Mexican Corporations Entering And Leaving U.S. Markets: An Impact Of The Sarbanes-Oxley Act Of 2002?

Eugenio J. Cárdenas, Stanford Law School
MEXICAN CORPORATIONS ENTERING AND LEAVING U.S. MARKETS: AN IMPACT OF THE SARBANES-OXLEY ACT OF 2002?

Eugenio J. Cárdenas*

TABLE OF CONTENTS

I. INTRODUCTION: STATEMENT OF TOPIC, HYPOTHESIS AND SYNOPSIS ..................................................................................................................282
II. THE SARBANES-OXLEY ACT AND CROSS-LISTING IN THE UNITED STATES: AN OVERVIEW ........................................................................287
   A. General Conception of the Act ........................................................................287
   B. Significant Sarbanes-Oxley Provisions ...............................................................289
   C. Broad Perspective of U.S. Cross-listing and the Act ...........................................291
III. SARBANES-OXLEY AS A FACTOR IN THE LISTING AND DELISTING OF MEXICAN CORPORATIONS .................................................................295
   A. Mexico as a Player in the Corporate Governance Movement ..............................295
   B. Why Would Sarbanes-Oxley Cause the Delisting of Mexican Firms? ..................297
      1. Double Enforcement and Regulation ...............................................................297
      2. Officer and Director Liability .....................................................................300
      3. The Burden of Cost; Section 404 ..................................................................302
      4. Low Trading Volume and Liquidity .................................................................305
      5. Other Market Alternatives for Mexican Firms .................................................305
   C. Mexican Corporation Migration before and after Sarbanes-Oxley .................309
      1. Who Has Left and Why? .............................................................................311
         a. Apparent Exceptions to the Rule .................................................................311
            i). Savia, S.A. de C.V. ..............................................................................311
            ii). Corporación Durango, S.A. de C.V. .....................................................312
         b. SOX into Play .............................................................................................313
            i). Internacional de Cerámica, S.A. de C.V. ...............................................313
            ii). Desc, S.A. de C.V. ..............................................................................315
            iii). Grupo Industrial Maseca, S.A. de C.V. .............................................317
            iv). Grupo IMSA, S.A. de C.V. ..................................................................318

* Master of Laws (LL.M.) Graduate, 2007, Harvard Law School / Consultant, Program on International Financial Systems, Harvard Law School. Special thanks go to Professor Hal S. Scott from Harvard Law School, for his invaluable guidance and advise. I am also equally grateful to Professor Mark J. Roe for supervising this paper, to Professors Reinier H. Kraakman and John C. Coates IV from Harvard Law School, and to Eugenio Amador from the John F. Kennedy School of Government, Harvard University, for their counsel, as well as to my wife, Liz Handal, for her unconditional support.
v). Controladora Comercial Mexicana, S.A. de C.V. ................321
vi). Elamex, S.A. de C.V. ........................................323
c). Was SOX Really It? .............................................324
i). TV Azteca, S.A. ..................................................324
ii). Grupo Iusacell, S.A. de C.V. .................................324
iii). Grupo Elektra, S.A. de C.V. .................................324
IV. CONCLUSION AND OUTLOOK OF THE MEXICAN
CORPORATION IN THE U.S. ..........................................329
A. Concluding Remarks ...........................................329
B. Forecast for the Mexican Firm in the United States ....332

Exhibit 1. NYSE Foreign Issuer Additions and Delisting 2003-2008 ....335
Exhibit 3. NYSE ADR Additions 2000-2008 .......................337
Exhibit 4. List of NYSE and NASDAQ Firms also listed in the Mexican
Stock Exchange .....................................................338
Exhibit 5. List of the Firms Delisted from NYSE and NASDAQ, Dec. 31,
Exhibit 6. NASDAQ Mexican Listed Companies ..................339
Exhibit 8. Interviews ................................................341
Exhibit 9. Interviews ................................................353

I. INTRODUCTION: STATEMENT OF TOPIC, HYPOTHESIS, AND SYNOPSIS

What has led to the dramatic decline of cross-listing in U.S. markets since 2002? A significant number of foreign issuers have delisted their American Depositary Receipts (ADRs) from the New York Stock Exchange (NYSE), accompanied by an impressive plunge in the number of Mexican firms seeking U.S. listings, among other shocking facts.¹ It is notable that this trend followed the enactment of the Sarbanes-Oxley Act of 2002² (hereinafter, “Sarbanes-Oxley”, “SOX” or “the Act”), considered by many to be an excessive and rushed political response by Congress to the 2001 Enron and WorldCom scandals, aimed at restoring investor confidence.³

With respect to company delisting, the Mexican case was the most pronounced, yielding the highest number of withdrawals.⁴ My purpose will be to

⁴ See New York Stock Exchange, supra note 1 (providing data to show that as of Dec. 31, 2002 there were twenty-four Mexican corporations listed in the NYSE and to this date only sixteen are left: a total of eleven delisted and only two have registered); see also NASDAQ: International Companies, http://www.nasdaq.com/asp/NonUsOutput.asp?page=M&region=latinamerica (last visited
determine whether the departure of considerable numbers of Mexican corporations from U.S. markets in the last five years may in fact be attributed to Sarbanes-Oxley and, if so, for what motives. Furthermore, the Mexican case is also worth studying because, among other issues, Mexico is not only a neighbor country to the U.S. but also an important business partner.

Many analysts predicted that the Act would have a considerable international impact and deter cross-listing because of the resulting shift from simple disclosure to complex substantive corporate governance provisions. It has also been noted that the Act made no distinction in its application with respect to foreign issuers, and that Congress gave very little consideration to such an issue, due to the rush and pressure to legislate. On the other hand, analysts also thought that the Act would not have that strong an impact. Among other reasons, the benefits of cross-listing in U.S. capital markets and the amount of requirements and high costs involved in withdrawing a listing were expected to maintain the status quo.

It has apparently been difficult to determine whether Sarbanes-Oxley was a factor in particular cases of delisting. A significant amount of time had to pass since its enactment before any results could be reflected. Nevertheless, more than five years after the Act came into effect, the Committee on Capital Market Regulation (CCMR), an important organization dedicated to improving the competitiveness of the U.S. capital markets by reducing regulation has recently advocated changes in regulation and enforcement. CCMR has suggested reducing the requirements of the Act, in particular Section 404 related to the certification of a firm's internal controls.

There is an interesting array of issues facing corporations that are considering whether to cross list their securities in U.S. markets. In cases of very large multinational corporations with worldwide operations, the benefits of liquidity and

---

5. Mexican corporations considered as reporting companies and listed as Level II and III American Depositary Receipts (ADRs) on a national securities exchange (NYSE and NASDAQ for the purpose of this investigation) or Over-the-Counter Bulletin Board.
10. *Id.* at 215.
13. Section 404 is probably the most criticized and onerous requirement of the Act, mandating disclosure of managerial assessment of internal controls.
exposure provided by U.S. markets may outweigh the costs, but firms that are in earlier stages of development will probably not only think about it twice, but many more times.

When firms withdraw from U.S. markets, they usually state that their float of securities based in the U.S. is just too small in terms of trading volume and liquidity and look for other markets, or decide to concentrate their capital in their own local stock exchanges. In fact, withdrawing firms are not always willing to admit being affected by regulation and higher level of enforcement, however excessive, given that they apparently associate it with running away from higher corporate standards and practices. However, fear of enforcement, ranging from disbarment of officers and directors to criminal prosecution, sanctions, and fines is evident. Most importantly, firms seem to be blown away by the excessive costs of compliance with provisions like Section 404 of SOX and stop to think before getting involved in U.S. markets. It is likely that were it not for the dramatic costs of compliance, and to a lesser extent, the higher level of enforcement and standards derived from SOX, firms would not need a cost-benefit analysis when thinking about being involved in U.S. markets. In fact, they would most likely pursue cross-listing so as to enjoy the benefits provided by U.S. markets.

Thus, I state as a hypothesis that even though there may be a combination of factors deterring cross-listing, it is in the end Sarbanes-Oxley, and particularly the costs of compliance with Section 404 related to the certification of internal controls, which constitutes the determinant element in the cost-benefit analysis that firms conduct when considering cross-listing in U.S. markets. In this article, I attempt to demonstrate my hypothesis using the Mexican example. In determining whether Sarbanes-Oxley has indeed triggered the delisting of Mexican corporations, my investigation will develop as follows: Section II seeks to understand its origins and how it is perceived by experts in the field in order to find out if the Act effectively lacked review and as a result incorporated extreme requirements that may be leading to the delisting of corporations. It explores the debate that has arisen both for and against Sarbanes-Oxley regarding its process of enactment, its content, and its impact on foreign issuers. In addition, I describe and review the most significant provisions of SOX that apply to foreign issuers and that

20. See Ribstein, supra note 7, at 318.
may have led to the delisting of Mexican corporations. In particular, I will focus on compliance costs and officer liability resulting from interrelated sections of the Act, such as 302, 404, and 906, all of which relate to internal controls certification. Furthermore, I also discuss what motivates foreign corporations in coming to U.S. markets, how Sarbanes-Oxley is applied without distinction to foreign issuers, and how it has been considered an extraterritorial regulation, imposing provisions and requirements that foreign corporations are not subject to by the laws of their respective countries.

Section III analyzes the standing of Mexico in the global corporate governance movement, in order to determine the level of corporate standards that Mexican corporations are subject to, and the impact of cross-listing in the U.S. and being subject to U.S. law. In connection with that, I examine whether new developments in Mexican law, such as the new Mexican Securities Law and the revised Better Corporate Practices Code were based on Sarbanes-Oxley. I will suggest that the introduction of new Mexican laws regulating corporate governance could be a cause of delisting, because Mexican corporations carry an extra burden by being subject to both the Act and to an even more demanding SOX-like Mexican Securities Law. In addition, I also venture into whether Mexican companies are withdrawing from U.S. markets in response to the higher level of enforcement that is apparently being imposed by both American and Mexican authorities. In addition, I take into account other possible causes of delisting such as higher levels of enforcement, costs of compliance, low trading volume, and officer liability, all of which seem to be part of a formula of factors considered by foreign corporations when conducting a cost-benefit analysis of coming to U.S. markets. Moreover, I explore how U.S. cross-listing may be deterred by the growth of other markets like the London Stock Exchange, and also how local markets like the Mexican Stock Exchange (Bolsa Mexicana de Valores) and the Brazilian Novo Mercado are joining forces, apparently becoming attractive alternatives for investors. Finally, Section V concludes the discussion and forecasts the changing dynamics of cross-listing of Mexican corporations in the U.S..

As to the method of research for testing my hypothesis, besides analyzing the relevant literature related to Sarbanes-Oxley and cross-listing, I considered existing documentation on the delisting of each of the Mexican corporations that withdrew since the enactment of the Act, including SEC company filings, press releases and articles. Moreover, I personally contacted each of the corporations mentioned in this article through their officers and directors, via interviews and focus groups, in order to gain first-hand information and to better understand what motivated their exit from U.S. capital markets. I also approached some of the largest multinational Mexican corporations that are currently listed in U.S. markets in order to

21. SOX introduced a tendency of equal treatment as compared to separate treatment under prior regulation; even though the Act does not clearly refer to how foreign corporations would be treated.
understand their perception of Sarbanes-Oxley and their experience since its enactment. I spoke to some of the “Big Four” auditing firms that have worked with those companies in their efforts to comply with the Act. With the same purpose, I interviewed officers of Mexican corporations that are only listed in the Mexican Stock Exchange in order to learn whether they have explored U.S. markets and why they have not cross-listed. In order to augment the business perspective obtained from talking to officers and directors, I contacted regulators as well, interviewing authorities of the Mexican Stock Exchange and the Mexican National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores), as well as the Committee of Better Corporate Practices of the Mexican Entrepreneurial Council. This information helped in concluding what has motivated Mexican firms to withdraw from U.S. markets and in assessing the outlook of the Mexican corporation in the U.S. for the years to come.

Figure 1

Issuers per year: 40 Countries

Source: NYSE
II. THE SARBANES-OXLEY ACT AND CROSS-LISTING IN THE UNITED STATES: AN OVERVIEW

A. General Conception of the Act

After the corporate scandals of 2001, "there was a loud and crowded 'bandwagon' moving inexorably toward reform," and with it came the Sarbanes-Oxley Act of 2002. Since then, opinions about the Act and to its impact on foreign issuers have been divided. One line of argument states that Sarbanes-Oxley, and the excesses that came with it, resulted from a response by Congress to the Enron and Worldcom scandals. In addition, it is argued that this response to the corporate debacles, was rushed and political in nature, turned out to be sloppy and

ineffective, and also served as an excuse to add provisions that had nothing to do with the scandals and that had been on the table for years.\(^\text{25}\)

Another train of thought notes that the Act brought with it a shift from disclosure to substantive regulation of corporate governance involving considerable costs of compliance, particularly affecting foreign firms.\(^\text{26}\) Furthermore, it was observed that Congress gave little consideration when extending Sarbanes-Oxley to foreign issuers, given the rush and the political climate, and that the Act might deter cross-listing. On the other hand, it has been argued that demand for U.S. cross-listing might be relatively inelastic, taking into account that foreign firms tend to be large and can bear the increased costs, coupled with the difficulty of exiting U.S. markets.\(^\text{27}\)

It has also been asserted in defense of the Act that the changes are more likely to have psychological than substantive effects, that it is not as burdensome or far reaching as it was thought to be, and that "it just might work."\(^\text{28}\) Professor John C. Coates IV concludes in a recent study that even though Sarbanes-Oxley is a complex piece of legislation, imposing significant number of substantive provisions, the process through which the Act was enacted has unfairly been characterized as rushed and undocumented.\(^\text{29}\) He points out that SOX introduced important innovations like the Public Company Accounting Oversight Board (PCAOB), a quasi-public institution that he considers able to "customize rules and respond to feedback much more rapidly than Congress could do on its own."\(^\text{30}\)

\(^{25}\) Romano, supra note 3, at 1523-24 (stating "SOX was enacted in a flurry of congressional activity in the runup to the midterm 2002 congressional elections after the spectacular failures of the once highly regarded firms Enron and WorldCom. Those firms entered bankruptcy proceedings in the wake of revelations of fraudulent accounting practices and executives' self-dealing transactions. But many of the substantive corporate governance provisions in SOX are not in fact regulatory innovations devised by Congress to cope with deficiencies in the business environment in which Enron and WorldCom failed. Rather, they may more accurately be characterized as recycled ideas advocated for quite some time by corporate governance entrepreneurs. In particular, the independent-director requirement and the prohibition of accounting firms' provision of consulting services to auditing clients had been advanced as needed corporate law reforms long before Enron appeared on any politician's agenda." Continuing, "The failure of Enron, then, provided the occasion for implementation of corporate governance initiatives that were already in the policy soup. What is perhaps most striking is how successful policy entrepreneurs were in opportunistically coupling their corporate governance proposals to Enron's collapse, offering as ostensible remedies for future 'Enrons' reforms that had minimal or absolutely no relation to the source of that firm's demise.'").

\(^{26}\) See Ribstein, supra note 7, at 299-300 (stating, "the spectacular crashes and frauds of Enron, WorldCom, and other US companies triggered a re-evaluation of legal rules intended to curtail fraud. The frauds occurred because of monitoring failures at several levels, including directors, prominent accounting and law firms, institutional shareholders, debt rating agencies, and securities analysts, and apparently escaped detection by supposedly efficient securities markets. In response to arguments that government regulators needed to restore confidence in the securities markets, Congress passed the Sarbanes-Oxley Act of 2002...") (footnote omitted).

\(^{27}\) Perino, supra note 9, at 215.


\(^{30}\) Id.
Nonetheless, the Act is predominantly described as excessive, regardless of the actual impact that it might have in foreign issuers, is that it is excessive. But what makes it excessive? Critical analyses focus on certain provisions that involve high costs of compliance, such as, Section 404, relative to the managerial certification of internal controls. To that end, Coates suggests that the SEC and PCAOB should moderate any unnecessarily costly requirements or prohibitions. Additionally, when referring to Sarbanes-Oxley, the main if not the only concern of the Committee on Capital Market Regulations relates to the costs of complying with Section 404.\(^{31}\)

Apparently the costs of complying with the Act, rather the regulation itself, seem to be a matter of foremost importance. On this point it has been stated in relation to Mexican corporations that they would happily comply with the rules just to enjoy the benefits and exposure that come with being involved to U.S. markets, but what stops them is simply the high costs of complying.\(^{32}\)

From the perspective of auditors, as well as officers and directors of Mexican corporations that have been listed in U.S. markets, both before and after the Act, and that are object of this investigation, the view is consistent that the Act indeed went to extremes, particularly in terms of the costs it involves.\(^{33}\)

**B. Significant Sarbanes-Oxley Provisions**

Substantive provisions were introduced with Sarbanes-Oxley that have been considered to have "significantly strengthened the financial reporting and governance process for public companies."\(^{34}\) Among them, Section 301 requires oversight by an independent audit committee regarding the hiring of external auditors, and otherwise prohibits the listing of an issuer's securities in an exchange; Section 402 prohibits loans to executives and insiders, having an impact in compensation practices; Section 201 restricts auditors from providing services of a non-auditing nature in certain cases; and Section 806 prohibits adverse actions against employees who assist and provide information in a securities investigation (whistle-blowing). In relation to the Mexican case, I will focus on three provisions

---

33. *See* Exhibit 9.I, Interview with Claudio del Valle, Executive Vice President of Administration of Grupo Vitro, S.A. de C.V., in Monterrey, Mex. (Dec. 22, 2006) ("My general conception as well that of others with whom I've discussed the origins of SOX, is that the US Congress was forced to act as a response to the multimillion dollar losses in markets upon the Enron and World Com corporate scandals and hence, went to extremes... We have perceived SOX requirements as considerably excessive; something that the US authorities have recognized as well and are apparently willing to reduce, as they have expressed; particularly rule 404. Such reconsideration of the authorities is also reflected through the deadline extensions granted in favor of foreign issuers in complying with certain SOX requirements."); *see also infra* p. 353 Exhibit 9.II, Interview with Héctor Medina, Executive Vice President of Planning and Finance, Cemex, S.A. in Monterrey, Mex. (Dec. 22, 2006); *infra* p. 353 Exhibit 9.IV, Interview with Humberto Garza, Chief Executive Officer of Famsa, S.A. in , Monterrey, Mex. (Dec. 22, 2006).
that apparently are having the greatest effect in deterring cross-listing: Sections 404, 302, and 906. These mandates are all related, and their impact lies in (1) the high costs of compliance, and (2) the senior executive liability, both involved in the certification of financial reports, particularly in relation to the assessment of internal controls.

In terms of high costs of compliance, the most criticized and onerous rule has been Section 404 of the Act, entitled “Management Assessment of Internal Controls.” It states that together with the financial reports rendered by the firm in terms of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, an additional report on internal controls should be included that will (1) state the responsibility of management in establishing and maintaining an adequate internal control structure and an assessment of its effectiveness for financial reporting; and in relation to the internal control assessment, (2) the registered public accounting firm that issues the audit report shall attest and report on the assessment made by the issuer’s management. The main concern about Section 404 involves the costs of complying with the provision rather than having to adopt a new corporate governance structure. Even though the rule may translate into a new practice for foreign issuers whose home countries’ laws do not mandate it, which is the case in Mexico, it is not an issue of corporate governance. In fact, there is some consensus among Mexican securities authorities and experts in the field that internal controls have very little or nothing to do with corporate governance and would not affect a corporation in terms of the way it is structured.35

Very much related to the internal controls included in Section 404, Section 302(a) establishes the corporate responsibility of executive and financial officers in certifying quarterly and annual financial reports. In particular, it provides that the signing officers: (1) must review the reports and certify that they fairly account for the financial condition of the company and that there are no false, omitted, or misleading statements; (2) are to be responsible for establishing internal controls and designing them in such a way as to be aware of all material information, in addition to evaluating and concluding its effectiveness; (3) disclose to the auditors and audit committee any deficiency and material weakness related to internal controls as well as any fraud by those involved in the issuer’s internal controls; and (4) indicate any significant changes in internal controls and corrective actions thereof. In addition, the fact that Section 302(b) expressly states that the provision

35. See infra p. 341 Exhibit 8.III., Interview with Roberto Danel Diaz, President, Committee of Better Corporate Practices of the Mex. Entrepreneurs Council in Mexico City, Mex. (Jan. 26, 2007) (“Hence, even if internal controls may have little or nothing to do with corporate governance, and if I would not consider SOX as a real securities regulation or as a document of corporate governance; it implies very serious consequences and costs in terms of internal control certification, being this the reason why corporations are delisting and seriously thinking twice about cross-listing in the U.S.”) (emphasis added); see also infra p. 341 Exhibit 8.II, Interview with Mauricio Basila, Vice President, Nat’l. Banking & Sec. Comm., Member of the Comm. of Better Corporate Practices of the Mex. Entrepreneurs Council in Mexico City, Mex. (Jan. 26, 2007). See also infra p. 341 Exhibit 8.I, Interview with Jose Manuel Allende Zubiri, Gen. Dir. of Issuers & Sec., Mex. Stock Exchange in Mexico City, Mex. (Jan. 25, 2007).
applies to all issuers with no exception may be a significant concern to foreign firms because it is a matter that extends to officer liability as well.

