

2003 Evian Final Compliance Report

World Economy and Growth

Commitment

2003 — 5: “We reaffirm our commitment to strengthen investor confidence by improving corporate governance, enhancing market discipline and increasing transparency”.

Background

Recent scandals involving large corporate entities have heightened concern over the accountability of both private and public firms. The G8 recognizes that effective regulation and transparent corporate governance practices are essential to the efficient functioning of capital markets and the fostering of economic growth. The Evian Summit resulted in the release of two documents that specifically address these concerns: *Fostering Growth and Promoting a Responsible Market Economy* and *Fighting Corruption and Improving Transparency: A G8 Action Plan*. French President Jacques Chirac, and the other G8 leaders, kept these documents in mind when they framed the above commitment in the macroeconomic growth section of the *Chair’s Summary*.

Assessment

Score	Lack of Compliance -1	Work in Progress 0	Full Compliance +1
Canada			+1
France		0	
Germany			+1
Italy	-1		
Japan		0	
Russia		0	
United Kingdom		0	
United States			+1
Overall			+0.25

Individual Country Compliance Breakdown:

1. Canada: +1

In June 2003 the Canadian government announced the creation of six Integrated Market Enforcement Teams (IMETs) composed of RCMP investigators, federal lawyers and investigative experts solely dedicated to capital markets fraud cases.³ In early 2004 two IMETs were established in Toronto, with a third being launched in Vancouver. Nine IMETs will eventually be established at major financial centres across Canada, including Montreal and Calgary.⁴ On 12 May 2004, for example, the Greater Toronto Area IMET arrested a former

³ Department of Justice Canada, “Government of Canada Announces New Measures to Deter Capital Markets Fraud,” 12 June 2003, Ottawa, May 2004 <canada.justice.gc.ca/en/news/nr/2003/doc_30926.html>.

⁴ Royal Canadian Mounted Police, “Federal and International Operations,” 15 March 2004, May 2004 <www.rcmp-grc.gc.ca/fio/imets_e.htm>.

HSBC administrator and charged him with Theft Over \$5000 and Launder the Proceeds of Crime under the Criminal Code of Canada.⁵

In February 2004 the Canadian Justice Ministry announced the reinstatement of proposed legislation to tackle capital markets fraud. The legislation proposes a new Criminal Code offence of improper insider trading, targeting employees; protection for employees who report unlawful corporate conduct; raising maximum sentence for existing market-related offences; provide federal prosecutorial authority for cases that threaten the national interest in the integrity of Canadian capital markets; and enhance the evidence-gathering tools of investigators through the addition of production orders to the Criminal Code.⁶

Canadian Justice Minister Irwin Cotler was encouraged by the significant progress made at the May 2004 meeting of G8 Ministers for Justice and Home Affairs regarding corruption.⁷

In May 2004 Industry Canada released a report that aims to improve standards of corporate governance for federally incorporated companies, through proposed amendments to the Canada Business Corporations Act.⁸ The paper notes that the federal government's 2004 Budget made a commitment to amend the Canada Business Corporations Act (CBCA) to enhance the transparency and accountability of corporations towards investors and shareholders. The report is a first step to satisfying this commitment. The report proposes that the majority of directors of distributing corporations be independent; that distributing corporations either separate the functions of Board Chair and CEO or, provide for an independent lead director; that audit committees of distributing corporations be composed only of independent directors; that the audit committee recommend the auditor to the board of directors prior to the board's approval of the management proxy circular; that there be independent nominating and compensation committees for distributing corporations; that a clear standard definition of 'independent director' be adopted in the CBCA Regulations; that auditors of distributing corporations be a participating firm in the Canadian Public Accountability Board; that the financial statements of distributing corporations be certified by the CEO and CFO; that CBCA penalties be amended to match securities legislation penalties where corporate and securities legislation overlap; and, that an offence be created for CEO and CFO misrepresentations with regard to the certification of financial statements.

Governance Metrics International (GMI), a corporate governance research and ratings agency, ranked Canada first out of the 20 OECD countries it surveyed. The GMI study analyzed board

⁵ Canada NewsWire, "Former securities 'Re-org' Administrator arrested," 12 May 2004, Toronto, May 2004 <www.newswire.ca/en/releases/archive/May2004/12/c2356.html>.

