regulatory agencies and other U.S. and non-U.S. governmental agencies on behalf of many of the largest U.S. and non-U.S financial institutions and trade associations.

Mr. Cohen has been Chairman of Sullivan & Cromwell since 2000

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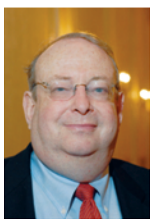

JACK FRIEDMAN

Chair, Moderator
Director's Roundtable

DIRECTORS ROUNDTABLE

Jack Friedman, Chair of the Director's Roundtable, is an executive and attorney active in diverse business and financial matters. He has appeared on ABC, CBS, NBC, CNN and PBS, and has authored numerous business articles in the *Wall Street Journal*, *Barron's*, and the *New York Times*.

Mr. Friedman has served as an adjunct faculty member of Finance at Columbia University, NYU, UC (Berkeley), and UCLA. He received his MBA in Finance and Economics from Harvard Business School and a J.D. from the UCLA School of Law.

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