Also relevant to the requirements imposed by Sections 404 and 302, Section 906 of the Act includes criminal sanctions to corporate officers who fail to certify financial reports adequately. In particular, it requires that the executive and financial officers must include with the periodic reports containing financial statements in terms of Sections 13(a) and 15(d) of the Exchange Act, a statement certifying that the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer. Perhaps the most significant point for foreign issuers in relation to Section 906 would be the criminal penalties it imposes, so that if officers certify statements knowing that the periodic reports do not comport with all these requirements, they are subject to fines of up to $1 million and imprisonment of up to ten years, and in cases of willful violations there may be an increase of up to $5 million and twenty years.

C. Broad Perspective of U.S. Cross-listing and the Act

Because the U.S. capital market has been considered as the most transparent, safe, and liquid market in the world, until a few years ago, it heavily attracted foreign investors. In particular, during the 1990s there was a dramatic increase in ADR listing by foreign firms. In fact, it was considered that, regardless of the high costs that come with Sarbanes-Oxley, foreign issuers would be willing to continue enjoying the substantial benefits of cross-listing, among them: (i) visibility and prestige; (2) access to deep U.S. capital markets; (3) voluntary submission to disclosure and U.S. securities rules; and (4) threat of SEC enforcement and private litigation, which provides credible signals of protecting minority shareholders and not extracting private benefits of control. Along those lines, empirical studies suggest that the signal sent through cross-listing, and the benefits that come with it, is most valuable for high growth companies with large controlling shareholders, as well as companies with weaker investor protection in their home country. Such firms seek to expand by raising equity capital or through acquisitions, and they may be able to lower their cost of capital by cross-listing. Therefore, they could be willing to absorb the costs of the Act if it strengthens the bond of cross-listing. To that effect, it has been claimed that “The bonding effect is strongest with respect to foreign firms that come from countries with weak legal rules.”

Assuming that the findings regarding strong controlling shareholders are true, this would particularly apply to the Mexican corporations subject to this

37. Perino, supra note 9, at 237.
38. Id.
investigation, due to the concentrated ownership structure that characterizes the
typical family conglomerates of Mexico. That would be reinforced by the argument
that countries with a civil code legal system origin provide less investor protection
and have weaker legal institutions than common law countries. Under this
scenario, adopting U.S. law would seem attractive and, as a result, corporations
would continue listing. Regardless of that theory, Mexican firms have recently
been leaving U.S. markets, which only make the Mexican example more
interesting.

We can relate the interest in cross-listing by controlling owners of foreign
corporations to the concept of functional convergence, according to which a firm
voluntarily rents U.S. law to obtain the benefits mentioned above. This concept
may be attractive to foreign issuers because it does not require that a company’s
home country change its laws, or that ownership structures shift from concentrated
to diverse. Hence, for a corporation that is based in a country that is not regarded as
investor protective, becoming subject to U.S. law may provide it a better image and
success in reaching deeper markets and better financing. However, it is also
possible that the real purpose of renting U.S. law could be something other than
raising corporate standards, and that functional convergence may be wrongfully
used for the personal interests of those who control and own the firms. To that end,
they would have no real concern for minority stockholders and investors, but rather
would only want access to financing other benefits provided by cross-listing in the
U.S.

Continuing to support the appeal of cross-listing, Lins, Strickland, and Zennner
have concluded that the presence of either emerging or developing markets
becomes a factor when measuring cross-listing. Their results indicate that the
benefits of cross-listing for an emerging market are significantly higher in terms of
the level of access to external international capital and the ability to raise it, than
for a developed market. If this were the case, Mexico, as an emerging market,
would have a higher drive to cross list than other developed countries. Hence, this
would, once again, make the delisting of Mexican corporations even more notable
and the impact of Sarbans-Oxley more significant. Along these lines, Lins,
Strickland and Zennner conclude that for developed nations, there should be
additional factors driving cross-listing, other than access to deeper external capital
markets, among them proximity, trade patterns, language, colonial ties and
industrial structure.

40. See Rafael La Porta et al., Corporate Ownership Around the World, 54 J. OF FIN., 471, 497
(1999).
41. Ribstein, supra note 7, at 20.
42. See K. Lins, et al., Do Foreign Firms Issue Equity on U.S. Stock Exchanges to Relax Capital
43. Id.
44. See id. at 26-28.
In relation to proximity, Professor Hal S. Scott has considered that "regionality" could be an element in measuring cross-listing. This would mean, for instance, that a European nation would tend to list in the London Stock Exchange rather than explore markets in other regions. This factor would apply to the Mexican illustration, considering that in terms of regionality or proximity, firms only have the U.S. to turn to, but nonetheless there has been a significant delisting trend in years following the Act.

The evidence and ideas mentioned above would seem to support a presumption that, regardless of Sarbanes-Oxley, companies may very well want to continue cross-listing, particularly those like the typical Mexican firm. However, several years have passed since Sarbanes-Oxley was enacted and, at least in the Mexican example, it does not seem to be the overall case. Even with the benefits of cross-listing, closely held corporations are leaving U.S. markets in considerable numbers. There are exceptions, among them Corporación Durango, S.A. de C.V., a Mexican corporation that was suspended from NYSE but decided to continue being voluntarily subject to SEC regulation and hence to Sarbanes-Oxley, referring to the benefits of cross-listing. However, as reviewed in the next section, that decision could be attributed to conditions imposed by the firm's creditors during a difficult restructuring phase.

So why are Mexican corporations leaving U.S. markets? Could the Act perhaps be driving them away? One possibility is that the costs of complying with U.S. law are increased by Sarbanes-Oxley and hence the benefits of functional convergence may drop. Another idea is that, if the benefits remain constant and the Act increases what managers and controlling shareholder have to pay for cross-listing in the U.S., this will change the cost-benefit calculation and reduce listing. Hence, regardless if U.S. securities laws drive the bonding theory of convergence,

45. Comment proposed by Hal S. Scott, Nomura Professor of International Finance Systems, during conversation at Harvard Law School on Jan. 24, 2007. See also infra p. 341 Exhibit 8.I, Interview with Jose Manuel Allende Zubiri, Gen. Dir. of Issuers and Sec., Mex. Stock Exchange in Mex. City, Mex. (Jan. 25, 2007) ("The issue of regionality is of special interest in relation to Mexican corporations and U.S. markets. For instance, when turning their back on U.S. markets, European firms may go to London. However, in the case of Mexicans issuers, the only real alternative would be the United States, but now, with nowhere to turn to, they are staying in the local market. Even with the option of having access to investors without such a heavy compliance through 144 listing in the US, there has been total delisting by corporations, bringing all their float of share to the Mexican Stock Exchange."); see also infra p. 341 Exhibit 8.II. Interview with Lic. Mauricio Basila Lago, Vice President, Stock Mkt. Supervision; Bd. member, Comm. on Mex. Better Corporate Practices in Mex. City; Mex. (Jan. 25, 2007).

46. Telephone Interview with Gustavo Peyro, Audit and Systems Manager, Corporación Durango, S.A. de C.V. (Feb. 23-24, 2007) ("We continue to be subject to U.S. laws for several reasons, among them: (1) It is a culture and a policy of our company to constantly adapt to better corporate practices; (2) Complying with higher standards like those related to internal control certification, provide more efficiency, better decision making and results for the organization; (3) We have important operations and subsidiaries in the U.S., particularly Texas and New Mexico.; (4) The benefits that come with having the status of corporation that discloses financial information reflect transparency and better presence in the market; (5) It is simply a convenient commercial and marketing strategy that we follow.")
more regulation will not encourage cross-listing. In addition to such costs, tougher enforcement provided by Sarbanes-Oxley could also be driving delisting. In a paper focusing on the time period before Sarbanes-Oxley, Jordan Siegel shows that there was relatively weak enforcement in the U.S. against foreign firms. However, after the passage of SOX and the accompanying drastic increases in the SEC enforcement budget, this may have changed and is ultimately an empirical question to be examined in this study. A higher level of enforcement may indeed be an important factor that firms are taking into account when considering involvement in U.S. markets. There is a wide belief that the level of scrutiny and enforcement has increased dramatically since the 2001 corporate scandals. In particular, many observers believe that the SEC has raised the bar and taken actions in order to make directors better comply with their security monitoring duties.

It is likely that the wave of regulation in the wake of the scandals, in particular Section 906 of the Sarbanes-Oxley Act, has caused a considerable impact. Regardless of whether real consequences against directors have been applied, there is at least a perception that may be scaring them off. As will be discussed further, the higher level of enforcement is something that officers and directors will not explicitly acknowledge as a deterrent to cross-listing, but that may nonetheless be an important factor in the decision to delist. Apparently there is a sort of taboo against admitting to running away from or avoiding corporate governance and higher standards. This is especially curious because many of the reforms involving liability have little or nothing to do with corporate governance, as was stated about internal controls.

Another issue that seems significant is that even though there have been recent security suits filed by the SEC involving criminal charges for self-dealing and other issues, many of them are settled and do not result in criminal consequences. However, it is also true that such settlements are without consequences. Settling firms often must pay large sums of money as administrative sanctions, and individuals could even be barred from being directors or officers of corporations (Sarbanes-Oxley). The Mexican TV Azteca case that will be covered in the next section provides as example of the potential settlement costs. Finally, the fact that SOX introduced provisions different than those that exist in foreign issuers' home countries may yet be another factor deterring cross-listing. This has led to the perception that the Act is an extraterritorial regulation. It is clear that if a foreign corporation comes to the U.S. it should be subject to its laws without that being considered extraterritorial. However, it becomes an issue when Sarbanes-Oxley imposes certain provisions and requirements that foreign corporations and their subsidiaries (which may have nothing to do with the U.S.) are not subject to by the laws of their respective countries. For instance, internal control rules like those

47. Ribstein, supra note 7, at 320.
49. See Sale, supra note 19, at 3.
50. See Perino, supra note 9, at 230.
imposed by Sections 302, 404, and 906 are not required by Mexican law; in fact, as will be discussed later, they are in a way avoided. It may be that after the cost-benefit analysis, functional convergence just becomes less attractive given such high costs, enforcement, and the introduction of more complex corporate governance rules. An issue to consider is that just as foreign firms choose to be subject to U.S. law, foreign firms also decide not to.

III. SARBANES-OXLEY AS A FACTOR IN THE LISTING AND DELISTING OF MEXICAN CORPORATIONS

A. Mexico as a Player in the Corporate Governance Movement

Last June 2006, the new Mexican Securities Law was enacted. A few months later, in November of the same year, the revised version of the Code of Best Corporate Practices of the Mexican Entrepreneurs Council was issued. These events received much attention and were quickly considered by many to be a result of the U.S. raising the bar in regulation. To that effect, it was stated that new U.S. corporate governance laws, like Sarbanes-Oxley, were pressuring Latin American regulators and corporations to raise standards, particularly through the provisions requiring foreign companies listed in U.S. markets to increase their internal controls.

Given the influence of the U.S. over Mexico, it might well be thought that the new legislation and corporate standards were an effect of the U.S. tightening regulation, especially post-Enron. In fact, the Mexican Securities Law did introduce more detailed issues like the specific functions of independent directors, and did legislate for the first time the fiduciary duties of care and of loyalty that U.S. corporate law is well known for. However, some of the players who were directly involved in the creation of the new rules, among them officers of the Mexican National Banking and Securities Exchange Comission and of the Mexican Stock Exchange, denied that the Act had anything to do with it. In fact, despite their issuance in 2006, the law and code are nevertheless considered pre–Sarbanes-Oxley in origin. The argument for that is based on the perception of Mexico as a breakthrough player in the global corporate governance movement of the late 1990s, having introduced its non-mandatory Better Corporate Practices Code since 1999. In fact, Mexico has been regarded as one of the first cases, if not the first, in which corporate governance provisions were formally introduced into law and

53. Telephone Interview with Roberto Danel Diaz, supra note 32.
54. See Interview with Roberto Danel Diaz, supra note 35. See also Interview with Mauricio Basila, supra note 35.
made mandatory. In this particular case, they were taken from the Better Corporate Practices Code into the Mexican Securities Law, through its 2001 reform. Thus the New Securities Law and the revised Better Corporate Practices Code of 2006 are simply considered to be a more detailed extension of the 2001 reform and hence as having nothing to do with the U.S. Act. This assertion is confirmed in the statement of motives (part of the legislative history) of the Mexican Securities Law, which expressly refers to Sarbanes-Oxley by way of contrast. It states that the purpose was not to reach the extremes of the U.S. Act. In particular, it refers to the costs of compliance related to internal controls and the goal of achieving a cost-benefit balance as opposed to SOX:

...we avoided incorporating any mechanism that could have as a consequence that the costs of compliance be of such a magnitude, that they would outweigh the benefits to investors, and that would not serve as an incentive in the placement of securities of new issuers; motivating some of them to withdraw from the market. A very clear example of these types of measures in foreign regulations, which were not incorporated in this project of law, are those of the Sarbanes-Oxley Act of the United States of America. In particular said law has brought about much controversy in relation to internal controls requirements. It has been proved that it implicates very significant costs, especially to medium sized companies; bringing about that they consider delisting, and deterring the listing of new ones.

---

55. See Interview with Roberto Danel Diaz, supra note 35 ("In 2001 the Mexican Securities Law took provisions from the Better Corporate Practices Code and made them mandatory. Then, at the end of 2004 we began to revise the code, working together with the authorities as to what would be contained in the New Securities Law of June 2006 and what would be included in the revised version of the Better Corporate Practices Code of November 2006. We were always in coordination with the authorities and the understanding is that the Code is the standard in Mexico, and the idea is of course to have high standards that the law will gradually take as mandatory considering the Mexican reality and circumstances.").

56. Interview with Mauricio Basila Lago, supra note 45 ("Mexico was one of the first to introduce corporate governance substantive provisions into Law through said 2001 reform, which proves that as opposed to what is commonly said, our legislation was not a copy of SOX. However, in 2003 we began to consider that certain aspects of the reform of 2001 were not detailed enough; and that it was important to touch more on issues like the functions of the audit and better corporate practice committees, as well as those of outside directors. Therefore we issued the new Mexican Securities Law which came out in June 2006.... We debated the new Securities Law in many forums and it was a long and very complete process. It all started with the National Banking and Securities Commission, in the very room where we are at now. We prepared a draft that was later revised by the Ministry of Finance, by the Mexican Stock Exchange, by top corporate lawyers and accountants. Finally we went with the Committee of Public Issuing Companies and all but one totally approved it. Many of the businesses were listed in the US market and had just experienced the bitter experience of SOX. At the beginning there were rumors that we were copying SOX, but it was totally false, if there is something we did not do it is just that.").

The statement was explicit about distinguishing the project from Sarbanes-Oxley:

The most important aspects of this new project which are detailed ahead, include: (i) innovation in the regulation of corporate procedures that distinguish this project of law of the recent international reforms, particularly that of the Sarbanes-Oxley Act of the United States of America; considering that they were based on the better corporate practices codes of England, Spain and France. 58

The Act, though, was taken into account, reviewed and assessed by the Mexican regulators. Hence, it did come into play and had an impact, even if it was just in relation to avoiding internal controls and high costs of compliance.

B. Why Would Sarbanes-Oxley Cause the delisting of Mexican Firms?

There are different issues related to Sarbanes-Oxley that could be considered significant factors in relation to Mexican corporations delisting from U.S. markets, including regulation and enforcement, personal liability, low trading volume, costs of compliance and alternative markets.

1. Double Enforcement and Regulation

An issue that might lead to delisting is the fact that Mexican corporations may, at a given moment, be subject to both Sarbanes-Oxley and other U.S. regulations on the one hand, and to the Mexican Securities Laws on the other. How much of a burden would this represent? What would most likely concern a foreign corporation would be subject to substantial provisions of corporate governance not required by the legislation of their home countries. This is precisely what is considered by some as the extraterritorial nature the Act. In addition, it is also possible that the two sets of regulations may come into conflict, as has been the case between SOX's audit committee rules and the German two-level boards. 59

In the case of Mexico, officers and directors of Mexican corporations believe that double enforcement and regulation of firms listing in American and Mexican markets is not much of a burden and that it does not constitute an issue to a company that is already listed in the U.S. and hence subject to higher standards. 60

58. Id. See also Interview with Claudio del Valle, supra note 33; Interview with Hector Medina, supra note 33; infra p. 353 Exhibit 9.IV, Interview with Humberto Garza Valdez, Abelardo Garcia Lozano, and Humberto Losa Lopez, in Monterrey, Mex. (Dec. 22, 2006).
59. See Ribstein, supra note 7, at 307-10.
60. See infra p. 353 Exhibit 9.II, Interview with Héctor Medina, supra note 33 ("Double enforcement has not been an issue for us given the fact that because we are a corporation that is listed in the US, it makes it by far easier for us to comply with Mexican regulation. In other words it is not an issue if you are already in the United States. If you are not listed in the Mexican market, and you decide to go to the US, the requirements imposed will without a doubt be a very considerable burden."); see
Apparently both Sarbanes-Oxley and other U.S. securities regulations are very similar to the new Mexican Securities Law in corporate governance standards and institutions, including independent directors and audit committees, as well as disclosure rules. Nevertheless, the Mexican laws do not contemplate other provisions brought about through the Act, such as the constraint on loans to executives, the whistle-blowing rules, and the duty of lawyers to report irregularities. However, even if such legal institutions did have a strong impact on issues like executive compensation, they would probably be perceived as more reasonable since they do not involve high costs of compliance or an increasing level of enforcement, and therefore would probably not be a significant factor driving delisting.

As discussed earlier, rather than any differences in corporate governance, what would seem more significant is the lack of requirements by the Mexican Securities Law in relation to internal controls certification. The significance of that difference from Sarbanes-Oxley may be drawn from the fact that, as expressed in the statement of motives of the Mexican Securities Law cited in the previous section, there is a manifest avoidance of internal control regulation.

If we were to focus on that factor as the only significant distinction between the two laws, and assume that enforcement, disclosure, independent director quotas and functions, and corporate governance rules are fairly equal, it might be concluded that if a corporation is already listed in the U.S., and hence subject to its internal controls requirements and costs, then being subject to the Mexican law as well wouldn’t be that significant a burden. That is probably the case of the Mexican corporations currently listed in U.S. markets, particularly if we take into consideration that they are all registered in the Mexican Stock Exchange as well and subject to the new Mexican Securities Law. However, if the firm is only listed in the Mexican Stock Exchange and considers going to the U.S. it will have to think carefully about the costs of compliance. It may already have a hard enough time complying with the Mexican Securities Law that is quite demanding in terms of higher corporate governance standards. Hence it would likely avoid the even more complex and costly U.S. market and subjection to the Act. Worse still, a company that is not listed in the Mexican Stock Exchange and that suddenly wants to register in the U.S. will have an even harder time. Even if that means only being subject to U.S. law (the Mexican Securities Law only applies to public

\[\text{also infra p. 353 Exhibit 9.V, Interview with Jaime de la Garza Martinez, Legal Dir., Value Grupo Financiero, in Monterrey, Mex. (Dec. 22, 2006); see also Interview with Claudio del Valle, supra note 33.}

61. \text{Bolsa Mexicana de Valores, http://www.bmv.com.mx/BMV/JSP/sec5_informal.jsp. See also New York Stock Exchange, supra note 1; see also NASDAQ, supra note 4; see also infra p. 338 Exhibit 4 (listing firms listed both on the NYSE and NASDAQ and the Mexican Stock Exchange); infra p. 339 Exhibit 5 (listing companies currently listed on the Mexican Stock Exchange but delisted from the NYSE and the NASDAQ); infra p. 339 Exhibit 6 (listing Mexican companies delisted from the NASDAQ); infra p. 340 Exhibit 7 (listing Mexican companies delisted from the NASDAQ between 2000-2006).}

62. \text{See infra p. 353 Exhibit 9.IV.}
companies), that corporation will probably have little experience in relation to such disclosure standards and the other regulations.