⁶ Department of Justice Canada, "Government of Canada Reinstates Legislation to Deter Capital Markets Fraud," 12 February 2004, Ottawa, May 2004 <canada.justice.gc.ca/en/news/nr/2004/doc_31122.html>.

⁷ Department of Justice Canada, "Justice Minister Attends G8 Meeting," 11 May 2004, Washington, May 2004 <canada.justice.gc.ca/en/news/nr/2004/doc_31188.html>.

⁸ Industry Canada, "Towards an Improved Standard of Corporate Governance for Federally Incorporated Companies: Proposals for Amendments to the Canada Business Corporations Act," 28 May 2004 <strategis.ic.gc.ca/epic/internet/incilp-pdci.nsf/en/h_cl00730e.html>.

accountability, financial disclosure and internal control, executive compensation, shareholder rights, ownership base, takeover positions, and corporate behaviour and responsibility.⁹

2. France: 0

France has partially fulfilled its commitments in the area of World Economy as outlined at the 2003 Evian Summit. The majority of the actions and initiatives taken by the French government were completed in 2003. Since then, the government has been focused primarily on promoting growth and investment in the French economy, at the expense of further efforts on corporate governance, transparency and corruption. Although the opposition Parti Socialiste has called for an independent audit of government accounts, accusations of malfeasance appear to be politically motivated rather than driven by fraud or a genuine lack of transparency.¹⁰ The issues of market efficiency, corporate governance and transparency, however, have become even more complicated in France since the introduction of pension funds in April of this year. Private pension plans not included in the current law accounted for over €7 billion of transactions last year alone.¹¹ Without proper structures to regulate the challenges and inefficiencies unique to this form of security, French regulators could find their current efforts to increase market efficiency come to naught.¹² In addition to the positive developments noted in the Interim Compliance Report, the French Republic has achieved two important milestones. In the realm of corruption, the trial and conviction of former Prime Minister Alain Juppé appears to have greatly affected perceptions of graft in France. The court's verdict, despite alleged pressure from various members of the UMP, marks the end of an era of lax attitudes toward corruption in public administration.¹³ Second, France has taken positive steps towards encouraging business participation in the Extractive Industries Transparency Initiative (EITI). At a UN sponsored conference on corruption in Paris in January 2004, Jacques Chirac announced that he would seek greater inclusion of the goals and principles of the EITI in the Global Compact Network France, a collection of 230 leading French companies committed to respect for human rights, transparency and the environment in their business practices.¹⁴

3. Germany: +1

In January 2004 Germany introduced a bill that increases the transparency of financial transactions through the telephone or the internet for consumers. Firms are to be held to a higher standard of information provision for end users.¹⁵

⁹ International Chamber of Commerce, "North America, Australia head ratings, Japan bottom, most of Europe lags," 12 February 2004 <www.iccwbo.org/CorpGov/stories/February_23_2004-GMIrating.asp>.

¹⁰ Pascal Sauvage, "The Sarkozy Plan, "False Launch" and "Real Austerity" According to Hollande", *Libération*, 6 May 2004. [Unofficial Translation].

¹¹ *Le Monde*, "Jean-Pierre Raffarin Signs The Birth Certificate of Pension Funds", 23 April 2004. [Unofficial Translation]

¹² *Financial Times Ltd.*, "French Activism has a Long Way to Go", 19 April 2004, p. 6.

¹³ *Time*, "Shock to the System", 16 February 2004, p. 32.

¹⁴ M2 Presswire, "UN Global Compact to Convene International Meeting in Transparency and Fight Against Corruption in Paris", 26 January 2004.

¹⁵ German Ministry of Justice, "More consumer protection with financial transactions through mouse-click," 28 January 2004, Berlin, unofficial translation, May 2004.

In April 2004 the German Federal Cabinet drafted a balance right reform law (BilReG) and a balance control law (BilKoG) that aim to increase corporate integrity. They emphasize transparency and self-monitoring to improve investor confidence. The regulations will begin being applied in January 2005. The laws emphasize the harmonization of accountancy standards with internationally accepted norms; ensuring the independence of auditors; and, an improvement in the monitoring of enterprise reports.¹⁶

In May 2004 Germany introduced a draft law that introduced the European Union's SEEG. The law will facilitate German companies' transnational ambitions through the implementation of uniform enterprise structure. Particular emphasis is placed on the rules governing corporate boards of directors.¹⁷

4. Italy: -1

Italy has failed to fulfill its commitments in the realm of World Economy as stated at the 2003 Evian Summit. The prime obstacle to the Italian government's compliance remains the ties between the current government of Silvio Berlusconi and the media industry.¹⁸ Political interference and supposed conflicts of interest have led to the resignation of several key managers of RAI, the state-owned television and radio company.¹⁹ The most immediate issue of concern, however, is the case of Parmalat and the fraud allegedly committed by the head of the agri-foods group, Calisto Tanzi.²⁰ Although the Minister of the Economy, Giulio Tremonti, claimed that the fiasco might cost Italian tax payers €11 billion and would require a major overhaul of the country's financial regulatory framework, little appears to have been done to correct the corporate governance loopholes that allowed the scandal to occur.²¹ As well, the impotence of the Italian government in dealing with the opacity of certain financial sectors and the malfeasance of directors has been further highlighted by the Banca 121 case. It has emerged that Banca 121 continued to sell its misrepresented financial products to poorly informed investors even after Minister Tremonti, wrote to then governor of Banca 121 Antonio Fazio concerning the faulty products.²² Finally, Italian corporate governance is only further tarnished by the emerging investigation into the financial firm Azioni Capitalia of Milan. The firm is alleged to have aided in illegal activities conducted during the bankruptcy of another firm, Cirio.²³ Without strong government leadership in the area of corporate governance and regulatory reform, it is highly probable that Italian investors will soon lose confidence in the

¹⁶ German Ministry of Justice, "Balance right reform and balance control strengthen enterprise integrity and investor protection," 21 April 2004, Berlin, unofficial translation, May 2004.

¹⁷ German Ministry of Justice, "European corporation strengthens the international competitive ability of German enterprises," 26 May 2004, Berlin, unofficial translation, May 2004.

¹⁸ La Repubblica, "RAI Occupied, Degeneration of the Democratic System", 6 May 2004. [Unofficial Translation].

¹⁹ Jean-Jacques Bozonnet, "Tension Between the President of RAI and the Italian Government", Le Monde, 2 May 2004. [Unofficial Translation].

²⁰ La Stampa, "A New Exchange of Accusation between Treasury and BankItalia", 18 January 2004. [Unofficial Translation].

²¹ Jean-Jacques Bozonnet, "Parmalat Could Cost Italians 11 billion euros", Le Monde, 16 January 2004. [Unofficial Translation].

²² La Repubblica, "Banca 121, Fingering Fazio, BankItalia: 'It's A Necessary Step'", 24 February 2004, www.repubblica.it/2003/l/sezioni/economia/banca121/fazind/fazind.html. [Unofficial Translation].

²³ La Repubblica, "Geronzi Fingering for Cirio Even by the Milanese Prosecutor", 2 March 2004, www.repubblica.it/2004/a/sezioni/economia/cirio2/geroinda/geroinda.html. [Unofficial Translation].

country's capital markets and corporate structures.²⁴ Market transparency and efficiency have themselves been harmed by persistent speculation and discussion over possible government intervention in various football clubs²⁵ and Alitalia²⁶, the national carrier. On a positive note, the securities regulatory, Consob, has utilized European Union directives to sanction those corporations based in Italy seeking investment funds without proper certification from the Italian authorities.²⁷ Italy has thus far made no serious attempts at fulfilling its commitments to the Extractive Industries Transparency Initiative, of which it is a signatory member.

5. Japan: 0

In February 2004 Japanese firms outlined their commitment to corporate social responsibility, however, they emphasized that companies pursue their own corporate strategies and priorities through the adoption of non-standardized voluntary guidelines.²⁸

In April 2004 the Japanese Business Federation and UNICE issued a joint statement supporting the development of a single internationally accepted set of accounting standards. Particular emphasis was placed on the work of the International Accounting Standards Board (IASB).²⁹

In May 2004 the Japanese Business Federation, Nippon Keidanren, called for the improvement of corporate law and the tax system, and regulatory reforms, aimed at improving transparency and promoting competition to strengthen Japanese corporations' position in the global market.³⁰