In Sarbanes-Oxley there is also an element of liability connected to internal controls as described above, particularly Section 302 in relation to Section 906 of the Act. With this additional factor, the prior scenarios would be even more accentuated, given that not only will costs of compliance be an issue, but also the officer liability that is tied to internal control requirements. Finally, another matter that has been considered to be significant and costly for a Mexican corporation, is being subject to very different accounting systems, the Mexican accounting principles and U.S. Generally Accepted Accounting Principles (U.S. GAAP). In Eric Pan’s account, “foreign companies balked at having to reconcile their current and historical financial statements—prepared originally under their home country accounting principles” to U.S. GAAP.

Besides being subject to both laws, double enforcement may also be an issue. It has been believed that raising corporate standards has caused a much higher level of enforcement by both Mexican and American authorities. While there have not been many cases of SEC enforcement against foreign corporations, and going back to the findings of Siegel described in Section II, at least before Sarbanes-Oxley it has not been very effective against foreign corporations, nevertheless a higher degree of enforcement may well be on its way and deter cross-listing. A recent example involves the SEC’s civil fraud charges against Mexico’s second largest television media network, TV Azteca, and its chairman, Ricardo Salinas Pliego, which is described in more detail later in this Section. It was described as the first precedent of SEC proceeding against a foreign corporation based on Sarbanes-Oxley. The interesting issue is that this action by the American securities authorities had an impact in leading the Mexican National Banking and Securities Commission to continue investigations against TV Azteca.

64. See infra p. 341 Exhibit 8.1 Interview with Jose Manuel Allende Zubi, supra note 35 (“Finally, in relation to double enforcement as a cause for delisting it could be considered very similar in terms of what information has to be disclosed etc. However, it is a burden for corporations to be subject to both U.S. and Mexican laws; especially because the Mexican accounting system differs considerably from U.S. GAAP. It does implicate a cost of transformation to carry the accountability a different way. Other than the accounting matter, disclosure rules are very similar.”).
65. See Cunningham, supra note 28, at 919.
67. See Interview with Claudio del Valle, supra note 33. See also Interview with Jaime de La Garza, supra note 60.
68. See generally Siegel, supra note 48.
69. Johnson, supra note 52 (“On Jan. 4, the U.S. Securities and Exchange Commission filed several civil fraud charges against Mexican media baron Ricardo Salinas Pliego, chairman of Mexico’s second largest broadcaster, TV Azteca. Using a provision of the Sarbanes-Oxley Act, U.S investigators charged Salinas and two of his top executives with engaging in ‘an elaborate scheme’ to conceal a $109 million profit Salinas allegedly engineered by purchasing debt at reduced prices from an Azteca cell-phone subsidiary called Unefon. Salinas has denied the charges and accused the SEC of operating in ‘bad faith.’ U.S. regulators filed the charges against the TV Azteca executives because the company is traded on the New York Stock Exchange, and thus is subject to U.S. laws. Mexico’s National Banking...
It has also been noted that "the most significant [enforcement] change . . . is the expansion of the SEC's authority to bar individuals from serving as officers and directors of reporting companies." That is precisely what the SEC did with Ricardo Salinas Pliego and other TV Azteca executives, barring them from being officers or directors of any publicly held corporation issuing securities in the U.S.; an additional factor which could have led to the firm's delisting. The belief of directors and officers of Mexican corporations is that the level of enforcement has increased dramatically, both in the U.S. and in Mexico, through better prepared government officials with a very systematic and well defined methodology. Apparently, the concept of legal risk has expanded to include fines and other administrative sanctions by financial and securities authorities.

2. Officer and Director Liability

Another factor that may be significant in the delisting of corporations is related to the director and officer responsibility that may derive from Sarbanes-Oxley, particularly in relation to internal controls. As noted before, Sections 404 and 302 of the Act require officers to establish and maintain adequate internal control structures and assess their effectiveness, as well as to certify the accuracy of the issuer's periodic reports and the adequacy of such internal controls. In relation to these rules, section 906 contains criminal provisions requiring executive officers to certify that the information in the financial statements fairly presents the financial condition and the operations of the issuer, imposing fines of up to $5 million and imprisonment of up to 20 years in willful violation cases.

The press releases of the Mexican corporations announcing their delisting never refer to personal liability as a cause of delisting. However, this may be an issue that foreign firms are not willing to openly admit since it might suggest to running away from corporate governance and higher practices, something they would definitely not want to convey to investors. It has been stated that liability is definitely a matter of importance, as well as something that is part of the cost-benefit formula. In fact officers (who are usually also directors and controlling

and Securities Commission led the TV Azteca investigation, and may yet charge the executives itself. But the fact that a U.S. regulatory body went public with the charges has raised questions about whether Latin American countries are ready to handle the new regulatory demands sweeping in from Washington and New York. "The U.S. laws do raise the bar, and if you've got transactions [involving subsidiaries or partners in America], you'd better be careful," says Grant Kirkpatrick, a senior economist at the OECD in Paris. In response to criticism that its new laws require too much of other countries too quickly, the SEC last week extended the deadline (to July 15, 2006) when foreign firms with U.S. listings must comply with its fraud-control rules. . . . The TV Azteca case has been an embarrassment for Mexico, but it will accelerate a reform process that the country desperately needs." (emphasis added).

70. Perino, supra note 9, at 230.
71. Noon, supra note 18 ("Salinas, who agreed to the $7.5 million settlement without admitting or denying the charges, will be barred from serving as an officer or director of any publicly held company with securities trading in the United States as part of the agreement.").
72. See Interview with Claudio del Valle, supra note 33.
owners) may very well question whether it is worth it to be potentially liable for a
case of disclosure that could be out of their control. This would be consistent
with other findings about higher SEC scrutiny and enforcement in relation to
security-monitoring duties of directors.\footnote{See generally Sale, supra note 19.}

It has also been claimed that there is no real liability and that even before
Sarbanes-Oxley there were similar criminal provisions on the books. However the
Act may operate as a strong signal to foreign issuers who will very likely perceive
a higher degree of potential liability.\footnote{See generally Perino, supra note 9.}
And because of the great impact of the corporate scandals of 2001 and the quick reaction by Congress, that liability is
often considered excessive. Hence, these provisions of the Act may very well be
causing officers to be afraid of the liability they may incur due to lack of
disclosure, especially when the error may be unintentional and in good faith.

Since, as stated in Section II, foreign corporations with concentrated
ownership structures may be the ones most interested in cross-listing, it is very
likely that the controlling owners of such companies, who are in many cases also
the main executive officers, would be afraid of becoming subject to a more
complex system of regulation. In fact, the mindset of the officers and directors of
Mexican firms is that they see themselves as running honorable and profitable
firms that have stood the test of time and won credibility in their home country.\footnote{See Interview with Roberto Danel Diaz, supra note 35.}
Hence, why risk going to a much more complex market in where they believe they
will receive what has been cruelly described as a “delinquent treatment”? Why
take the blame for the corporate scandals and debacles of 2001 and get into trouble
for accidentally not disclosing something? And most importantly, why pay huge
amounts for complying with requirements like certification of internal controls, or
risk criminal liability, particularly when they can now find other alternatives and
attractive markets? It is clear that Mexican officers and directors are afraid of the
personal liability, particularly criminal, that may derive from Sarbanes-Oxley. They
are concerned that they may be liable, even when not acting with bad faith, but
instead because of mistakenly not disclosing the correct information due to lack of
expertise regarding the more complex and demanding laws of another country.\footnote{See infra p. 353 Exhibit 9.I, Interview with Claudio Del Valle, Executive Vice-President of Administration of Grupo Vitro, S.A. de C.C. in Monterrey, Mex. (Dec. 22, 2006) ("The impact of SOX in Mexican corporations and other foreign issuers is considerable due to... 1. The significant fear of personal director and officer liability and penalties for not complying with SOX. When you are foreigner and do not know the law in detail and to the fullest extent, there is a natural nervousness and people seek protection by avoiding being subject to it. The feeling is: 'I am not an American corporation and do not know the law; regardless if I hire counsel from US lawyers. If for any reason there is an omission or something is not fulfilled, there may be a personal repercussion.' Hence people are afraid of the consequences that may arise not from doing something deliberately wrong and with bad faith, but from omission and ignorance.") See also infra p. 353 Exhibit 9.II, Interview with Ing. Hector Medina, Executive Vice-President of Plan and Finance, Cemex, S.A., in Monterrey, Mex. (Dec. 22, 2006); infra p. 353 Exhibit 9.V, Interview with Lic. Jaime de la Garza, Legal Director, Value, Grupo Financiero in Monterrey, Mex. (Dec. 22, 2006).}
3. The Burden of Costs; Section 404

As mentioned previously, the U.S. markets provide many benefits. It has been argued that if the advantages of bonding and renting U.S. law actually increase with Sarbanes-Oxley, foreign issuers will continue coming. 77 However, the Act also carries substantial costs for all the companies listed in the U.S. and hence cross-listing becomes an issue of cost-benefit balancing. Regarding costs of compliance, many believe that given the speed of the “bandwagon” that started rolling after the corporate scandals of 2001, “there was little time for serious, detailed examination of the costs and benefits of proposed reforms or for close examination of reliable empirical evidence.” 78 After having been attracted to U.S. markets during the 1990s, it is also believed that firms “have found that the costs and burden of maintaining... listings often outweigh the benefits.” 79

As previously suggested, the requirements related to internal controls, particularly Section 404, are regarded as the most criticized and onerous of the Act and seem to be the main driver for delisting. There should be little doubt that the purpose of Section 404 is a good one, as it seeks to improve the accuracy of financial statements. But it is hard at this point in time to measure the benefits of the provision, given that little time has passed since its “phased” implementation and not enough information is now available. Still, the Committee on Capital Markets Regulation has considered several potential benefits and how to measure them. 80 For one thing, a stronger internal controls environment should improve financial reporting by reducing accounting errors. 81 This could be measured by a reduction of financial restatements. Another benefit would be a reduction in a firm’s cost of capital. 82 The Committee has analyzed studies conducted on both counts, but determined that they are still inconclusive and that further assessment needed. 83 It is likely that such analyses will improve with time as data becomes available, and that the benefits of Section 404 will become apparent and be conveyed to firms, causing a significant impact in their decision to cross list.

It is hard to measure when it pays off for a foreign issuer to cross list and how large the benefits have to be or what other circumstances are necessary in order for entry to U.S. markets to represent a substantial benefit, given that every case may differ. Aside from a firm’s markets capitalization, many factors may come into play in making that decision. Even a very large firm that could pay the costs may just not do it, due to low trading volume or a lawsuit that barred its officers, among many other possibilities.

77. Li, supra note 24, at 7.
78. Clark, supra note 23, at 255.
79. See Guthrie, supra note 15.
80. Kuritzkes, supra note 12, at 118-23 (discussing potential benefits of the Sarbanes-Oxley Act: an improvement in the accuracy of financial reporting for public companies, a reduction in the cost of capital for certain companies, and an improvement in the efficiency of financial management).
81. Id. at 119.
82. Id.
83. Id. at 124.
The benefits of listing seem to be non-monetary, or at least at first apparently do not translate into savings or into cost reductions. Therefore, in terms of cost-benefit, in the short term a firm will most likely just look at the numbers it is spending and at the trading volume it is handling in the U.S., rather than assess if it is becoming more efficient or incurring fewer accounting errors. While it is easier to measure the costs of compliance, which have in fact been judged by many corporations as excessively high, it is still a problem to conduct a cost-benefit analysis, given the ambiguity of the potential benefits.

Compliance with Section 404 for the first year it was implemented resulted in an average cost per firm of $4.36 million. It is possible that costs will be reduced with time as firms become more efficient in their internal controls. However, the amount is still not clear, considering that non-accelerated filers have yet to incur in their start-up costs in the near future and those expenses will also have to be taken into account. Another estimate that has been made is an annual expenditure per firm of $1 million for every billion in revenue. Furthermore, it has also been calculated that for cross-listing to be worth it in terms of costs of compliance, a firm should have a market capitalization of more than $300 to $400 million. That leaves a very large sector of firms that will just not reach the threshold. These estimates would be consistent with the Committee’s conclusion that compliance is much more burdensome for smaller firms of less than $700 million market capitalization, for which costs of compliance represent approximately 0.46% of their revenues, as compared to those over that threshold for which it would only translate into 0.09%. The burden is particularly heavy for small firms that, unlike larger ones, lack accounting staff to monitor effectiveness of internal controls. In addition, small firms benefit less from being public than large firms. Hence it would be likely that small companies will have worse internal controls and be unable to comply at a cost they could bear.

Larger firms may face less regulatory compliance costs, given economies of scale and that they may often be able enough to attract U.S. investors to justify

84. Id. at 5.
86. See infra p. 353 Exhibit 9.1, Interview with Claudio del Valle, Executive Vice-President of Administration of Grupo Vitro, S.A. de C.V. in Monterrey, Mex. (Dec. 22, 2006) ("2. The other very significant consideration is cost. Besides one or two very large corporations, such as CEMEX, for the rest that are currently in US markets, the question of 'cost/benefit' has become an issue; considering it is necessary to incur in costs of hundreds of thousands and even millions of dollars to comply with SOX...it is very likely that smaller and medium-sized corporations will not support SOX, given the cost/benefit issue previously discussed. In fact, the corporation whose capitalization level is below 300 to 400 millions of dollars will end up delisting from US markets due to the high costs; that particularly due to 404 requirements.")
87. Kuritzkes, supra note 12, at 126.
89. Id.
their regulatory costs. In any case they often outgrow their home markets and need to turn to more complex and developed capital markets in spite of the costs.\textsuperscript{90} This has been a concern of the Committee, considering the costs as substantial and far above the SEC’s original estimate, while the benefit is still uncertain. Hence its suggestion to change the implementation of the Act (rather than the regulation itself), with a potential exemption of smaller firms with a market capitalization of $75 million or less.\textsuperscript{91} The recommendation states in part as follows:

In the near-term, application of section 404 to non-accelerated filers (companies with less than $75 million of market capitalization) should continue to be deferred until the changes in materiality, enhanced guidance, and multi-year rotational testing take effect. At such time, the SEC should reassess the costs and benefits of extending Section 404 to small companies. To the extent that the SEC finds that, even with the proposed reforms, the costs are still too high relative to the benefits, it should ask Congress to consider exempting small companies from the auditor attestation requirement of Section 404 while at the same changing the management certification requirement to one requiring reasonable belief in the adequacy of internal controls. Without the comfort of auditor attestation, management would not be able to make a stronger certification.\textsuperscript{92}

Finally, it is important to note that though costs of compliance may drive a firm away, the requirements of delisting are in many cases considered to be even higher\textsuperscript{93} and costly. Foreign corporations could not delist until they reduced their U.S. shareholders to less than 300 according to Rule 12g-4(a)(2) of the Securities Exchange Act of 1934.\textsuperscript{94} To that effect, it was predicted unlikely that firms would choose to exit.\textsuperscript{95} Mexican issuers have nevertheless found their way out one way or another. It is also important to note that it was not until very recently that the bar has been lowered and that firms have been liberated from delisting requirements.\textsuperscript{96} Now that the “Hotel California” rule that “you can check out anytime you like, but you can never leave” has been overridden, will there be a new delisting wave?

Companies like Carlos Slim’s America Movil, S.A.B. de C.V. which has the largest market capitalization in Mexico, of approximately $1,151,455,452,425

\textsuperscript{91} Kuritzkes, supra note 12, at 133.
\textsuperscript{92} Id.
\textsuperscript{93} See Bruce, supra note 11 (“Once listed, they discover that the benefits are few and the costs many. But leaving has been almost impossible, under existing rules.”).
\textsuperscript{94} Securities and Exchange Act of 1934, Rule 12g-4(a)(2).
\textsuperscript{95} Perino, supra note 9, at 215.
Mxp” (Approx. $107,612,659,105 UScy), and operations all around the world will probably not have any problem with costs. However, as will be seen further in this section, it is uncertain if whether companies with fairly large market capitalization of around $700 million or slightly higher will stay.

4. Low Trading Volume and Liquidity

One of the elements that most firms cite as the main reason for delisting is their limited liquidity and low trading volumes in relation to U.S. markets. More particularly this may involve a small float of registered holders of the issuer who are resident in the U.S., very low liquidity in the trading of securities, or infrequent trading of the securities on the stock exchanges and low expectations of increase in the near future.

There is a belief among many foreign issuers that concentrating their securities in their local market or in other exchanges is a better decision in terms of liquidity. It has also been argued that diversifying in different markets may actually bring about more liquidity. But that might be the case only for larger corporations that trade and manage higher volumes and can afford to enter different markets with successful returns. The question remains whether this factor by itself would motivate the exiting of firms or if it would be just an additional element in the delisting decision formula.

The liquidity factor could be classified as being independent from the Act. However, it may be related to other factors that are derived from SOX. If lack of trading volume is an important motivation, why did the Mexican firms only start to delist after Sarbanes-Oxley? Did they get better liquidity before the Act, so that they maintained their listings, or did the Act cause costs of compliance and other factors that together with low liquidity outweigh the benefits of cross-listing? It is likely that prior to 2002, regardless of liquidity, it was still worth it to be in U.S. markets. Therefore, one possibility could be that even though low trading volumes are a logical motive to withdraw from U.S. markets, this factor did not become determinant until other elements such as the high costs of compliance related to internal controls came along.

5. Other Market Alternatives for Mexican Firms

At least until a few years ago, cross-listing was expected to remain relatively inelastic because of the lack of close substitutes for the benefits that the U.S.

98. See Interview with Jose Manuel Allende Zubiri, supra note 35.
100. See Interview with Mauricio Basila, supra note 35.
offers.\textsuperscript{102} That may now be changing because other markets are apparently providing attractive alternatives for foreign firms, and hence deterring cross-listing.\textsuperscript{103} In fact, the U.S. seems to be facing competition from other markets that are creating attractive options for investors.\textsuperscript{104}

The Committee on Capital Markets Regulation attributes the decline of U.S. competitiveness to excessive regulation, including enforcement and costs of compliance.\textsuperscript{105} With an opposing view, Eric J. Pan argues that it is not “overregulation” but simply the existence of new markets and alternatives that has deterred U.S. cross-listing.\textsuperscript{106} However, could excessive U.S. regulation be a cause motivating the emergence of other markets? It is true that there are new alternative markets and that they may be an additional and even a determinant factor in the delisting calculation, but it is more likely that this factor alone would not have much impact if it were not for tougher enforcement and excessive regulation that translate into the higher costs of compliance and the increasing officer liability under Sarbanes-Oxley. Such overregulation and enforcement is consistent with the considerable delisting trend and the decrease in ADR additions by foreign issuers that has taken place during the last five years following the corporate scandals and the enactment of Sarbanes-Oxley.\textsuperscript{107} Moreover, the trend of companies moving away from the U.S. that Pan describes as taking place during the last 15 years is not consistent with the 1990s cross-listing boom. In fact the observation that he makes of a lack of interest among foreign firms for coming to the U.S. and the decline in initial public offerings (IPOs) in the U.S. circumscribes the period from 2000 to 2005, during which overregulation and enforcement took over U.S. markets.\textsuperscript{108}

However, Pan does appear to agree that excessive regulation is an issue, when referring to the two-fold problem faced by the SEC in the sense of over-regulating and driving issuers away versus under-regulating and driving investor and market vulnerability.\textsuperscript{109}

It would seem like a chicken and egg problem whether new markets brought less U.S. cross-listing, or less U.S. cross-listing (due to more regulation, costs, and enforcement) is driving new alternative markets. The latter would seem more likely, given the perception of the Mexican Stock Exchange\textsuperscript{110} that over-regulation in the U.S. is something that other markets such as the London Stock Exchange have taken advantage of in attracting investors; one product of that being the AIM market. This opens a window of opportunity in the wake of the apparent loss of

\textsuperscript{102} Perino, supra note 9, at 231 (“[W]e may therefore see little decline in foreign private issuers entering the US markets.”).
\textsuperscript{103} See Pan, supra note 39.
\textsuperscript{104} Id.
\textsuperscript{105} Luigi Zingales, Section I: Competitiveness, in INTERIM REPORT OF THE COMMITTEE ON CAPITAL MARKETS REGULATION 50 (Nov. 30, 2006).
\textsuperscript{106} Pan, supra note 39, at 2.
\textsuperscript{107} See New York Stock Exchange, supra note 1.
\textsuperscript{108} See Pan, supra note 39.
\textsuperscript{109} Id. at 14.
\textsuperscript{110} See infra p. 341 Exhibit 8.1, Interview with Jose Manual Allende Zubiri, supra note 35.
competitiveness of U.S. markets. In either case, it is manifest that there are indeed new markets in the limelight, with the capacity to successfully compete against the U.S. in the capital markets race.