Governance Metrics International (GMI), a corporate governance research and ratings agency, ranked Japan last out of the 20 OECD countries it surveyed. The GMI study analyzed board accountability, financial disclosure and internal control, executive compensation, shareholder rights, ownership base, takeover positions, and corporate behaviour and responsibility.³¹

6. Russia: 0

Russia has partially fulfilled its commitments in the area of World Economy as outlined at the 2003 Evian Summit. In January, the Russian government began discussion of a new anti-corruption campaign, although many critics in the country's media doubted the sincerity of the long-awaited plan or its efficacy in eliminating the influence of money in political circles.³²

²⁴ Corriere Della Sera, "Ciampi: Trust is Essential for the Economy", 27 February 2004. [Unofficial Translation].

²⁵ BBC News, "Italian Football Finances Probed", 28 February 2004.

²⁶ BBC News, "Bankruptcy Warning for Alitalia", 4 May 2004.

²⁷ La Stampa, "Consob Blocks Seven Sites of a Mysterious Firm: Avatar", 22 February 2004. [Unofficial Translation].

²⁸ Nippon Keidanren, "Nippon Keidanren Position Paper on Promoting Corporate Social Responsibility," 17 February 2004, Tokyo, May 2004 <www.keidanren.or.jp/english/policy/2004/017.html>.

²⁹ Nippon Keidanren, "Joint Statement of International Accounting Standards," 19 April 2004, Tokyo, May 2004 <www.keidanren.or.jp/english/policy/2004/032.html>.

³⁰ Nippon Keidanren, "Developing a New Frontier by Nurturing Corporate Dynamism," 27 May 2004, Tokyo, May 2004 <www.keidanren.or.jp/english/policy/2004/045.html>.

³¹ International Chamber of Commerce, "North America, Australia head ratings, Japan bottom, most of Europe lags," 12 February 2004 <www.iccwbo.org/CorpGov/stories/February_23_2004-GMIrating.asp>.

³² Pravda, "Corruption – it's a gift for Russia", politics.pravda.ru/politics/2004/1/1/15722_CORRUPTION.html, 16 January 2004. [Unofficial Translation]

Members of Russian anti-corruption organizations predict that if serious steps are not taken to eradicate corruption in Russia — which they claim has permeated every aspect of Russian life — ordinary citizens will lose faith in the parliamentary system and Russia’s democratic institutions.³³ Russia’s government has continued to pursue the country’s so-called oligarchs, whom it accuses of corporate malfeasance, fraud and tax evasion, among other crimes. In March, the government first demanded \$1 billion US in back taxes from the oil firm Sibneft, owned by Roman Abramovich. Two days later, it demanded a further \$420 million US.³⁴ Although critics assert that the government’s actions are politically motivated, official sources maintain that oil firms deflated the selling prices of oil products in their financial statements in order to evade taxes. Similar accusations have been leveled against the oil firm YUKOS, whose president Mikhail Khodorkovsky is awaiting trial on fraud and other charges. In April, YUKOS’s offices were raided as part of the investigation into the alleged tax evasion.³⁵ The Russian government has also taken several less contentious steps towards strengthening transparency and corporate governance in the country. In April, Coordinator of the National Committee on Corporate Governance Astopovich announced that a conference of experts on corporate governance would be held in Moscow in June.³⁶ As well, in a survey conducted by the ratings agency S&P, 80% of investors questioned believed that corporate governance in Russia had improved since the 1990s.³⁷ Prior to President Putin’s shuffle of his government in February, then Prime Minister Kasyanov announced that the Russian government would pursue anti-monopoly legislation and other mechanisms aimed at improving market efficiency by 2007.³⁸ Whether or not such plans will be completed remains the prerogative of the new government, confirmed after the March 2004 presidential elections. Despite being a signatory to the EITI, Russia has yet to fulfill any of the commitments outlined in this agreement.

7. United Kingdom: 0

The UK Department of Trade and Industry has wound up several firms in 2004 including a company that received more than £100 million by selling derelict boarded-up houses in an elaborate investment scam³⁹ and a firm that charged exorbitant fees to list business entries on an internet business directory.⁴⁰

In February 2004 the Director of the UK’s Serious Fraud Office (SFO), Robert Wardle, noted that the Corporation of London and the Home Office have pledged an additional £4 million in

³³ Pravda, “Sergei Stepashin knows how to save Russia from corruption”, economics.pravda.ru/economics/2004/7/21/58/16045_CORRPTION.html, 15 February 2004, [Unofficial Translation]

³⁴ BBC News, “Sibneft ‘hit by further tax bill’”, 4 March 2004.