Are other markets that foreign issuers seem to be opting for simply a second-best alternative as a result of costs now outweighing benefits for trading in the U.S., or do they constitute in themselves an additional factor hindering U.S. cross-listing? One line of argument is that alternative markets are not actually affecting U.S. competitiveness. For instance, it is thought that the London AIM market has nothing to do with a loss of U.S. competitiveness, given that it is aimed at a different, smaller type of firm. That point is made by Doidge, Karolyi, and Stulz about the loss of U.S. competitiveness in relation to the London AIM market:

"...though the success of the AIM is impressive, it is critical to understand that the typical firm that lists in AIM is a small firm that would not have listed on a U.S. exchange, either in the 1990s or in more recent years. Consequently, it is simply wrong to interpret the success of AIM and the resulting growth in market share of London as evidence of a decline in the attractiveness of U.S. exchanges. However, U.S. exchanges could have become less attractive because they no longer attract new listings that they would have attracted in the 1990's...."

Maybe the smaller type of firm that goes to London would not even weigh the possibility of a U.S. listing. But the point is that other markets do not necessarily have to be as large and important as the U.S. in order to compete. They may in fact be aiming at particular niches of smaller firms that cannot handle U.S. costs of compliance and standards. There are many important firms that may be at a lower stage of development in terms of being multinational, and for which smaller markets may be sufficient. Would that not still be competition?

For instance, the Mexican Stock Exchange does not have any problem with larger Mexican firms going to the U.S., because such a listing helps the firms to access deeper markets and promotes liquidity. Such a scenario benefits the

112. Id.
113. Id.
114. See infra p. 341 Exhibit 8.I, Interview with Jose Manual Allende Zubiri, supra note 35 ("The Mexican Stock Exchange currently offers more attractive alternatives. Firms are starting to concentrate their capital in Mexico. However, it depends on the type of the corporation; if it is global with operations in many markets and if their income depends on other countries, they are able stay in the US, but we are not against that. If there are various markets and multiple listings by firms, they acquire more operating capacity in the markets and that even helps us. What one must analyze is the size of the business and volumes that they handle, but a smaller business listed in the Mexican Stock Exchange will probably have sufficient capacity to distribute its securities to American and/or European firms that are starting to buy their securities in Mexico, and it is not an obstacle as it was before. Something you have to consider is that all businesses that delisted from the United States are still listed in Mexico.")
Mexican Stock Exchange, and it has made strong competitive efforts to ensure that all of the Mexican companies that are listed in the U.S. also traded in the Mexican market. Those who manage the Mexican Stock Exchange know that it is a different race and that they may be in different leagues, but that does not seem stop the competition.

While it could be argued that some firms are not large enough to be involved in the U.S., in the Mexican case they used to be. The concern is that, as in the case of Mexico, many firms that had been involved in U.S. markets for years suddenly saw themselves as not being able to support the burden of maintaining a listing.\textsuperscript{115} Therefore, they started to look for alternative markets, which in itself add a competitive component.\textsuperscript{116}

In the particular case of the Mexican firms subject to this study, it has been noted by the Mexican Stock Exchange, in its intense race to attract firms, that some firms have been very tempted to go to London,\textsuperscript{117} and that the only reason they did not do so involves a factor of proximity, considering that it is a different region.\textsuperscript{118} Given modern communications, regionality would not seem to be very significant, but as discussed in Section II, factors like different time zones and the perception of distance may be stalling cross-listing in London.

Hence, what is happening in Mexico, in light of not having any other significant market nearby to turn to, is simply that firms are staying in their local exchange. This is something that the Mexican Stock Exchange has taken advantage of very well. The exchange is always on the lookout. The first thing it does is find out the reasons and factors why a Mexican corporation would delist from U.S. Markets.\textsuperscript{119} It is likely that it involves an issue of being competitive and attracting as much capital as possible.

In fact, the Mexican Stock Exchange has become stronger, creating attractive alternatives of marketability to corporations, a process helped by the higher corporate standards in Mexico.\textsuperscript{120} This conception has been confirmed by

\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Telephone Interview with Roberto Danel Diaz, supra note 32.
\textsuperscript{120} See infra p. 353 Exhibit 9.IV, Interview with Ing. Humberto Garza Valdez, Chief Executive Officer of Grupo Famsa (Dec. 22, 2006) ("The general perception of officers and directors of Mexican corporations is that SOX is quite complex and the costs involved in gathering the information and complying with the requirements is quite considerable. Hence as long as the Mexican Stock Market continues to get stronger and provides good opportunities of marketability and if foreign investors go on agreeing to invest through the Mexican Stock Market, it is not worth it to explore other markets that are more complex than ours. When we analyzed to become public, our advisors did not even consider participating in the US markets given the cost/benefit involved; extremely high requirements, costs and accountability... It is clear that the authorities have achieved such purposes and practically saved the Mexican Stock Market, which around 4 or 5 years ago was destined to collapse and disappear. Now it is breaking one record after the other in terms of [liquidity] and it is perceived that Mexico has stability and has come to stay. The new corporate practices and standards do seem to invite investors.")
authorities from the Mexican Stock Exchange.\textsuperscript{121} It has been reported that the Mexican Stock Exchange has undergone its best period of recent times during the last six years. Even though the number of corporations listed in the exchange has not increased significantly during this period, the exchange has doubled the value of market capitalization from $125 billion to $308 billion in October 2006.\textsuperscript{122}

In addition, it is important to note that all of the 16 Mexican corporations listed in the U.S. are currently registered in the Mexican Stock Exchange as well. Also, all of the corporations that delisted from U.S. markets after Sarbanes-Oxley are still registered in the Mexican Stock Exchange, indicating that it does offer some interesting alternatives. Hence, corporations are not simply disappearing, they are still around and even if they left the U.S., they are staying in Mexico. In conclusion, considering factors like the high costs of complying with Sarbanes-Oxley, the local Mexican market might just be an incentive for small, medium-sized and even some relatively large Mexican corporations (above $700 million in market capitalization) to stay in Mexico as opposed to exploring the more complex and costly U.S. markets.

\textit{C. Mexican Corporation Migration before and after Sarbanes-Oxley}

The following was stated in relation to ADR cross-listing, soon after the enactment of Sarbanes-Oxley:

By nearly any measure, the amount of foreign private issuer activity in the United States has grown substantially over the last twelve years. . . . Exchange-listed ADR programs have flourished in the United States, increasing from 176 in 1990 to 623 in 2001 . . . At the same time, issuers from a broader array of countries utilized ADRs, with most of this expansion linked to issuers from emerging markets.\textsuperscript{123}

Five years later, however, the decline in ADR listing has been very significant at a world wide level. In NYSE, there were 329 ADR programs in 2003 but only 269 in 2008.\textsuperscript{124} In addition, there was an abrupt fall in ADR additions.\textsuperscript{125} In such a trend, Mexico serves a considerable illustration. Out of the 257 foreign corporations listed in NYSE, since 2003, Mexican firms had the most delistings.

\begin{flushright}
121. Guthrie, \textit{supra} note 15 ("A handful of Mexican companies have opted to abandon the New York Stock Exchange, deciding there's no place like home for their stock listings." Pedro Zorrilla, Vice President of the Mexican Stock Exchange has considered that "[i]n a global world with freely flowing capital, companies are recontemplating the necessity of multilistings in several countries... Often they can meet their objectives on the local exchange.").


123. Perino, \textit{supra} note 9, at 217-18.

124. \textit{See infra} p. 335 Exhibit 1.

125. \textit{See infra} p. 336 Exhibit 2.
\end{flushright}
with 10.\textsuperscript{126} Equally significantly, there were only 3 additions.\textsuperscript{127} Similarly, in the case of NASDAQ, there were no additions and only 3 firms remain registered.\textsuperscript{128} The firms that delisted had been listed in U.S. markets for a considerably long time; all of them over 8 years.\textsuperscript{129} Overall, there has been a significant decline of 26% in Mexican corporations listing in U.S. Markets during this period, among the greatest decline in relation to other countries.\textsuperscript{130} Currently there are 262 foreign corporations listed in NYSE, from 36 countries. That represents 7.2 corporations per country. Hence, even after the decline, Mexico is well above average with 17 corporations listed.\textsuperscript{131} This would mean that it is an important player that U.S. markets should focus on during the wake of this delisting wave.

Another issue to consider is that the corporations that left U.S. markets had a considerably large market capitalization as described in the following sections. This makes one wonder if the burden is also reaching bigger firms.

\begin{figure}
\centering
\caption{Issuers per year: Mexico}
\includegraphics[width=\textwidth]{figure3.png}
\caption*{Source: Graph created based on data provided by NYSE. Note: 26\% drop in listing.}
\end{figure}

\textsuperscript{126} See New York Stock Exchange, \textit{supra} note 1.
\textsuperscript{127} Id.
\textsuperscript{128} See NASDAQ, \textit{supra} note 4.
\textsuperscript{129} See See New York Stock Exchange, \textit{supra} note 1. See also NASDAQ, \textit{supra} note 4.
1. Who Has Left and Why?

There are different reasons cited as causes of delisting by the considerable number of Mexican corporations that withdrew their ADR programs from U.S. markets since 2002. It is true that each of them represents a very particular and distinct case, but nonetheless, there seems to be consistency in certain aspects related to the Act regarding their delisting. I will comment on what each corporation had to say in relation to the withdrawals, taking into account SEC filings, press releases, and personal interviews that were held for the purpose of this investigation with officers and directors of the mentioned firms.

a. Apparent Exceptions to the Rule

Since the enactment of Sarbanes-Oxley, the delisting of two of the Mexican firms that withdrew from U.S. markets had apparently nothing to do with the Act, or with any motive related to it. Nonetheless, officers of those firms did recognize the considerable impact SOX has represented for Mexican companies.

i. Savia, S.A. de C.V.

Savia, S.A. de C.V. (SAVIA) listed in NYSE on February 2, 1994. It was suspended from trading on October 13, 2003. NYSE’s action for the removal of the listing followed a transaction through which the company reduced its assets and operations by selling its stake in another corporation. The following was reported:

The Exchange's action is being taken in view of the fact that Savia has substantially reduced its operating assets and scope of operations as a result of the disposal of its ownership in Seminis Inc. (“Seminis”). On September 29, 2003 the Company announced that it completed its previously announced transaction, in which Fox Paine & Company, LLC, a San Francisco-based private equity firm and certain related parties to Savia, acquired from Savia its ownership in Seminis and as a result, Seminis is no longer a subsidiary of Savia. . . . The NYSE noted that it may, at any time, suspend a security if it believes that continued dealings in the security on the NYSE are not advisable. 132

During an interview with Héctor M. González, Secretary of the Board and chief legal counsel of Savia, S.A. de C.V., the following was reported:

---

130. See infra p. 335-37 Exhibits 1, 2, & 3.
131. See infra p. 336 Exhibit 2.
For obvious reasons, Sarbanes-Oxley had nothing to do with the delisting of Savia, which came as a result of other business strategies and transactions. Regardless, we are aware of the high costs of compliance of the Act in relation to internal controls certification and of the considerable impact it has had on Mexican firms.133

This particular case appears to be exceptional in relation to the rest of the Mexican corporations that left U.S. markets during the last five years, but the firm still noted the impact of the Act and how it has affected Mexican issuers.

ii. Corporación Durango, S.A. de C.V.

Another exceptional case concerns Corporación Durango, S.A. de C.V. (CDSA), a company that had been trading in NYSE since July 15, 1994 and that was suspended in 2004 because of a financial debt restructuring it had to undergo. In an interview the company’s chief financial officer explained the action:

We had an ADR program, as well as long term debt bonds listed in NYSE. However, 2002 was a difficult year for the company and in general for the paper industry. Hence, we entered into a restructuring plan with our creditors, and given the NYSE rules regarding restructuring we had to be delisted.

In the negotiations with our creditors, in order to issue new debt, we offered, for their assurance, that we would continue being a voluntary filer registered with the SEC, and that way provide trust by preparing and disclosing our financial information like any other reporting company, by being subject to U.S. securities laws, including the Sarbanes-Oxley Act, by complying with both the Mexican Accounting Principles and US GAAP, and by being subject to potential officer liability.134

Even though the company reached an agreement with its creditors to continue being registered with the SEC regarding the issuance of new debt, and is hence subject to Sarbanes-Oxley, the following concerns were mentioned in relation to the Act:

Even if we are subject to SARBANES-OXLEY and currently getting ready to comply for 2008, we have indeed invested huge amounts of money and time, and it is a very strict black or white regulation that we

---

133. Telephone Interview with Héctor M. González, Chief Legal Counsel and Secretary of the Bd. of Savia, S.A. de C.V. (Mar. 1, 2007).
hope will become more flexible in its implementation. It is definitely not designed for Mexican corporations; the Act is just too rigid. We are hoping for reevaluation.

Nonetheless we will continue to be registered to SEC, at least until 2012 and hence subject to SARBANES-OXLEY. Our creditors and investors require that even though we are not in NYSE, we do disclose and provide all the necessary financial information, something we assure by being registered with SEC, assuring better quality securities and trading. In addition, it is our way of accessing international markets. Other markets like London are good, but most of our investors are American and they are more familiar with U.S. markets. Our financing sources come from the U.S..

This is a case in which the delisting of the corporation had apparently nothing to do with SOX. The proof would be that even after delisting, the company continues to be subject to it. However, the serious concerns about the costs of complying with Section 404 suggests that if it were not for the conditions imposed by its creditors, the firm would have withdrawn given such costs, particularly since the firm is relatively small with a market capitalization of $970,322,543 Mxp (Approx. $90,684,349.81 UScy). Hence, bearing the costs of compliance related to internal controls should be a considerable burden to the company. If it hadn't been for the restructuring, would the company still be willing to subject itself to U.S. law and to the Act?

b. SOX in Play

Most of the issuers that left U.S. markets since 2002 were in some way driven away by Sarbanes-Oxley. The following six companies particularly attribute their withdrawal to the high costs of compliance.

i. Internacional de Cerámica, S.A. de C.V.

Internacional de Cerámica, S.A. de C.V. (ICSA) listed in NYSE in December 8, 1994 and decided to deregister almost ten years later. When soliciting to withdraw its American Depositary Shares from listing in NYSE, the following reasons were declared:

The Board of Directors ("Board") of the Issuer approved a resolution on September 8, 2004 to withdraw the Issuer's Securities from listing on the

135. Id.
NYSE. The Board stated that following reasons factored into its decision to withdraw the Issuer's Securities from the Exchange: (i) The dramatically increasing costs associated with the preparation and filing of the Issuer's periodic reports with the Commission and other expenses related to listing the Securities on the NYSE; (ii) the limited number of registered holders resident in the United States; (iii) the lack of analyst coverage and minimal liquidity in trading of the Securities; (iv) the infrequent trading of the Securities on the NYSE and the likelihood that such trading volume would not increase materially in the foreseeable future; (v) the costs associated with the continued listing of Securities are disproportionately high, given the limited trading volume; (vi) the limited voting units underlying the Securities will continue to be listed and traded on the Bolsa Mexicana de Valores, S.A. de C.V. ("Bolsa"); (vii) the belief of the Issuer that concentration of its Securities on the Bolsa alone rather than on two different trading markets will improve liquidity in and trading of its Securities; and (viii) the benefits associated with maintaining listing and registration in the United States are outweighed by the costs of maintaining the listing and registration.137

There are three distinct issues expressly addressed as motives of delisting. First, the costs of compliance. There is no express mention of Sarbanes-Oxley, as the costs are referred to in general terms, but the fact that they are associated with preparing and filing of reports with the SEC and other expenses related with listing securities in the NYSE suggests that it is related to Section 404 of the Act. The second and most remarked aspects are associated with low trading volume and liquidity. The corporation refers mainly to small number of holders in the U.S., low liquidity in trading of securities, and infrequent trading and low expectations of future increase in trading. Third, there is allusion to another feasible alternative that the corporation is pursuing, that being, the Mexican Stock Exchange (Bolsa Mexicana de Valores).

Even though there are different reasons related to the delisting, the common denominator seems to be costs of compliance. The corporation notes the low level of trading and the disproportionate high costs associated with listing the securities, concluding that the costs of registration and of maintaining the listing outweigh the benefits.138 In addition, the costs of compliance also bring about the decision of the firm to concentrate its securities in an alternate exchange market in order to acquire more liquidity. Therefore, it is fair to infer that, if there were no costs of compliance (or if they were more moderate), the cost-benefit analysis may have had a different outcome and the company might have not decided to delist, regardless of the low trading volume and the existence of other alternative markets.

137. Issuer Delisting, Notice of Application (Int'l de Cerámica), supra note 16.
138. Id.
In an interview held with the Secretary of the Board of Directors of the company, he stated that the main reason for the delisting of the ADR program was indeed a costs-benefit analysis conducted by the firm: low trading volumes coupled and the high costs of complying with Section 404 of the Act outweighed the benefits of listing. He explained in this way:

There were several fundamental reasons that the company considered in that moment to delist from NYSE. There was a very small amount of trading in the U.S. In fact, most of the activity was taking place Mexico. Hence, we decided to concentrate all of our securities in the Mexican Stock Exchange. Also, the increasing costs of compliance and the time required in gathering and filing all the financial information to maintain the listing was just too much for the low trading of our ADRs. We just considered it was not worth it.

We had been listed in the U.S. since 1994, and we did not have any problems. However, the alternative of delisting in 2004 was considered, taking on account the costs of compliance derived from the Sarbanes-Oxley Act, particularly Section 404.

I do not know if the higher level of officer liability derived from Sarbanes-Oxley had something to do with the delisting and I don't believe it was ever mentioned. The issue of higher enforcement and litigation in the U.S. was not addressed either when the delisting was considered. What was mentioned were the costs and the paperwork involved, and at that moment the cost-benefit assessment did not result in our favor.

This firm has a relatively low market capitalization of $4,717,259,596 Mxp (Approx. $440,865,382.8 UScy). Given its smaller size, the company would have been more able to maintain its listing if it were not for the costs of compliance with Section 404 of the Act. On the other hand, it is interesting to note that there was no mention of issues like higher level of enforcement, litigation, and officer and director liability, which were apparently not of concern, or at least not addressed as such.

ii. Desc, S.A. de C.V.

Desc, S.A. de C.V. (DESC) is a very diversified manufacturer with divisions in the automobile parts, food, chemical, and real estate industries. It listed in NYSE in

---

139. Telephone Interview with Luis Fernando Mesta, Secretary of the Board of Directors and Legal Advisor, Internacional de Cerámica, S.A. de C.V. (Feb. 20, 2007).
140. Id.
July 14, 1994, but on November 29, 2004, its stockholders voted to delist its ADRs. A business journalist observed that:

Desc, with annual sales of $2 billion and four different business lines, can expect to save about $5 million a year in lawyer and accountant fees by not preparing filings for the U.S. Securities and Exchange Commission.

The high costs of compliance derived from legal and accounting fees for preparing filings with the SEC suggest the impact of the Act. Furthermore, the following reasons for delisting were publicly reported by the company:

In a press release, Desc said its series B shares will continue to trade on the Mexican Stock Exchange, and that the company will continue to comply with reporting obligations and other requirements under Mexican law. Desc announced in October that it wanted to leave the New York Stock Exchange, saying that "the benefits to Desc and its stockholders in maintaining a U.S. trading market are outweighed by the costs and other burdens at the present time."

The company explained that it doesn't plan to access U.S. capital markets and that investors wishing to buy into Desc would still have the option of buying its shares on the Mexican exchange.

As stated above, the motives for withdrawal appear to be the costs and burdens associated with trading in the U.S. markets outweighing the benefits of maintaining a U.S. listing, as well as the alternative of concentrating its capital in the Mexican Stock Exchange. The main issue lies in the high costs of trading in U.S. markets. This should be a concern for the U.S. market given that Desc, S.A. de C.V. is one of the largest industrial groups in Mexico "with 2003 sales of approximately U.S. $2.0 billion and nearly 14,000 employees."

In a conference with the individual who served as chief financial officer of Desc, S.A. de C.V. at the time of delisting, he referred to the following issues:

Desc delisted from NYSE due to several factors. The first issue that was brought to our attention was the costs of compliance we would have to incur, particularly in obtaining the internal control certification in terms of Section 404 of the Sarbanes-Oxley Act of 2002. We looked at several


143. Guthrie, supra note 15.

144. Jones, supra note 142.

145. Id.
proposals and the costs went from the least expensive of between 700 and 800 thousand dollars to the most expensive of 1 and ½ million dollars.

I would say that it is that combination of factors involving costs of compliance and very low liquidity in the U.S. that made the company delist from the U.S. market from a costs-benefit perspective.

It is possible that if the Sarbanes-Oxley had not come along Desc would still be in the U.S. market. It would probably have delisted several years later.\textsuperscript{146}

It is clear that the costs of compliance were derived from Section 404 of the Act. The firm is relatively small and would face more of a burden having a market cap of $4,796,408,215 Mxp\textsuperscript{147} (Approx. $ UScy); below the $700 million threshold cited by the Committee of Capital Markets Regulation.

\textbf{iii. Grupo Industrial Maseca, S.A. de C.V.}

Grupo Industrial Maseca, S.A. de C.V. (GIMSA) listed in NYSE on May 17, 1994 and delisted more than ten years later.\textsuperscript{148} In an interview held with the legal vice-president and the legal manager of the company the following was addressed in relation to GIMSA’s withdrawal:

Having two companies from the same group listed in the U.S. made the investor decide which one they would choose. Hence our corporate group was competing against itself. The low trading volume of GIMSA had become minimum both in Mexico and in the U.S., and the ADR program was constantly becoming smaller. After this we contemplated the possibility of delisting GIMSA from both markets or only form the U.S. This has nothing to do with Sarbanes-Oxley, but there are some very considerable expenses that we would avoid.

There was definitely the cost benefit of being in the U.S. market, derived from Sarbanes-Oxley. It was not smart for us to pay for internal controls derived from Section 404, considering the liquidity was extremely low. We analyzed the benefits and they were few, so it was not convenient to continue.

\textsuperscript{146} Telephone Interview with Lic. Arturo D’Acosta, Former CFO, Grupo Desc, S.A. de C.V. (Feb. 15, 2007).


\textsuperscript{148} \textit{See} New York Stock Exchange, \textit{supra} note 1.
The cost did influence the delisting from NYSE, because even if it was not so significant, there was an increase, plus it wasn’t worth while placing more efforts and work into it.

If Sarbanes-Oxley had not come out, maybe we would have not delisted.

The analysis of delisting GIMSA came before Sarbanes-Oxley, but after Sarbanes-Oxley was implemented we decided to finalize the process of delisting.149

There were reasons other than Sarbanes-Oxley that led to the delisting of GIMSA. Perhaps the most compelling ones have to do with the fact that the corporate group to which GIMSA belongs, has another company listed in NYSE, Grupo Maseca, S.A. de C.V. (GRUMA), that the group of companies is already subject to Section 404 costs of compliance, and that due to corporate reorganization strategies, the international presence that GIMSA had in earlier years was shifted within the corporate group to GRUMA.

However, what is most significant for the purpose of this research is the remark that if it were not for Section 404 costs of compliance, GIMSA might have maintained its listing, regardless of low liquidity and the group’s access to U.S. markets through another corporation of the group. It is interesting to note that GIMSA has a relatively high market capitalization of $8,265,645,000 Mxp150 (Approx. $772,490,186.9 UScy). A large corporation not being able to handle the costs of compliance either? Apparently at least not when coupled with low trading volume and liquidity.

iv. Grupo IMSA, S.A. de C.V.

Grupo Insa, S.A. de C.V. (IMSA) listed in December 11, 1996.151 An order was issued granting the application of IMSA to withdraw its American Depositary Shares from listing and registration on the New York Stock Exchange, effective at the opening of business on April 7, 2005.152 In relation to the delisting of the company, the following was reported:

151. See New York Stock Exchange, supra note 1.
"We're looking at concentrating on one market and attracting investors in Mexico," Imsa Chief Financial Officer Marcelo Canales told analysts in a conference call last week....

By departing now, the Mexican companies will avoid tougher compliance requirements under the Sarbanes-Oxley reform law. Both Desc and Imsa, though, insist that they aren't running from tougher standards in the U.S. 133

When filing for delisting with the SEC on February 10, 2005, the corporation stated the following reasons:

The Board of Directors ("Board") of the Issuer adopted resolutions, at a meeting held on January 10, 2005, to withdraw the Security from listing and registration on the NYSE. The Board stated that in reaching its decision to withdraw the Security from the Exchange, the Board considered the following factors. First, the Board believes that the Issuer's shareholders have been disadvantaged by the historically thin liquidity of trading in the U.S. markets for the Security. The Board believes that the trading price of the Security has been adversely affected by weak liquidity. Second, in the Board's view, the liquidity and pricing issues have arisen because the public float of the Security is not large enough to support trading on two exchanges. Only 15% of the Security is owned by the public, with the rest owned by the Canales Clariond and Clariond Reyes families. Since the Issuer is a Mexican company, headquartered in Monterrey, Mexico, the Board believes that all trading in the Security should take place on the Mexican Stock Exchange. Third, the Board hopes that if all of the trading in the Security takes place on the Mexican Stock Exchange, the market for the Security on that exchange will show improved liquidity and pricing. In that case, withdrawal of the Security from listing on the NYSE will benefit the Issuer's shareholders.

Last, the Board stated that as required by the Issuer's by-laws, the Issuer's shareholders have voted on and approved by a majority of more than 98%, the proposal to withdraw the Security from listing on the NYSE. Investors in the Security will continue to have access to information regarding the Issuer contained in reports filed with the Commission. In view of the thin liquidity of the trading markets for the Security and the price at which the Security has historically been trading, the Board believes that the Issuer's shareholders have not realized the benefits of an NYSE listing.134

133. Guthrie, supra note 15.
From this information, the board was primarily concerned about: (1) Thin liquidity of trading in the U.S. markets for the securities; (2) The liquidity and pricing issues have arisen because the public float of the security is not large enough to support trading on two different exchanges; (3) Only 15% of the security is owned by the public, with the rest owned by the controlling families; (4) Since the issuer is a Mexican company, headquartered in Monterrey, Mexico, the Board believes that all trading in the security should take place on the Mexican Stock Exchange; and (5) The Board hopes that if all of the trading in the security takes place on the Mexican Stock Exchange, the market for the security will show improved liquidity and pricing. In that case, withdrawal of the security from listing on the NYSE will benefit the issuer's shareholders.155

In relation to reason (2), the public float not being large enough to support two exchanges, it seems probable that the firm’s plan was to only stay in one exchange which required a choice between the two. In the case of Grupo IMSA, S.A. de C.V., the Mexican Stock Exchange was the alternative that the corporation took to the NYSE. In fact, only a few days before filing for delisting of NYSE on February 10, 2006, and right after the board resolution of January 10, Grupo IMSA, S.A. de C.V. joined the Mexican Stock Exchange and referred to acquiring better liquidity in the following terms:

Mr. Marcelo Canales Clariond, Grupo Imsa's CFO, stated: "We are very satisfied that our company's shares have been included for the first time in the Mexican Stock Market Index. This is a firm step in our objective of increasing the liquidity of our stock. We are committed to continue working to make Grupo Imsa a financial instrument that creates value for our shareholders." Mr. Canales added: "The improvement in our stock's liquidity over the past few months and its inclusion in the Stock Market Index increase the opportunities for Grupo Imsa to be included in the portfolios of new investors, such as pension funds (Afores) and mutual funds."156

However, when interviewing the corporation directly, it became clear that liquidity was not the decisive issue, but rather was combined with costs of compliance with Section 404 of SOX. IMSA’s legal manager stated:

IMSA’s delisting was due to a combination of factors. For one part, we didn't have much trading in the U.S.; Hence we decided to concentrate in the Mexican market in order to gain more liquidity.

---

155. *Id.*
In addition, costs of compliance were too high. In fact, even with low liquidity we probably would have stayed in the U.S. market if it were not for the Sarbanes-Oxley Act and its implementation; particularly Section 404.

Therefore, low liquidity combined with having to certify internal controls and therefore incurring in high costs and having to involve many auditors and lawyers to prepare and file financial information really complicated things.

Therefore, the conclusion was moving to the Mexican market.157

Once again, a combination of low liquidity and high costs of compliance brought about delisting. That in addition to having a low market capitalization of $1,748,813,700 Mxp158 (Approx. $163,440,532.7 USc), costs of compliance do seem to be significant when facing low liquidity. It appears that if it were not for the costs of complying with the Act, regardless of thin liquidity, it is likely that the corporation would have maintained its listing of ADRs in the NYSE. If a firm this size is able to pay such costs, it might also be able to find ways of increasing its trading and gaining liquidity.

v. Controladora Comercial Mexicana, S.A. de C.V.

Controladora Comercial Mexicana (CCM) listed in NYSE on October 11, 1996, and delisted ten years later.159 The following was stated in a public address to the CCM’s withdrawal:

Press Release. Controladora Comercial Mexicana, S.A. de C.V., (CCM) announced today its intention to terminate its Global Depositary Receipt (GDR) Deposit Agreement with the Bank of New York, to delist its securities listed on the New York Stock Exchange (NYSE) and to deregister its securities under the United States securities laws.

The reason for delisting off the shares in the United States is that over the past several years, substantially all of the trading volume in the Company’s equity securities occurs in Mexico through Comerci UBC shares, which will continue trading normally. Since the GDRs represent such a small portion of CCM’s total equity and trading volume, the

159. See New York Stock Exchange, supra note 1.
Company believes that the administrative costs and burdens of continued listing and registration outweigh the benefits.

The trading of the GDRs shall continue on the NYSE until around November 3, 2006, when CCM expects to deregister its GDRs with the United States Securities and Exchange Commission (SEC). GDR holders will have a period of time during which to exchange their GDRs for common shares that are traded on the Mexican Stock Exchange (BMV).

As a result of delisting and deregistering its securities, CCM will no longer have the obligation of filing with the SEC certain reports, such as its Annual Report on Form 20-F and other periodic reports. This will allow the Company significant savings on time and money expended on U.S. compliance.

CCM’s BC Units will continue to be listed on the BMV and the Company will continue to abide by the disclosure requirements under Mexican law. CCM will continue its policy of timely reporting material financial and other information to the investor community and the public in general. 160

Apparently the predominant factor was very low trading volume of securities in the U.S., while there was the alternative of trading offered by the Mexican Stock Exchange in which the company had most of its equity. The company continued to comply with disclosure requirements and report material financial information, but in accordance with Mexican law, which would be less burdensome.

The administrative costs and burdens of maintaining the listing and registration were considered to be significant, apparently outweighing the benefits. Thus the delisting would result in considerable savings in the time and money involved in U.S. compliance. Given a relatively high market capitalization of $31,048,740,000 Mxp41 (Approx. $2,901,751,402 US$), low trading volume does seem to be an issue. This also means that even a large company will struggle with the high costs of compliance.

In an interview with the Manager of Investor Relations of CCM, she reported that the costs of compliance with Section 404 was the most significant component in the decision to delist:

The costs of compliance of Section 404 of the Sarbanes-Oxley Act were the main factor leading to the delisting of Controladora Comercial Mexicana. In a cost benefit analysis, it was not worth it to incur in such

160. Controladora Comercial Mexicana, S.A. de C.V., Report of a Foreign Private Issuer (Form 6-K), Exhibit 99.1 (Oct. 23, 2006) ("CCM announces its decision to delist the GDRs from the New York Stock Exchange (NYSE) and to deregister from the Securities and Exchange Commission (SEC)").

costs with such a low volume trade. Only 2% of our securities were in the U.S. market with the rest of them being traded in the Bolsa Mexicana de Valores. If it weren’t for the costs, the company would most likely have continued in the United States given the benefits provided by a listing of that kind.  

vi. Elamex, S.A. de C.V.

When soliciting to be delisted from the NASDAQ stock exchange by January 30, 2006, Elamex, a Mexican company with manufacturing operations and real estate holdings in Mexico and the U.S., offered this explanation:

Richard R. Harshman, Elamex's President and CEO commented, "The Company's Board of Directors approved the delisting and deregistration of its common stock after carefully considering the advantages and disadvantages of continuing registration and listing. The costs and administrative burdens associated with being a public company have significantly increased, particularly in light of SEC, Sarbanes-Oxley and NASDAQ requirements. Our Board has determined that the rising costs of compliance, as well as the substantial demands on management time and resources, outweigh the benefits the Company and its shareholders receive from maintaining its registered and listed status. We believe that deregistering will result in significantly reducing expenses, avoiding even higher future expenses and will enable our management to focus more of its time and resources on operating the Company and enhancing shareholder value."

In addition, when speaking to the Vice President of Financial Operations of the company, the following was stated:

There were different factors that led to the delisting of Elamex, S.A. de C.V. The most significant one, however, involved the costs of complying with section 404 of the Sarbanes-Oxley Act related to the certification of internal controls given the relatively small size of the Company. Nevertheless, there are other elements that also were taken into consideration in the cost benefit analysis assessed by the company when considering whether to continue with the listing. Among them were non-section 404 SEC related costs including filing fees, publication and mailing costs, and higher outside accounting fees and Directors and

162. Telephone Interview with Maria Maillard Touche, Manager of Investor Relations, Controladora Comercial Mexicana (Feb. 28, 2007).
Officers insurance. Another issue of concern is the risk impact to a public company and its senior management in the United States, stemming from shareholder lawsuits as well as SEC enforcement efforts.\textsuperscript{164}

This case refers once again to the considerable increase in costs and to the burdensome administrative system that are now required. The advantages and disadvantages are weighed in the cost-benefit analysis that firms now apply when considering cross-listing, with the unfortunate outcome of the costs prevailing.

Another interesting issue is that the costs of compliance, and all the attention that is shifted toward administrative matters and the implementation of internal controls, is diverted from operating the company and enhancing shareholder value. This is something of concern, given that the regulations may have little to do with corporate governance, but can have a direct impact on firm performance. In fact, it may also have an impact in the development of capital markets, simply because the SOX requirements cause companies to go private or to withdraw their listing in exchanges in order to avoid the costs.

c. \textit{Was SOX Really It?}

i. TV Azteca, S.A.

ii. Grupo Iusacell, S.A. de C.V.

iii. Grupo Elektra, S.A. de C.V.

So far it is possible to identify a group of companies whose delistings had apparently little or nothing to do with Sarbanes-Oxley. We can also find another bundle of firms whose reasons for delisting were reported to be the costs of compliance with Section 404 of the Act which relates to internal control certification. Moreover, there is a third group of firms whose underlying reasons for delisting were not the costs of compliance: TV Azteca, S.A.; Grupo Iusacell, S.A. de C.V., and Grupo Elektra, S.A. de C.V.

These three companies belong to the same corporate group, Grupo Salinas. TV Azteca, S.A., the second largest Television chain in Mexico, was listed in August 15, 1997, Grupo Iusacell, S.A. de C.V. was listed in June 15, 1994, and Grupo

\footnote{164. Telephone Interview with Mr. Mark Zimmerman, Vice President of Financial Operations, Subsidiary of Elamex, S.A. de C.V. (Mar, 3, 2007).}
Elektra, S.A. de C.V. was listed on December 5, 1994. They all withdrew their ADRs in 2005.

It is important to note that these firms were implicated in a significant public scandal involving fraud charges filed by the SEC against the group, its chairman, Ricardo Salinas Pliego, and other officers. It alleged that the defendants failed to disclose the related party nature of a 2003 debt transaction involving Unefon, S.A. de C.V., a TV Azteca subsidiary, and Codisco, LLC, an entity in which Salinas held a beneficial interest. The group settled without admitting to or denying the allegations of the complaint, but Salinas and another officer, Pedro Padilla Longoria, agreed to pay disgorgement and penalties of $7.5 million and $1 million respectively, and further agreed not to serve as officers or directors of a U.S. public company for a period of five years, except under limited circumstances. Additionally, TV Azteca, Grupo Elektra, and Grupo Lussacell, without admitting or denying the Commission’s findings, each consented to the entry of an Order Instituting Proceedings, Making Findings and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934. The orders were instituted and the revocations of registration became effective immediately. The proposed judgments provide that, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, the monies paid would be deposited with the Court and used to establish a Fair Fund to compensate affected investors.

This case, involving self-dealing for the amount of $109 million at the expense of shareholders, was marked by the SEC as the first time that foreign executives had been charged under the provisions of the Sarbanes-Oxley Act. Also, it led the Mexican securities regulators to start an investigation and to fine TV Azteca and its

165. See New York Stock Exchange, supra note 1.
166. Id.
167. See Johnson, supra note 52.
168. SEC v. TV Azteca, S.A. de C.V., et al., Litigation Release No.19833, Civil Action No.: 1:05CV0004 (EGS) (D.D.C). (Sept. 14, 2006), available at: http://www.sec.gov/litigation/litreleases/2006/fr19833.htm (“The Commission’s complaint, filed in January 2005, alleges that the defendants violated or aided and abetted violations of Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(b)(5), and 13(d) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1, 13a-14, 13a-16, 13b2-2, 13d-1 and 13d-2, thereunder. The Commission alleged that defendants failed to disclose the related party nature of a transaction involving Unefon, S.A. de C.V., a TV Azteca subsidiary, and Codisco, LLC, an entity in which Salinas held a beneficial interest.... Defendant Salinas agreed to consent to a final judgment that imposes a permanent injunction prohibiting future violations of Sections 10(b), 13(b)(5) and 13(d) of the Securities Exchange Act of 1934, and Rules 10b-5, 13a-14, 13b2-2, 13d-1 and 13d-2 thereunder, or aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-16 thereunder and orders him to pay $7,500,000 pursuant to Section 21(d)(3) of the Exchange Act and §1, which shall serve §§as a predicate to converting the funds paid into a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002.”).
169. Id.
170. Id.
171. Id.
chairman $2.4 million. The scandal is often cited as the main reason why the group withdrew or had to delist, though the withdrawal took place in July 2005, much before the settlement was reached. However, in press releases, the group offered other motives and denied it had to do anything with the fraud charges:

Shareholders of TV Azteca and other companies controlled by businessman Ricardo Salinas Pliego voted Wednesday in favor of proposals to delist their shares from the New York Stock Exchange, a company official said.

TV Azteca, retail and consumer banking concern Grupo Elektra, and wireless phone company Grupo Iusacell, will all delist their American Depositary Receipts.

Luis Nino de Rivera, vice chairman of Elektra unit Banco Azteca and spokesman for the Salinas Group, said TV Azteca shareholders voted almost unanimously in favor of delisting, while 91.5 percent of Elektra shareholders and 96.9 percent of Iusacell holders backed the proposal. He rejected the assertion that the delistings had to do with the fraud charges brought by the SEC against Salinas and other TV Azteca officials over a 2003 debt transaction involving wireless phone company Unefon SA. In announcing the plans to delist last month, the three companies cited "excessive regulation" in the United States, which they said increases costs and expenses and legal risks, with questionable benefits. Nino de Rivera said the overwhelming votes in favor of the U.S. delisting lead the companies to expect that most shareholders will swap their ADRs for CPO shares that trade on the Mexican Stock Exchange.

Rivera thus attributes the delisting to "excessive regulation" in the U.S., which caused increased costs and legal risks, and to better prospects on the alternative Mexican Stock Exchange. However, even if it is denied that the delisting had anything to do with the fraud charges, it should be considered that the increasing "legal risk" could very well involve administrative sanctions, stricter enforcement, and litigation similar to what the group had to face against the SEC.

Grupo Iusacell, S.A. de C.V. referred to another motive for terminating the ADR program with the NYSE, alluding to the Mexican Stock Exchange as a stronger

173. See New York Stock Exchange, supra note 1.
alternative capital market offering high levels of liquidity with lower costs in addition to a legal framework that protects investors:

Among other factors, the shareholders based their decision on the limited activity of the shares of the Company in the U.S. capital markets. The shareholders considered that the Mexican capital markets have become a strong source for peso financings, with lower costs for the Company compared with the ADR program, at the same time offering high levels of liquidity to investors. The Company believes that the Mexican Stock Market Exchange offers a legal framework that emphasizes protection of all shareholders.\textsuperscript{176}

The strength of the Mexican capital markets could be in itself a motive. It is also possible that the corporation simply had to find another market, given the high costs of compliance derived from U.S. regulation, with or without the fraud case, or a combination of both: the Mexican market has improved while the U.S. market has become more difficult.