³⁵ BBC News, “Tax Police Raid Oil Giant Yukos”, 22 April 2004.

³⁶ Interfax, “Press Conference on Corporate Governance in Russia”, 20 April 2004.

³⁷ WPS, “National Report About the State of Corporate Governance in Russia, which President Vladimir Putin will present at the G8 meeting, has been partially disclosed”, 22 April 2004. [Translation on nexis.com]

³⁸ Vesti, “An Electro-energy Market Will Be Formed in 2004”, 16 January 2004. [Unofficial Translation]

³⁹ UK Department of Trade and Industry, “Property Investment Companies Wound Up Following DTI Investigation,” 1 March 2004, London, May 2004
<213.38.88.221/gnn/national.nsf/TI/AF21CD4B03F0B34E80256E4A005B96EF?opendocument>.

⁴⁰ UK Department of Trade and Industry, “Online Business Index Wound Up,” 28 January 2004, London, May 2004
<213.38.88.221/gnn/national.nsf/TI/8843F7EF708930BC80256E29005DC118?opendocument>.

funding to increase the number of City of London Police detectives dedicated to tackling fraud. Wardle added that the SFO will be receiving a fifty percent increase in funding over the next two years.⁴¹

The SFO has dealt with several fraud cases in 2004 including dockets concerning three construction industry professionals that wrongfully invoiced six contracts for £15 million; false accounting practices of a former finance manager of the Milk Development Council; executives involved West Midlands based high yield investment fraud; and, executives involved in a worldwide advance fee fraud conducted through a venture capital business.⁴² Governance Metrics International (GMI), a corporate governance research and ratings agency, ranked the UK fourth out of the 20 OECD countries it surveyed. The GMI study analyzed board accountability, financial disclosure and internal control, executive compensation, shareholder rights, ownership base, takeover positions, and corporate behaviour and responsibility.⁴³

8. United States: +1

The US Department of Justice Antitrust Division was busy in 2004, seeing NEC-Business Network Solutions Inc. pleading guilty to bid rigging and wire fraud charges, resulting in a US\$20.6 million dollar fine and restitution; ordering Microsoft's Bill Gates to pay US\$800,000 for violating antitrust premerger notification requirements; and, making Crompton Corporation pay US\$50 million for participating in a rubber Chemicals cartel, among others.⁴⁴

The Justice Department and Federal Trade Commission hosted a joint workshop on merger enforcement from 17-19 February 2004 in Washington, D.C.⁴⁵ The workshop was open to the public and its agenda spanned issues like applying a monopolist test, concentration and market shares, non-price competition and innovation, efficiencies and dynamic analysis.⁴⁶

In March 2004 the US Securities and Exchange Commission (SEC) held a roundtable discussion regarding proposed security holder nomination rules.⁴⁷ The roundtable addressed the proxy process by which directors are nominated and elected, the possible disclosure of security holder nominees in company proxy materials, security holder rights, the impact on retail and other investors, and, the voting mechanics of the proposed initiatives.

⁴¹ UK Serious Fraud Office, "Adam Smith Institute Fraud Seminar," 26 February 2004, Westminster, May 2004 <www.sfo.gov.uk/publications/speechesout/sp_79.asp?id=79>.

⁴² UK Serious Fraud Office, "Press Release Archive 2004," 25 May 2004 <www.sfo.gov.uk/news/pr_archive.asp>.

⁴³ International Chamber of Commerce, "North America, Australia head ratings, Japan bottom, most of Europe lags," 12 February 2004 <www.iccwbo.org/CorpGov/stories/February_23_2004-GMIrating.asp>.

⁴⁴ US Department of Justice, Antitrust Division, "2004 Press Releases," May 2004 <www.justice.gov/atr/public/press_releases/2004/index04.htm>.

⁴⁵ US Department of Justice, "Justice Department/Federal Trade Commission to Host Joint Workshop on Merger Enforcement," 11 February 2004, Washington, D.C., May 2004 <www.justice.gov/atr/public/press_releases/2004/202426.htm>.