In an interview Eduardo González Salceda, Financial Manager\textsuperscript{177} of Grupo Salinas,\textsuperscript{178} offered the following explanation for the delisting of the corporations:

The main factor had to do with a situation in which the costs outweighed the benefits by far. In particular, it had to do with Section 404 and all the expenses derived from internal control implementation. It was truly excessive and it involved hiring many auditors and lawyers. It just wasn't worth it and it wasn't granting us any benefit. In fact, we believe that having all our securities in the Mexican Stock Exchange yields much more liquidity.\textsuperscript{179}

Addressing the possibility that the scandals surrounding the firms at that time may have been behind the delisting, González Salceda stated that this was not true:

The controversies related to our group of companies were just bad timing. It just happened at the same time in which we decided to delist. It was purely a bad coincidence and had nothing to do with our decision. It is just a matter of gossip that of course calls for attention, but it did not derive from any order by the SEC in the sense of delisting, or from any agreement either. It did not matter to the SEC if we continued listed or not.


\textsuperscript{177}  Telephone Interview with Lic. Eduardo Gonzalez Salceda, Financial Manager, Grupo Salinas (Mar. 1, 2007).

\textsuperscript{178}  Grupo Salinas includes TV Azteca, S.A. de C.V.; Grupo Iusuacell, S.A. de C.V.; and Elektra, S.A. de C.V.

\textsuperscript{179}  Telephone Interview with Lic. Eduardo Gonzalez Salceda \textit{supra} note 177.
in relation to said controversies. The official and true reason has to do with our strategical and business decision to withdraw based on a cost benefit analysis.\textsuperscript{180}

In relation to lusacell, he referred to financial rather than legal issues:

In the particular case of lusacell, it was a corporation that had financial difficulties. We acquired it with too much debt and it was not feasible to continue maintaining a U.S. listing. In fact, the market capitalization was very low in relation to the present day, with approximately $250,000,000 U.S.. Today our share value has gone up considerably and we have a market cap of just over a billion dollars. But then again, the costs were too high.\textsuperscript{181}

Regarding Grupo Elektra, considering that its market capitalization was the highest, exceeding 3.5 billion,\textsuperscript{182} he cited low trading volume:

It is true that Grupo Elektra is much larger, but I don’t believe cross listing should be measured in terms of market capitalization. The market may very well evaluate a firm in a very different way to what its actual liquidity is. In this case, the trading volume was very low and regardless of how large a corporation is, there is just no excuse in going around spending money in all those costs for no reason.\textsuperscript{183}

In relation to TV Azteca, with its market capitalization over $1.6 billion dollars\textsuperscript{184} and a large trading volume, the costs still exceeded the benefits:

TV Azteca is very large as well and as opposed to the other two firms, it did have a large float of securities trading in the New York Stock Exchange. However, regardless of a higher level of liquidity, the costs still outweighed the benefits. We were in the United States in order to share and disclose our information in order to place ourselves in a different level and with it, to have access to deeper markets and to better financing.
However, we were getting neither and, so, the costs were still high and it was not worth it to continue with the listing.\textsuperscript{185}

It is worth noting to see how many elements danced around the delisting of the corporations. For one thing, at least two of the firms were fairly large at the time of withdrawal, and at least one of them had high liquidity. However, the group of firms and their highest officials and controlling owners were surrounded by public scandal involving large amounts of money.\textsuperscript{186} This could lead us to suspect that the debacle constituted the underlying reason for withdrawal. Perhaps the SEC did not order such a departure, at least not officially, but the fact that the controlling owner and manager of the corporate group was exposed publicly, and finally had to pay a large sum and was disbarred from serving as an officer in any public corporation issuing in U.S. markets, served as a “not welcome” sign; or perhaps, on a personal note, the owner decided to withdraw due to his resentment of the charges.

It is interesting to consider the possibility that the lack of financing that the corporations experienced had to do with a bad image from the scandals and that a reputational component kicked in. However, they could have had that financing problem previously. There are many ways to read this situation, but the fact is that the official version attributes the delisting not to fraud, but to Sarbanes-Oxley and the high costs of compliance that came with it.\textsuperscript{187}

V. CONCLUSION AND OUTLOOK OF MEXICAN CORPORATIONS IN THE U.S.

A. Concluding Remarks

The purpose of this investigation was to determine whether the departure of considerable numbers of Mexican Corporations\textsuperscript{188} from U.S. markets in the last five years\textsuperscript{189} was due to Sarbanes-Oxley, particularly in relation to the costs of compliance with Section 404 concerning the certification of internal controls. As previously described, many factors come into play in the cost-benefit analysis that firms conduct when evaluating coming or staying in U.S. markets. Hence, whether or not Sarbanes-Oxley and its costs of compliance were the key factors leading to such delisting is not something that can be easily determined.

Even if it has been argued that the causes leading to delisting preceded Sarbanes-Oxley,\textsuperscript{190} what is crystal clear is that the delisting trend did follow the

\textsuperscript{185} Telephone Interview with Lic. Eduardo Gonzalez Salceda supra note 177.
\textsuperscript{186} Noon, supra note 18
\textsuperscript{187} Telephone Interview with Lic. Eduardo Gonzalez Salceda supra note 177.
\textsuperscript{188} For purposes of this study, Mexican corporations are considered to be reporting companies that are listed as Level II and III ADRs on a national securities exchange (NYSE and NASDAQ for the purpose of this investigation).
\textsuperscript{189} New York Stock Exchange, supra note 1.
enactment of Sarbanes-Oxley. Particularly in the Mexican case, firms only began to significantly exit after 2002. These firms had been listed for an average of approximately 10 years each, and had maintained a listing in spite of issues like low trading volume and liquidity. Only after Sarbanes-Oxley, with its high costs of compliance, did they begin to leave. In fact, at least in the Mexican illustration, officers and directors of all the firms that voluntarily (not those suspended by the exchanges) withdrew their ADR programs from the New York Stock Exchange and NASDAQ since 2002 attribute their exit to the costs of compliance of the Act.

As was seen in some of the firms analyzed, officers and directors may not always spell out the underlying factors that truly led to the withdrawal of their companies. Identifying the real motives behind each case was the objective of the qualitative research method of this study, specifically through analyzing existent documentation related to each company and its delisting and comparing it with what was learned through the interviews and focus groups held with them, and through other related observation methods.

As observed by Professor Mark J. Roe in relation to my findings, this research identified three groups of Mexican firms that left the U.S. markets since 2002.\textsuperscript{191} The first one is not relevant for the purpose of this study, since it involved only two firms\textsuperscript{192} that were suspended by the New York Stock Exchange for financial difficulties and restructuring. The other two groups of Mexican corporations voluntarily left U.S. markets.

One group, comprised of six firms,\textsuperscript{193} was consistent with my hypothesis in that their withdrawal was motivated by the high costs of compliance with Section 404 of Sarbanes-Oxley related to internal controls certification. These first indicated that those costs, coupled with other factors such as low liquidity and trading volume, outweighed the benefits of maintaining a U.S. listing.

On the other hand, in the third group, while the official explanation for delisting was also cost of compliance, these three companies\textsuperscript{194} were implicated in a public corporate scandal in which the SEC filed charges of civil fraud involving self-dealing amounting to $109 million.\textsuperscript{195} Even though the issue was settled, the companies were publicly exposed, and their chairman and senior executive officers were barred from serving in any American public firm and had to personally pay millions of dollars.\textsuperscript{196} At least two of the three mentioned companies were significantly large, with market capitalizations of over 1.5 billion,\textsuperscript{197} and could have

\textsuperscript{191} Observation made by Professor Mark J. Roe when I presented my findings in the Corporate Law Research Seminar at Harvard Law School (Mar. 22, 2007).
\textsuperscript{192} Savia, S.A. de C.V. and Corporación Durango, S.A. de C.V.
\textsuperscript{193} Internacional de Cerámica, S.A. de C.V.; Desc, S.A. de C.V.; Grupo Imsa, S.A. de C.V.; Grupo Industrial Maseca, S.A. de C.V.; Controladora Comercial Mexicana, S.A. de C.V.; and Elamex, S.A. de C.V.
\textsuperscript{194} T.V. Azteca, S.A. de C.V., Grupo Iusacell, S.A. de C.V. and Elektra, S.A. de C.V.
\textsuperscript{195} Noon, supra note 18.
\textsuperscript{196} Id.
\textsuperscript{197} See Corporate Information, Elektra, S.A. de C.V. Company Snapshot, http://www.corporateinformation.com/snapshot.asp?Cusip=C484B3960; see also Corporate
aborted the costs of compliance. Moreover, they had good liquidity and trading volume. Hence, their decision to exit was probably more related to enforcement and litigation, and to the “reputational component” usually associated with these factors.

These mentioned findings lead me to conclude that two kinds of Mexican companies delisted: (1) sound firms that had to leave U.S. markets simply because they could not handle the high costs of compliance, and (2) firms whose owners sought to extract private benefits of control, which were successfully prosecuted, leading to their departure. On one hand, it seems clear that the costs of compliance may indeed be excessive and drive firms away, and it is a concern that most of the Mexican companies had fairly large market capitalizations, between approximately $600 million and $3.5 billion. Perhaps the $75 million market cap limit that has been recommended for exemption is not high enough. On the other hand, there are bad apples that sometimes are exposed and end up delisting.

The issue then is identifying the good companies from the bad ones and finding a balance in regulation and implementation in order to preserve the good ones. Mexican firms may be great candidates for cross-listing in the U.S., but their intentions are not clear. Functional convergence may seem attractive to them, but are they really committed to complying with U.S. law? As stated by Mark J. Roe, if a foreign firm that sells stock in the U.S. were truly devoted to acquiring American Law and to providing minority stockholder protection, it would form an American holding company to issue that stock.

Hence, given the uncertainty of whether a foreign firm is or not a sound organization, strong internal controls, however costly, will help in reducing accounting error, producing better financial statements, and deterring fraud. Furthermore, tough enforcement may also establish a check on companies whose controlling owners rent U.S. law to their own benefit. Both functions are valuable, as long as the good healthy firms are not driven away by costs of compliance and by fear of excessive enforcement and potential liability.

Nevertheless, the Mexican case is significant because it involves the type of firms that would most likely benefit from cross-listing: companies from developing countries with civil law systems and concentrated ownership structures. These factors are usually associated with weak investor protection and weaker legal institutions, so voluntarily adopting U.S. law, sends a good signal to investors and provides access to deeper markets. With that in mind, the fact that

199. Kuritzkes, supra note 12, at 133.
200. See Ribstein, supra note 7, at 317-321.
202. See La Porta et al., supra note 40, at 27.
approximately 26% of the Mexican firms decided to leave, and that only two new issuers have been listed in five years, truly calls for attention.\textsuperscript{203}

While the withdrawal had much to do with excesses in regulation and implementation, particularly in terms of costs, alternative markets also played a role. In fact, all of the delisting Mexican firms decided to concentrate their securities in the Mexican Stock Exchange, determining that it provided them with enough liquidity and access to financing. Even though it has been considered that the U.S. markets have no substitute, the fact that certain sectors of firms may be opting for other markets should be of significant concern.

In conclusion, Sarbanes-Oxley did bring about considerable benefits like the PCAOB. Moreover, the implementation of better internal control mechanisms may indeed improve financial statements and reduce fraud. However, the costs of implementation must be reduced while preserving the same benefits.

Finally, smaller firms have a special burden in complying with internal controls, with costs of compliance representing approximately 0.46% of the revenues of a firm with a market capitalization of less than $700 million, as opposed 0.09% for firms over that threshold.\textsuperscript{204} In addition, small companies have less capacity to implement the correct internal controls, which will in turn result in more accounting errors and in potential liability and litigation.

Having reviewed the different cases of delisting, the evidence indicates that as stated in my hypothesis, the costs of compliance, in particular costs related to internal controls under Section 404 of the Act, are the tipping point in the delisting analysis for Mexican corporations. Even when other factors came into play, in the end those costs are the common denominator in the decision to delist.

\textbf{B. Forecast for The Mexican Firm in the United States}

What does the future hold for Mexican corporations in the U.S.? It would seem natural that given relatively good diplomatic relations, a significantly successful business partnership through the North American Free Trade Agreement, and an important element of proximity as next door neighbors, there should be some kind of arrangement between Mexico and the U.S. that allows for Mexican firms to be involved in U.S. markets. For instance, there could be an attempt to make the standards and procedures uniform including the accounting rules.

Even after the delisting trend, Mexican corporations continue to represent an important number within the main U.S. stock exchanges.\textsuperscript{205} Mexican firms are ideal candidates for cross-listing in the U.S.. Renting U.S. law through functional convergence should continue to be an attractive choice for accessing deeper markets and better financing.

\textsuperscript{203} New York Stock Exchange, supra note 1.
\textsuperscript{204} Kuritzkes, supra note 12, at 126.
\textsuperscript{205} New York Stock Exchange, supra note 1. See infra p. 335 Exhibit 1.
Mexican officers and directors acknowledge the benefits of a U.S. listing, especially after having enjoyed it for a considerable time. In fact, there are some cases in which firms have to withdraw from trading but nonetheless maintain their registration with the SEC and continue complying with the law. They do this to send a signal of credibility and of bonding to higher corporate standards through voluntary submission.

However, we should also take into consideration that most of the Mexican firms are not yet developed enough to be able to absorb the costs of compliance required to maintain a U.S. listing. In addition, they may not require deeper markets and larger financing for a while. Also, there are many firms listed in the Mexican exchange, which very likely would want to be in the U.S. if it were not so burdensome. Only sixteen of them have been able to stay, and only two cross listed through ADR programs in five years.

Firms with smaller market capitalization have a special burden in maintaining a U.S. listing, particularly in terms of costs, and they also lack the expertise to implement and manage an effective internal control structure. We have seen that several of the delisted firms were not large enough in terms of market capitalization. However, others did exceed a billion dollars and should have been able to absorb such expenses. This prompts us to wonder if there may be other factors aside from costs. In fact, a very large corporation in terms of market capitalization could still have very little trading volume, or even little need to access a deeper market or additional financing. This means that the size does not necessarily represent the capacity or the incentive to maintain a listing.

However, the fact that several relatively large corporations exited the U.S. could also lead us to conclude that regardless of their size, they were not able to bear the excessive costs either. For several of the companies sampled in this study the combination of trading volume, little liquidity, and high costs outweighed the benefits of listing.

There are some exceptions like the three corporations of the TV Azteca group that delisted in the course of a corporate scandal brought about by the SEC. However, even here the official report cites the high costs of compliance.

I do believe that there is excess in regulation, particularly in the costs of compliance. It appears to be a major deterrent. This does not mean that the regulation is wrong or that internal control requirements should be lessened. In fact, they probably will be effective in producing better financial statements and preventing frauds, even more effective than prison terms that are rarely imposed.

Although there may not be that much enforcement against foreign firms and their officers and directors are not actually exposed to much risk in criminal terms, a very strong signal was indeed sent through tougher legislation and requirements after the corporate debacles of 2001. As I found, firms will not acknowledge being afraid, and will discount liability and enforcement as an issue, but I think it is a very important factor deterring cross-listing and will continue to be so in the future.

This is consistent with the thesis that small firms are more likely to have a hard time implementing better internal control mechanisms. It would translate not only
into higher costs, but also into the perception that they will more likely make misrepresentations and accounting errors in their statements that will result in liability. That is usually the mindset of a Mexican controlling owner who is not willing to be personally involved in liability and receive a "delinquent treatment." An additional issue related to liability and enforcement is the high cost of litigation and the increasing number of both private and public actions against firms in the U.S.. This will be the focus of an upcoming study, but it does seem that it will be a factor that may drive smaller Mexican firms away from the U.S. in years to come.

Another factor in the future of capital markets and cross-listing of firms is the existence of additional markets, regardless of the regulation and enforcement issue. This does create a new array of attractive choices. For starters, Mexican corporations that find it too hard to face the compliance costs of the U.S., (which would apparently be the case of most) may rely on their own Mexican Stock Exchange.

Eric J. Pan refers to a future in which there will be a "dance" among major global stock exchanges and a competitive environment; but also one in which markets will join forces in order to stay afloat. To make a stronger U.S. market, he suggests that the SEC should encourage the American exchanges to be more competitive and to strive for greater convergence of regulation. Coordination of trading hours may be one thing, but raising regulations to U.S. standards does not appear as something that other markets would be likely to do anytime soon, precisely because they now are finally able to compete against the U.S. market as it increases its regulation and the burdens and costs of that regulation.

In relation to the case of Mexico, Pan's metaphor of the dance helps illustrate the emerging alliance between the Mexican Stock Exchange and the Brazilian Novo Mercado. It has been reported that the London Stock Exchange took advantage of the decline in competitiveness currently faced by the U.S. market. It was then that it truly boomed. It is clear that competition is getting very intense among stock exchanges. The Mexican Stock Exchange is preparing new programs in which it even provides resources to corporations and helps them list and comply with the necessary standards. The objective is of course to invite and capture new issuers.

Hence, perhaps the answer in making the U.S. more competitive is not to spread its high regulation all around, but to reach a balance and make it easier for corporations to comply. This does not mean lowering the bar and inviting fraud, but easing the process and the costs of maintaining a listing.

There lies the future of Mexican firms cross-listing to U.S. markets. As in all sweeping and revolutionary reforms, the pendulum will have to swing back and reach a balance. This is something that will sooner or later take place in the U.S. capital market.

Exhibit 1

NYSE Foreign Issuer Additions and Delisting 2003-2008*

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>10</td>
<td>11</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Australia</td>
<td>12</td>
<td>4</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>1</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Brazil</td>
<td>32</td>
<td>31</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Chile</td>
<td>18</td>
<td>15</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>China</td>
<td>15</td>
<td>38</td>
<td>24</td>
<td>1</td>
</tr>
<tr>
<td>Colombia</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Dominican R.</td>
<td>1</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>4</td>
<td>1</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>20</td>
<td>8</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>Germany</td>
<td>14</td>
<td>7</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>Ghana</td>
<td>1</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Hong Kong</td>
<td>5</td>
<td>2</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Hungary</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>India</td>
<td>7</td>
<td>11</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Indonesia</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>3</td>
<td>6</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Israel</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>10</td>
<td>4</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td>19</td>
<td>19</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Korea</td>
<td>7</td>
<td>8</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td>23</td>
<td>17</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>Netherlands</td>
<td>18</td>
<td>9</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>New Zealand</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Peru</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Philippines</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Country</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>11</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>Australia</td>
<td>12</td>
<td>10</td>
<td>9</td>
<td>8</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Austria</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Belgium</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Brazil</td>
<td>32</td>
<td>33</td>
<td>33</td>
<td>31</td>
<td>31</td>
<td>31</td>
</tr>
<tr>
<td>Chile</td>
<td>18</td>
<td>18</td>
<td>16</td>
<td>16</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>China</td>
<td>15</td>
<td>17</td>
<td>17</td>
<td>19</td>
<td>36</td>
<td>38</td>
</tr>
<tr>
<td>Colombia</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Denmark</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Dominican R.</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>France</td>
<td>20</td>
<td>19</td>
<td>18</td>
<td>17</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>Germany</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Ghana</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>5</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Hungary</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>India</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Indonesia</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Ireland</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>5</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Israel</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Italy</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>9</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Japan</td>
<td>19</td>
<td>19</td>
<td>19</td>
<td>19</td>
<td>19</td>
<td>19</td>
</tr>
</tbody>
</table>

* Data obtained from New York Stock Exchange, available at http://www.nyse.com/pdfs/00_08_NonUSAdditions.pdf.
<table>
<thead>
<tr>
<th>Country</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Australia</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bermuda</td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brazil</td>
<td>5</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td></td>
<td></td>
<td>1</td>
<td>1</td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>Canada</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chile</td>
<td></td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>China</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>30</td>
</tr>
<tr>
<td>Finland</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>Germany</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>Greece</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td>2</td>
</tr>
</tbody>
</table>


Exhibit 3

NYSE ADR Additions 2000-2008

Korea 7 8 8 8 8 8 8
Luxembourg 2 2 2 2 3 3
Mexico 23 21 16 16 17 17
Netherlands 18 15 13 13 9 9
New Zealand 2 1 1 1 1 1
Norway 3 4 4 3 1 1
Peru 2 1 1 1 1 1
Philippines 1 1 1 1 1 1
Portugal 2 2 2 2 1 1
Russia 5 6 6 5 5 5
South Africa 6 6 6 6 6 6 6
Spain 6 6 6 5 4 4
Switzerland 9 10 10 10 6 5
Taiwan 5 5 5 5 5 5
Turkey 1 1 1 1 1 1
U.K. 52 49 43 40 27 27
Venezuela 1 1 1 1