⁴⁶ US Department of Justice, "Merger Enforcement Workshop: Workshop Agenda," 17-19 February 2004, Washington, D.C., May 2004 <www.justice.gov/atr/public/workshops/mewagenda2.htm>.

⁴⁷ US Securities and Exchange Commission, "Agenda for Roundtable Discussion on Proposed Security Holder Director Nomination Rules: March 10, 2004," 10 March 2004, Washington, D.C., May 2004 <www.sec.gov/spotlight/dir-nominations/dir-nom-agenda.htm>.

The SEC charged Scott D. Sullivan, WorldCom's former CFO, with a civil action accusing him of engaging in multi-billion dollar financial fraud in March 2004.⁴⁸ The Commission alleged that Sullivan "caused numerous improper adjustments and entries in WorldCom's books and records, often in the hundreds of millions of dollars...made numerous false and misleading public statements about WorldCom's financial condition and performance and signed a number of SEC filings that contained false and misleading material information".⁴⁹

The SEC held a hearing on modernizing the regulatory framework for the National Market System, or Regulatory NMS, in April 2004.⁵⁰ The hearing sought to promote dialogue on the development of the regulation that "in its current form is designed to encourage honoring the best price between markets by establishing a uniform trade-through rule for both exchange and Nasdaq listed securities, with proposed exceptions for slow markets and informed investor opt-outs."⁵¹

In May 2004 the SEC charged a former Managing Director for Investor Relations and Corporate Secretary for Enron Corp. for violating the antifraud provisions of the federal securities laws.⁵² Fraud charges were also brought against Enron's former President, CEO, Chief Operating Officer, Chief Accounting Officer, and CFO in 2004.⁵³

In 2004 the SEC made final rulings on regarding market timing and selective disclosure of portfolio holdings, shareholder reports and quarterly portfolio disclosure of registered management investment companies, and, management responsibilities in international control over financial reporting.⁵⁴

Governance Metrics International (GMI), a corporate governance research and ratings agency, ranked the US second out of the 20 OECD countries it surveyed. The GMI study analyzed board accountability, financial disclosure and internal control, executive compensation, shareholder rights, ownership base, takeover positions, and corporate behaviour and responsibility.⁵⁵ The US portion of the study was the most thorough, analyzing 1159 firms.

⁴⁸ US Securities and Exchange Commission, "SEC Charges Scott D. Sullivan, WorldCom's Former Chief Financial Officer, with Engaging in Multi-Billion Dollar Financial Fraud," 2 March 2004, May 2004 <www.sec.gov/litigation/litreleases/lr18605.htm>.

⁴⁹ US Securities and Exchange Commission, "SEC Charges Scott D. Sullivan, WorldCom's Former Chief Financial Officer, with Engaging in Multi-Billion Dollar Financial Fraud," 2 March 2004, May 2004 <www.sec.gov/litigation/litreleases/lr18605.htm>.

⁵⁰ US Securities and Exchange Commission, "Speech by SEC Chairman: Opening Statement at the Regulation NMS Hearing," 21 April 2004, New York, May 2004 <www.sec.gov/news/speech/spch042104whd.htm>.

⁵¹ US Securities and Exchange Commission, "Speech by SEC Chairman: Opening Statement at the Regulation NMS Hearing," 21 April 2004, New York, May 2004 <www.sec.gov/news/speech/spch042104whd.htm>.

⁵² US Securities and Exchange Commission, "SEC Charges Paula . Reiker with Violating Federal Securities Laws While Serving as Investor relations Official at Enron," 19 May 2004, May 2004 <www.sec.gov/litigation/litreleases/lr18717.htm>.

⁵³ US Securities and Exchange Commission, "Enron-Related Enforcement Actions," May 2004 <www.sec.gov/spotlight/enron.htm>.

⁵⁴ US Securities and Exchange Commission, "SEC Final Rules," May 2004 <www.sec.gov/rules/final.shtml>.

⁵⁵ International Chamber of Commerce, "North America, Australia head ratings, Japan bottom, most of Europe lags," 12 February 2004 <www.iccwbo.org/CorpGov/stories/February_23_2004-GMIrating.asp>.

9. *European Union

To come.