329 323 307 301 270 262
Exhibit 4

List of NYSE and NASDAQ Firms also listed in the Mexican Stock Exchange*

<table>
<thead>
<tr>
<th>Firms</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
<th>11</th>
<th>12</th>
<th>13</th>
<th>14</th>
<th>15</th>
</tr>
</thead>
<tbody>
<tr>
<td>América Móvil, S.A. de C.V. (NYSE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CEMEX S.A. de C.V. (NYSE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coca-Cola FEMSA, S.A.B. de C.V. (NYSE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Desarrolladora Homex, S.A. de C.V. (NYSE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Empresas ICA, S.A. de C.V. (NYSE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fomento Económico Mexicano, S.A.B. de C.V. (NYSE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gruma S.A. de C.V. (NYSE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grupo Aeroportuario del Pacífico, S.A. de C.V. (NYSE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grupo Aeroportuario del Sureste, S.A. de C.V. (NYSE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## Exhibit 5

List of Firms Delisted from NYSE and NASDAQ Dec. 31, 2003- Feb 14, 2008, Currently Listed in the Mexican Stock Exchange

<table>
<thead>
<tr>
<th>Firms</th>
<th>Corporation</th>
<th>Market</th>
<th>Listed</th>
</tr>
</thead>
</table>

## Exhibit 6

NASDAQ Mexican Listed Companies

<table>
<thead>
<tr>
<th>Corporation</th>
<th>Market</th>
<th>Listed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grupo Aeroportuario del Centro Norte S.A.B. de C.V. (NASDAQ)</td>
<td>NASDAQ</td>
<td>2006</td>
</tr>
</tbody>
</table>

### C.V.

<table>
<thead>
<tr>
<th>Corporation</th>
<th>Market</th>
<th>Listed</th>
<th>Delisted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telefonos de Mexico SA de CV</td>
<td>NASDAQ</td>
<td>1980</td>
<td></td>
</tr>
<tr>
<td>America Movil, S.A. de C.V.</td>
<td>NASDAQ</td>
<td>2001</td>
<td></td>
</tr>
</tbody>
</table>

### Exhibit 7

**NYSE Mexican Company Delisting Dec. 31, 2003-Feb 14, 2008**

<table>
<thead>
<tr>
<th>Corporation</th>
<th>Market</th>
<th>Listed</th>
<th>Delisted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Desc Sa De C</td>
<td>NYSE</td>
<td>1994</td>
<td>2004</td>
</tr>
<tr>
<td>Corporación Durango S.A. de C.V.</td>
<td>NYSE</td>
<td>1994</td>
<td>2004</td>
</tr>
<tr>
<td>Internacional de Cerámica S.A.</td>
<td>NYSE</td>
<td>1994</td>
<td>2004</td>
</tr>
<tr>
<td>Grupo Indl. Maseca S.A De C.V.</td>
<td>NYSE</td>
<td>1994</td>
<td>2005</td>
</tr>
<tr>
<td>Grupo Imsa S.A.</td>
<td>NYSE</td>
<td>1996</td>
<td>2005</td>
</tr>
<tr>
<td>Grupo Elektra S.A. De C.V.</td>
<td>NYSE</td>
<td>1994</td>
<td>2005</td>
</tr>
<tr>
<td>Grupo Iusacell S.A. de C.V.</td>
<td>NYSE</td>
<td>1994</td>
<td>2005</td>
</tr>
<tr>
<td>TV Azteca S.A.</td>
<td>NYSE</td>
<td>1997</td>
<td>2005</td>
</tr>
</tbody>
</table>

Controladora Comercial Mexicana, S.A. de C.V. & NYSE & 1996 & 2006

Exhibit 8

HARVARD LAW SCHOOL

MEXICAN CORPORATIONS ENTERING AND LEAVING U.S. MARKETS: AN IMPACT OF THE SARBANES-OXLEY ACT OF 2002?

Eugenio J. Cárdenas

Interviews México City
Date: January 25 & 26, 2007

Issues of Discussion:

1. General conception of SOX by Mexican corporation and authorities.

2. If SOX has been considered as a cause of Mexican corporations delisting from U.S. and for what reasons.

3. Level of delisting before and after SOX.

4. Level of Enforcement by SEC and Mexican Securities Commission on Mexican corporations before and after SOX and if that is cause of delisting.

5. If SOX has led to a double enforcement on Mexican corporations by both SEC and Mexican Authorities and if that is a cause of delisting.

6. If SOX has led Mexican authorities to raise corporate standards, if so why (attracting Foreign Investment), how have Mexican corporations taken it, and if that has been a cause of delisting.

7. If the new Mexican securities legislation was a consequence of SOX and if its enforcement together with SOX has led to delisting.

8. If SOX represents costs, and if that burden has been a reason for delisting.
9. Are those costs due to requirements, tax, legal fees etc…

10. If other requirements by SOX, besides cost, have led to delisting and if so which and why.

11. Does SOX impose restrictions (self dealing, insider trading etc..) different to other markets and if that has led to delisting.

12. Performance of corporation before and after SOX and connection with delisting (opportunity costs etc).

**Interviews:**

**I. Organization:** Mexican Stock Exchange (Bolsa Mexicana de Valores)
(http://www.bmv.com.mx)

**A. Interviewee:** Lic. José Manuel Allende Zubiri, General Director of Issuers and Securities.

- The general conception is that SOX is excessive. Without a doubt it is a factor for them to delist, in the most part because of the 404. The quantity of delisting before and after the Act is evident. You can see statistics in the Internet. The fact that the Committee of Capital Market Regulation was created is a signal of the concern about the current loss of competitiveness of U.S. markets due to the excessive regulation that is driving issuers away. However, it would be great if the corporations themselves tell you why they left. I will tell you who to speak with so you can get first hand information.

- There are two main reasons why Mexican Corporations have delisted from U.S. capital markets. The first one is the Sarbanes-Oxley Act (SOX); particularly in relation to the costs of compliance of Section 404, which are extremely high for many corporations. The certification of internal controls, including the revising and validating of each one of the processes of a certain activity, involves just too many people and man-auditor hours; basically very expensive fees. Without providing exact numbers, I am aware that the costs may range from between 4 to 6 million dollars depending on the size of the company. Corporations suddenly see themselves facing these large amounts, and after doing the math they conclude that the costs outweigh the benefits. Our conception would hence be consistent with that of the Committee of Capital Markets Regulation in that regarding SOX, the only real concern is Section 404.

- There is a second factor that I believe is also causing delisting. When the ADR programs began many years ago, it was easier for Mexican corporations to list in U.S. markets and adopt their regulation and
standards, and it was also the best means through which American and international investors could invest in Mexican securities. Later, with globalization, money started to move faster and investors began to operate in the markets of the origin of the value, in this case México. Now there are American Investors that understand Mexican regulations and the operative models of México and Brazil quite well. European investors also shift their attention to México. However, the problem with them is the time difference; 8 hours. They close their market and you open, but still, the flow comes through New York, it centralizes there and then it comes down to México, Argentina and Brazil. Through local brokers they buy the Mexican values. All this has caused for companies to withdraw or reduce their number of ADRs. Many of the investors either came directly to México or by own strategy they focused on a niche of Mexican investors. The reality is that the float that the ADRs had was very small or was reduced, so it was not profitable to maintain all the infrastructure of ADRs enlisted in the United States. In proportion to the float of the market, it was not a lot, so some issuers delisted the value. In fact, many saw SOX coming, and so they delisted in advance. Large multinational firms with worldwide operations will probably stay in the U.S., but to all the others it may not make sense given their small float of securities, coupled of course with the high costs of compliance.

- The compliance of SOX, in relation to internal control certification, did not go into effect right away; in fact, an extension was granted for one more year. Then in 2003 everyone started to see what was coming, so many took precautions, and if their trading volume was low, it had no sense for them to stay in the United States. What they did was cancel their listing and offer the same value to their investors but directly in México through local brokers.

- Trading securities in different markets may be very good in terms of liquidity; contrary to what many think. This makes sense in cases of very large Mexican multinational corporations with worldwide operations like Cemex, among others. However, if a smaller firm has 5% of its stock in the U.S. and 95% in México, that 5% does not yield enough liquidity. This goes together with the costs; 4 million dollars for the small 5% of my stocks is just too much, and it is therefore much better to concentrate the capital in México.

- Another very important factor that is affecting the competitiveness of U.S. markets is the existence of other exchanges. For instance, the London Stock Exchange has an Alternative Investment Market (AIM) segment for medium sized companies that has been working very successfully. In fact, the London Stock Exchange took advantage of the impact of SOX in cross listing and has managed the situation very well.
The regulation of the London market is based on principles as opposed to SOX, which is based in substantive provisions, which turn out to be a burden for foreign issuers. London hence took advantage of the situation and attracted many of the listings. None of the Mexican corporations have gone to London though, but many were seriously tempted. It did on the other hand take many Americans overseas; you can see clearly in statistics, there was an enormous drop. There were a large number of companies delisted, foreign and local, small and medium; not because they are running away from corporate governance, but mainly because of the cost of compliance derived from SOX. Many corporations go private, among them American and they started to sought other markets; a special segment that London has captured exceptionally well. If you look at the statistics, for instance in Worldexchanges.org, you’ll see a dramatic decline in the listing of foreign issuers, and even of American ones.

The issue of regionality is of special interest in relation to Mexican corporations and U.S. markets. For instance, when turning their back on U.S. markets, European firms may go to London. However, in the case of Mexicans issuers, the only real alternative would be the United States, but now, with nowhere to turn to, they are staying in the local market. Even with the option of having access to investors without such a heavy compliance through 144 listing in the U.S., there has been total delisting by corporations, bringing all their float of share to the Mexican Stock Exchange.

The Mexican Stock Exchange currently offers more attractive alternatives. Firms are starting to concentrate their capital in México. However, it depends on the type of the corporation; if it is global with operations in many markets and if their income depends on other countries, they are able stay in the US, but we are not against that. If there are various markets and multiple listings by firms, they acquire more operating capacity in the markets and that even helps us. What one must analyze is the size of the business and volumes that they handle, but a smaller business listed in the Mexican Stock Exchange will probably have sufficient capacity to distribute its securities to American and/or European firms that are starting to buy their securities in México, and it is not an obstacle as it was before. Something you have to consider is that all businesses that delisted from the United States are still listed in México.

Let me talk to you about what we are currently doing at the Mexican Stock Exchange. I will give you this six page pamphlet that we are offering new issuers, through which we lay out for them in a very executive and simple manner, a three year process during which they will gradually have to comply with the corresponding disclosure rules and other legal requirements of being listed. We give recommendations on what the corporation should do in each year in order to improve their
corporate governance and explain the benefits of following them. In addition, we understand the perception that the trading in the market is expensive, and therefore, we not only provide for firms to pay less, but actually make it free during the first year. The idea is that they destine what would otherwise be the cost of listing and issuing, to their own processes of institutionalization. We even pay the advisory of a third party so that new issuers can receive help in assuring compliance. It is a gradual and reasonable process so it is inviting for them. It does involve some issues of internals, but not with the detail that Section 404 of SOX requires. In conclusion that is the way in which the Mexican market is responding: 1. We will not charge you; 2. If you enter we will help you to gradually comply during the first 3 years, and even pay for counsel.

- Costs and requirements of delisting may also be a burden; as it is difficult to stay in, curiously it is also very difficult to leave. I think that the moment that the exit is facilitated, more firms are likely to leave. In fact, I understand there will soon be reform to liberate said requirements, and hence, fear of a new wave of delisting is a fair assumption; at the very least, as long as there is no clear sign that SOX will be reduced.

- The way I see it, SOX reached extremes. I consider it a pendulum that just went too high and that like in all cases will sooner or later have to achieve balance. It was simply a political answer to the scandals, that resulted in outreach; this, through a series of provisions that just went too far and that like those concerning internal controls aren’t even really corporate governance; regardless if corporate governance would by default implicate some audit and internal control matters. This subject has been misunderstood and many people incorrectly sell it as corporate governance. When the new Mexican Securities Law was being discussed the issue of internal controls came up, but it was of course concluded that other than audit committees and the evaluation of certain processes, an unlawful form of internal control like section 404 would not be included.

- As to Officer and Director Liability being a factor in the delisting of Mexican corporations from U.S. markets and in consequence, the higher level of enforcement and litigation, I do not believe them to be determinant factors. Nonetheless, D&O insurance rose to the clouds and that could also be a cost indirectly contributing to delisting. Regardless, directors and managers are more concerned than ever about disclosure and analyze everything with huge detail. In México we start to see a trend of “Professionalization of Directors” and there are organizations that in fact have started to give courses and conferences on being a director and the accountability involved. This could have two edges.

- Also, these high costs of compliance only brought more jobs to lawyers and auditors. They are the ones that are gaining money at the cost of a
regulation and I think it got out of hand. Other industries like systems and computers are selling themselves like corporate governance experts, and because they provide part of the software and system required it all results in a vicious cycle. It also worries me that the consulting firms start to carry issues of corporate government, totally out of the blue. Anyone can now form their consulting firm and be an advisor of corporate government, everyone suddenly seems to sell themselves as experts in the field. Many have come to me wanting to come on board this new three year plan because they know we give resources to firms so that they get the advice of consultants, and they do not have any background in that but because there are resources they want to sell it and themselves as experts. Plus, they assess badly and charge highly, and when a business wants to get in the market they had already been wrongly advised. However, I insist in that what they are selling is internal control and not corporate government.

- Finally, in relation to double enforcement as a cause for delisting it could be considered very similar in terms of what information has to be disclosed etc. However, it is a burden for corporations to be subject to both U.S. and Mexican laws; especially because the Mexican accounting system differs considerably from U.S. GAAP. It does implicate a cost of transformation to carry the accountability different way. Other than the accounting matter, disclosure rules are very similar.

**II. Organization:** Mexican National Banking and Securities Commission

(Comisión Nacional Bancaria y de Valores)

(http://www.cnbv.gob.mx/default.asp?com_id=0)

**A. Interviewee:** Lic. Mauricio Basila Lago, Vice President, Stock Market Supervision; Board member, Committee on Mexican Better Corporate Practices.

- To better understand the current situation of Mexican corporations and their involvement in U.S. markets I would like to go back to the 2001 reform of the previous Mexican Securities Law. Said reform should be considered the most important, given that for the first time, corporate governance concepts where made mandatory and introduced into a law. As you probably know the corporate governance rules were first crystallized in better corporate practices codes that were not mandatory. They were simple recommendations, that nonetheless, firms were starting to abide to, and we could measure their grade of cohesion to a sort of checklist of better practices provided to issuers; which they would attach to their periodical disclosure filings both at the Mexican Stock Exchange and at the National and Banking Securities Commission. However, it was decided that certain aspects had to be made mandatory and the only way was introducing them to the law, including independent directors and
audit and corporate practices committees. Given the Mexican reality of closely held corporations, the main purpose of these provisions was to increase minority shareholder protection v. controlling owners.

- The first great difference with the United States is the way in which agency conflicts are reflected. In the U.S., the conflict is between managers and shareholders, given that most corporations have dispersed ownership structures; large controlling blocks are rare and could maybe range around 10% of the ownership. However, controlling owners are the constant in México and hence, there is no such agency conflict. However, the conflict would be vertical, between controlling shareholders and minorities. The law introduced independent directors and audit committees. In addition, it also provided minority rights. For instance, 10% shareholders (considered a minority) could name a director, and with 20% they could oppose judicially to shareholder meeting resolutions.

- In 2001 it was a surprising new legislation because no on expected the principles of corporate governance to be made mandatory. In fact, prior to that, it called the attention of other countries how the Committee of Better Corporate Practices of the Mexican Entrepreneurs Council (Comite de Mejores Practicas Corporativas del Consejo Coordinador Empresarial) was a result of a joint effort of the private Mexican business community and the Mexican authorities; mainly Ministry of Finance, the Mexican Stock Exchange and the National Banking and Securities Commission. The fact that authorities were involved seem to be in conflict with the nature of a non-mandatory good practices code but it brought good outcomes.

- México was one of the first to introduce corporate governance substantive provisions into Law through said 2001 reform, which proves that as opposed to what is commonly said, our legislation was not a copy of SOX. However, in 2003 we began to consider that certain aspects of the reform of 2001 were not detailed enough; and that it was important to touch more on issues like the functions of the audit and better corporate practice committees, as well as those of outside directors. Therefore we issued the new Mexican Securities Law which came out in June 2006. In addition, the fiduciary duties of directors, namely of care and loyalty, as well as a sort of Business Judgment Rule protection are now included in said law. Like in the U.S., if the board makes an informed decision in the best interest of the corporation, with good faith and free of any conflict, its members will enjoy of such protection even if the decision turns out to be the wrong one. The law is quite new and it just became effective this past December 31, 2006, but it is likely that judicial action will be soon exercised on grounds of this newly legislated duties.
• Duties in the U.S. are not limited to the director, but also to management and even to controlling shareholders, but in the Mexican Law we decided that for now it would only apply to Directors. Nonetheless, there are general principles of civil law in accordance to which management may also be held responsible.

• We debated the new Securities Law in many forums and it was a long and very complete process. It all started with the National Banking and Securities Commission, in the very room where we are at now. We prepared a draft that was later revised by the Ministry of finance, by the Mexican Stock Exchange, by top corporate lawyers and accountants. Finally we went with the Committee of Public Issuing Companies and all but one totally approved it. Many of the businesses were listed in the U.S. market and had just experienced the bitter experience of SOX. At the beginning there were rumors that we were copying SOX, but it was totally false, if there is something we did not do it is just that. Countries all around the world agree in some principles because at the end of the day they are universal values that have to be protected, like life and property. Therefore, the new Mexican Securities Law has been well perceived. In fact, the efforts involved in making the law are recognized in a 2005 report of the World Bank on “Doing Business”, in which México improved its ranking regarding protection of investors, moving about 90 spots, from 120 to 30. In addition, in relation to its position in corporate governance, the only organization in which México is not considered an emerging country is in the International Organization of Securities Commission.

• Shifting our attention to SOX, its main issue is Section 404 involving internal control certification; which should not be considered as corporate governance. Even though our new law does relate in some ways to internal controls, it is a matter we avoided, particularly requirements like asking the company to be certified by an external firm, which are the greatest faults of SOX, given the elevated costs of compliance involved. Some companies have spent up to 6 million dollars; so if you ask me, this would be the reason why many companies are delisting.

• Big multinational firms are willing to pay said amounts and continue in the U.S. market; but only because they are large global companies that find it convenient to list themselves in global markets. Most of these companies, like Cemex or America Movil, have the majority of their operations taking place outside of México. However, there are other smaller companies with local presence and a lower level of development, and hence, the local market is enough for them. I believe the growth of a company happens in stages, at first it can be enough for its necessities to stay in the local market and there may come a point when ADRs in the U.S. are the best choice in order to have access to bigger capital markets.
and liquidity. Nonetheless, it is important to note that before SOX, there were Mexican corporations of all sizes listed in U.S. markets, but that now, given their small float of securities, in relation of course with the extreme costs of compliance, it is just not feasible. What has got to be taken on account in this analysis is simply the costs derived from SOX. Why pay a very big prize if most investors are not even in the U.S.? It is better then to concentrate in México instead of dividing their capital.

- In relation to other possible causes of delisting, higher enforcement and director and officer liability do exist, in fact, the criminal sanctions are excessive and higher than aero-piracy; but anyway, I do not think this is the driver for the companies to delist from the U.S. Specially, when in México we also have very significant liability provisions and consequences. Companies are not fleeing from corporate governance or higher standards and practices either; the real cause derives from Section 404 compliance costs.

- Another tendency to take on account is that other markets are gaining strength, such as the London Stock Exchange. In fact, the Mexican Stock Exchange has become quite attractive as well. To the point that Americans begin to invest through México, and so it makes no sense going to the U.S. We have international standard mechanisms and it is very easy to invest in México. Also, we are able to list securities in other countries and for instance, an institutional investor can buy shares of Microsoft in the Mexican market. In addition, it is important to note that we will soon have a strategic alliance with the Novo Mercado of Brazil, so that Brazilian values can be listed in the Mexican market and vice versa and this will probably deter U.S. cross-listing as well.

III. Organization: Committee of Better Corporate Practices of the Mexican Entrepreneurs Council (Comité de Mejores Prácticas Corporativas del Consejo Coordinador Empresarial)


Interviewee: C.P. Roberto Daniel Díaz; President, Committee on Mexican Better Corporate Practices; Corporate Governance Consultant.

- I was able to experience the creation process of the Sarbanes-Oxley Act (SOX) through the National Association of Corporate Directors (NACD) of which I have been a part of since 2000. In fact, the chairman of NACD participated and worked closely in the creation of SOX, and hence I constantly received and was able to file all the minutes and debates related to SOX; plus information that Cleary, Gotlieb, Steen and Hamilton sent
me, both through which it became clear that the Act was excessive, particularly in terms of the issues around internal controls.

- When SOX was enacted, the NACD held a seminar in Washington, D.C. to which I assisted. Bill Donaldson, who had just been designated Chairman of the Securities Exchange Commission (SEC) spoke and expressed that SOX had gone too far, specially in relation to the certification of internal controls and the consequences and costs of compliance it would bring about.

- The issue of internal controls has been around for to while. If we had the good fortune of being able to talk to your grandfather, Ramon Cardenas Coronado, he would have been able to tell us about his research and findings on internal controls from more than 40 years ago, and to comment on the books on internal controls written by his friend, Joaquin Gomez Morfin. But most importantly, that to an accountant, like himself, the concept of internal controls has a very strong connotation and should be taken very seriously and with extreme care. This would be especially true under the terms and consequences that SOX involves.

- Therefore, when asked to give an opinion on the internal controls of a firm, where his or her signature will be involved, an accountant will be very meticulous. Take for instance General Electric (G.E.), which has many companies around the world. When you ask the accountant an opinion or certification about internal controls, he knows that his name is at risk, because with the tiniest omission in good faith, in relation to one of the thousands of operations of G.E. in the other side of the world, it could mean years in prison; at least that would be the perception. In that particular case, Claudio X. Gonzalez, who is the head of the audit committee of G.E., has very seriously told me: “I am sitting in my New York office, with very serious and formal people who hand me certain documents for me to approve and sign, and this of course causes a problem for me, because how do I know that somewhere in this huge organization everyone did their job well. So then I have to ask my auditors to revise and that will take a long time and you can’t imagine the hours and fees required so that they can personally go to every corner of the world; and I want them to go, because they can’t just do a normal audit, but one that goes way beyond good, given my signature is at stake. Then you have to add costs of the insurance of the auditor so you can respond to damages etc.. And when you add everything up, it is a barbaric cost!”

- Hence, even if internal controls may have little or nothing to do with corporate governance, and if I would not consider SOX as a real securities regulation or as a document of corporate governance; it implies very serious consequences and costs in terms of internal control certification,
being this the reason why corporations are delisting and seriously thinking twice about cross-listing in the U.S.

- In several cases the costs are double or triple of the normal audit work. In addition, the law says that the auditor can’t give you the revision himself, so you have to go to another auditor, but he says he does not know anything about your case and he does not know you and hence will have to analyze everything and that will cost you more.

- It is important to understand the mindset of foreign issuers like Mexican corporations to have an idea why SOX would deter cross listing. Take for instance a controlling owner of a company who is sitting down in his office here in México City. He thinks of how his corporation has stood the test of time and gained the trust of the community by providing labor for more than 100 years. Then he starts to explore the possibility of cross listing in the U.S. and to analyze all the requirements and costs of compliance involved, and even the possible personal liability at stake. Finally he concludes, “what need do I have of going to a more complex market and to a system which I ignore, as well as to being subject to a legislation where I will in good faith receive a “delinquent treatment” and take the blame for the Enron and Worldcom Scandals; plus it will cost me a ton of money and I don’t have that big of a trading volume in the U.S. .”

- It is important to note that other markets are taking advantage of the loosing edge of the U.S. markets that came with SOX. The London Stock Exchange has done a good job in that sense. In London there are no Mexican companies, but that’s because it is different region. There is one Chilean company, however that is due to the long time relationship with England. You can see a lot of English banks and European culture in countries like Chile and Argentina, but not in México. Nonetheless, the London Stock Exchange has played its cards very well. On the other hand, if México got together with Brazil, (something that is currently happening), and if some other countries joined them as well, they could create a big market that would attract many Latin America firms, diverting them from New York. In fact, we start to see U.S. and European companies investing in México. They are not that big and do not have big trading volumes. Hence, they do no list in the U.S. because of the costs. However, they see México as a viable market to invest in, and a place where they can receive resources and enjoy the benefits that the Mexican Stock Exchange currently grant to firms. It is definitely a new phenomena. They come to México and realize of the advantages provided by the laws and the authorities. Hence, given México and Brazil are leaders in Latin America, if they join forces, that would make way for a considerably attractive market.
Also, México is now offering more attractive business alternatives. The Stock Exchange is inviting companies to participate in the market through a three year program, making it easier for them, both economically and in terms of advise. In fact, I am involved in this project myself and was in charge of creating the pamphlet that explains the process and makes suggestions on corporate governance during the different stages of program. It is very simple to understand and very executive, so it attracts companies. We explain what to do the first year you participate in the Mexican market, ad then what to do the second, and so on. So the companies are understanding the plan being offered and find it attractive. The Mexican Stock Exchange even offers them money and counsel and it is making a difference.

Finally, let me tell you a little about the corporate governance movement, about how México as a player of the movement and about my experience as president of the Committee of Better Corporate Council since 2004. The idea of corporate governance was formally documented in the beginning of 1990 by Sir Adrian Cadbury. Later the World Bank concluded it could not be constantly lending to countries and that they had to do something to attract capital themselves. So the OECD asked Cadbury and Ira Milstein to help in this matter. As a result, the first documents of corporate governance for the OECD took shape. When México entered the OECD in 1994 it received a list of subjects that it had to improve, especially of investor and minority protection. The list was long and they came every once in a while and told us we were behind. In 1996 the issue was assigned to the Mexican Ministry of Finance which then turned it to National and Banking Securities Commission. Later on, they hired two Harvard researchers, Rafael La Porta and Florencio Lopez de Silanes. They designed a document that served as foundation for the Mexican Better Corporate Practices Code, in which private and public financial, institutions, lawyers, accountants and other authorities were involved. By then, the code was coming around and there were periodic reunions, and it finally came out in June 9, 1999. However, it was concluded by the Ministry of Finance and the Banking and Securities Commission that given its non-mandatory nature it would be more legitimate and gain more acceptance if it were to be placed in the hands of the private sector. This was considering that corporate governance is very related to the owner of the companies, especially in the place with family origin like México. It was thought that due to the Mexican culture it was only going to be directed to public companies, even though the code refers to every type of corporation and association.

The OECD has divided the world in 5 zones and they organized 4 roundtables from 2000 to 2003. México was host in the 2002; we are region of Latin America. In 2001 the Mexican Securities Law took provisions from the Better Corporate Practices Code and made them
mandatory. Also, in 2003 the Circular Única de Emisoras (Sole Issuers Regulation) attached the Better Corporate Practices Code as an exhibit. Hence the code could be considered as law, which is not the true purpose of the code. Then, at the end of 2004 we began to revise the code, working together with the authorities as to what would be contained in the New Securities Law of June 2006 and what would be included in the revised version of the Better Corporate Practices Code of November 2006. We were always in coordination with the authorities and the understanding is that the Code is the standard in México, and the idea is of course to have high standards that the law will gradually take as mandatory considering the Mexican reality and circumstances. We put a lot of effort and thought into the revised version of the code. Florencio suggested 6 or 7 different codes that he thought I should consider for the revised version. He was a member of the committee but given his position at Yale, excused himself from formally being a part. Nonetheless, he continues advising me, and he has been of great help. We have followed his suggestions and have been in contact.

Exhibit 9

HARVARD LAW SCHOOL

MEXICAN CORPORATIONS ENTERING AND LEAVING U.S. MARKETS: AN IMPACT OF THE SARBANES-OXLEY ACT OF 2002

Interviews with Directors and Officers of Mexican Corporations
Date: December 22, 2006

Issues of Discussion:

1. General conception of SOX by Mexican corporation and authorities.

2. If SOX has been considered as a cause of Mexican corporations delisting from U.S. and for what reasons.

3. Level of delisting before and after SOX.

4. Level of Enforcement by SEC and Mexican Securities Commission on Mexican corporations before and after SOX and if that is cause of delisting.

5. If SOX has led to a double enforcement on Mexican corporations by both SEC and Mexican Authorities and if that is a cause of delisting.
6. If SOX has led Mexican authorities to raise corporate standards, if so why (attracting Foreign Investment), how have Mexican corporations taken it, and if that has been a cause of delisting.

7. If the new Mexican securities legislation was a consequence of SOX and if its enforcement together with SOX has led to delisting.

8. If SOX represents costs, and if that burden has been a reason for delisting.

9. Are those costs due to requirements, tax, legal fees etc…

10. If other requirements by SOX, besides cost, have led to delisting and if so which and why.

11. Does SOX impose restrictions (self dealing, insider trading etc.) different to other markets and if that has led to delisting.

12. Performance of corporation before and after SOX and connection with delisting (opportunity costs etc).

Interviews:

I. Organization: Grupo Vitro, S.A. de C.V.  
(http://www.vitro.com/vitro_corporativo/ingles/portada.htm)

A. Interviewee: C.P. Claudio del Valle, Executive Vice President of Administration.  
(http://www.vitro.com/vitro_corporativo/ingles/abusexe.htm)

B. Firm Profile:  
(http://www.vitro.com/vitro_corporativo/ingles/abus.htm)

Vitro, S.A. de C.V. (NYSE: VTO; BMV: VITROA), through its subsidiary companies, is one of the world's leading glass producers. Vitro is a major participant in two principal businesses: flat glass and glass containers. Its subsidiaries serve multiple product markets, including construction and automotive glass; food and beverage, wine, liquor, cosmetics and pharmaceutical glass containers. Vitro also produces raw materials and equipment and capital goods for industrial use, which are vertically integrated in the Glass Containers business unit.

Founded in 1909 in Monterrey, México-based Vitro has joint ventures with major world-class partners and industry leaders that provide its subsidiaries with access to international markets, distribution channels and state-of-the-art technology. Vitro's subsidiaries have facilities and distribution centers in nine
countries, located in North, Central and South America, and Europe, and export to more than 45 countries worldwide.

C. Interview:

- My general conception as well that of others with whom I’ve discussed the origins of SOX, is that the U.S. Congress was forced to act as a response to the multimillion dollar losses in markets upon the Enron and World Com corporate scandals and hence, went to extremes.

- We have perceived SOX requirements as considerably excessive; something that the U.S. authorities have recognized as well and are apparently willing to reduce, as they have expressed; particularly rule 404. Such reconsideration of the authorities is also reflected through the deadline extensions granted in favor of foreign issuers in complying with certain SOX requirements.

- The impact of SOX in Mexican corporations and other foreign issuers is considerable due to two particular issues: 1. The significant fear of personal director and officer liability and penalties for not complying with SOX. When you are foreigner and do not know the law in detail and to the fullest extent, there is a natural nervousness and people seek protection by avoiding being subject to it. The feeling is: “I am not an American corporation and do not know the law; regardless if I hire counsel from U.S. lawyers. If for any reason there is an omission or something is not fulfilled, there may be a personal repercussion.” Hence people are afraid of the consequences that may arise not from doing something deliberately wrong and with bad faith, but from omission and ignorance. 2. - The other very significant consideration is cost. Besides one or two very large corporations, such as CEMEX, for the rest that are currently in U.S. markets, the question of “cost/benefit” has become an issue; considering it is necessary to incur in costs of hundreds of thousands and even millions of dollars to comply with SOX.

- From my perspective, those are the two main factors that I perceive have led several Mexican corporations to consider delisting from U.S. markets. Obviously as you also mentioned, the Mexican legislation has not stayed behind; simply for reasons of market competition, given that investors are always on the lookout of where to place their money globally and seek the highest levels of protection possible. That is why México raised its corporate standards and actually achieved its purpose through the new Mexican Securities Law (Ley del Mercado de Valores, June 2006). It is still quite new, but the perception of the Mexican market, both internally and externally has totally changed from what it was around one to two years ago.
Regarding the double enforcement burden for Mexican corporations of being subject to both SOX and the Ley del Mercado de Valores, I don’t really believe it is an issue to consider. If you are already listed in U.S. markets, the Mexican requirements will not be a problem at all, simply because U.S. standards are higher. If you are listed in México and want to go to the U.S. it will be more considerable. However, in terms of regulation and disclosure, both are very similar, and it is not an issue to consider. Of course you will have to translate everything to English and formally undergo some changes, but the content of the information and the amount of disclosure is practically the same.

Nonetheless, it is very likely that smaller and medium-sized corporations will not support SOX, given the cost/benefit issue previously discussed. In fact, the corporation whose capitalization level is below 300 to 400 millions of dollars will end up delisting from U.S. markets due to the high costs; that particularly due to 404 requirements. However, it is likely that the SEC will review and possibly lower said requirements, and if that happens in two years from now, the perspective of Mexican corporations could change, considering that they were granted an additional extension of another year to comply with SOX.

It is also true that other Mexican corporations such as “Grupo Alfa” have gone to Spain, and that there have been some attempts to explore other places markets, but I believe that is a tendency beyond regulation, as it is natural to open to more possibilities of investment.

In the particular case of “Grupo Vitro” it was one of the first Mexican Corporations to be go to the U.S. Market, in fact I believe it was the second one. However, since the issuance of SOX, the matter of costs has been quite significant. In addition, the level of monitoring has increased considerably and we are constantly in contact with our U.S. lawyers and always aware of the SEC regulations and interpretations in order to comply promptly with the requirements.

In relation to the level of delisting, it is clear that prior to SOX, no Mexican corporation actually considered delisting, in fact, it was quite the opposite. On the contrary, after SOX there have been a few corporations that have withdrawn and even if it is a small number, it may very well be significant.

In addition, it is clear that SOX would be the only considerable factor motivating delisting and that it will also represent a relevant inhibitor for Mexican Corporations to enter U.S. Markets. Again, when you have to disburse millions of dollars, the question of cost/benefit becomes an issue; in addition to being foreign and fearing personal criminal liability and other consequences of accidentally not complying.
Finally, the level of enforcement by Mexican Authorities has increased dramatically and not precisely because of SOX; given it is a program that the Comisión Nacional Bancaria y de Valores (CNBV) already was pursuing, in order to elevate standards; something that they will definitely continue doing through the New Mexican Securities Law.

II. Organization: CEMEX (http://www.cemex.com/)

A. Interviewee: Ing. Héctor Medina, Executive Vice President of Planning and Finance (http://www.cemex.com/tc/tc_mt.asp)

B. Firm Profile: (http://www.cemex.com/tc/tc_gl.asp)

"We are a growing global building-solutions company that produces, distributes, and markets cement, ready-mix concrete, aggregates, and related building materials to customers and communities in more than 50 countries. Over the past century, we have grown from a local player to one of the top global companies in our industry. Today we are strategically positioned in the Americas, Europe, Africa, the Middle East, and Asia. As one of the world's largest cement traders, we maintain trade relationships with approximately 90 nations."

Worldwide presence

- Operations in more than 50 countries across four continents
- Annual production capacity of approximately 98 million metric tons of cement
- Annual production levels of approximately 70 million cubic meters of ready-mix concrete and 160 million metric tons of aggregates
- 66 wholly owned cement plants, more than 1,900 ready-mix concrete facilities, and a minority participation in 15 cement plants.
- 390 aggregate quarries, 203 land-distribution centers, and 89 marine terminals

CEMEX's shares are traded on the Mexican stock exchange in the form of CPOs and on the New York Stock Exchange in the form of ADRs. One CEMEX ADR equals ten CEMEX CPOs. The depositary bank for CEMEX's ADR program is Citibank, N.A.
C. Interview:

- My perception is that the knowledge of SOX in México is very superficial, being very few individuals who read and know about financial issues. Actually only a small number of corporate lawyers and auditors involved with Mexican corporations listed in U.S. markets as well as some authorities in the specific field of financial markets, would know about it. The public in general has a very vague understanding and perceive SOX as reflected through the media that is: a response to the Enron and Worldcom scandals.

- My concept and that of others is that SOX is definitely an additional burden, being likely that many Mexican corporations that are not listed today either in the Mexican or U.S. markets will, before registering, think about it not only twice but many more times. It is clear that a corporation that is not subject to said law, only by reading the requirements and finding out about the documentation, internal processes, and obligations of disclosure involved, will definitely say: “this will cost me”. Accountability is also an issue. Now you think several times before becoming a director, a lot of work is required and there is a significant accountability, worse yet in Mexican corporations listed in the U.S.. I am director of several corporations and I am honestly reconsidering it.

- In addition, the new Mexican Securities Law has also considerably raised the standards. The first project of said law could have been considered outrageous in relation to requirements. Many of us involved in the process thought of it as something dangerous; if issued it very well might have left the Mexican Securities market deserted. Fortunately it was modified but it still has some defects, some of omission and some of exaggeration; but nothing too considerable if compared to the requirements of SOX.

- As an example of how corporate governance has changed through the New Mexican Securities Law, our corporation just underwent a process consisting of an offer to acquire a corporation based in Australia but with most of its assets in the U.S.. We had some difficulties considering that based on said new law, we needed the approval of the shareholders meeting, and that generated a “mixed blessing”, considering that for one part it was positive in that the minority shareholders had the opportunity of approving a very relevant event in the life of the corporation that if successful could bring about impressive growth. However, on the downside, the fact that we had to carry out the meeting, which is public, provided much information to the target corporation and we lost considerable bargaining power. In fact it was the first time in México that a shareholders meeting had to approve a resolution of such nature; it happened just two weeks ago. We were subject to that and there was
nothing we could do; hence, corporate governance is good and sane in terms of transparency, but it also has some drawbacks.

• Another flaw of the new Mexican securities law, involves the introduction of an intermediate category that recognizes a class of corporations that are not as reliable but that still may register in the stock exchange. This brought the bar down considerably and created a bad image. When this change was being proposed I argued with the previous president of the Comisión Nacional Bancaria y de Valores (CNBV) that if what they wanted was to create trust, they were doing just the opposite. He could not take the pressure once the new law was issued and later left; I haven’t had the opportunity of discussing this issue with the new president yet.

• Another problem that corporate governance may not solve is that businesspeople often have very low moral and social values and advantage of investors, and they will continue to act just that way. If the system is created upon trust and if managers and corporations are supposed to take risks in order to bring about positive outcomes, this problem will not be fixed through additional requirements like those introduced with SOX. In fact there have been good corporate practices codes that are not law and that are not mandatory, and they should be enough. Maybe it is something that the SEC has recognized and hopefully will reduce through the review procedures that are supposedly taking place.

• Nonetheless SOX did not hit our corporation so hard. But only because we started to document and uniform our processes since 1999 because of the “Y2K Bug”. At that time we did not have as much world wide presence outside of México, but we did have operations in Venezuela, Colombia, Egypt, Philippines and Central America and we were convinced that it was very convenient to have a common platform in our different corporations to document our processes. But it was a strategy of how to manage our corporation as one in all the world, to be the best and most efficient. So when SOX came, it did not affect us so much given we were already ahead and when we had to comply in 2004, we did it well, and right now we are OK. Nonetheless it has still been difficult, as well as an additional burden; considering that we have acquired new corporations, but we are OK and in compliance with 404. It was just a business decision to become more efficient; but we only were aiming for internal benefit, and not external in the sense of selling our corporation to investors and making us look more trustful.

• Double enforcement has not been an issue for us given the fact that because we are a corporation that is listed in the U.S., it makes it by far easier for us to comply with Mexican regulation. In other words it is not an issue if you are already in the U.S.. If you are not listed in the Mexican
market, and you decide to go to the U.S., the requirements imposed will without a doubt be a very considerable burden.

- An important effect of SOX has definitely been the Mexican homologation raising corporate standards, however, the fact that they may be considered excessive is not sane; considering corporations are expected to take risks and move freely without being placed additional burden. Regulation is good as long as it is not excessive. When thinking about SOX, I like to refer to the following traditional Mexican folkloric proverb that states: “Neither so much that it burns the Saint, nor so little that is does not light it”, making allusion to the religious tradition of lighting candles to saints when praying to them; if you place the candle too close you will burn the saint, but also, if you place it too far away it won’t answer to your prayers, being the idea that you should maintain a balance and moderation, and that both extremes, much and few are not good. SOX is excessive and even if the Mexican Law is more moderate and has adequate provisions and characteristics, it is still a burden to some corporations, plus it does not promote trust, through the flexibility of allowing “not so perfect” corporations to list in the Mexican Market.

- Another problem that I see is that even if SOX was a political response to the scandals, and if the U.S. authorities have recognized it should be reviewed, the auditing and law firms are wrongfully selling corporate governance as they see SOX as a gold mine that will provide large amounts of fees. We do trust our advisors and they are good, but it is evident how their attitude is different since SOX, seeking economical interests. Since two to three years ago, audit firms have sold corporate governance as something that is necessary so that your company acquires more value, something that I do not agree with, since all that should be taken on account is to comply with the legal requirements in order to be able to enter the public markets with the purpose of protecting investors, but “don’t sell me something else”. The authorities just tell you that corporate governance is necessary to guarantee a good market environment to investors and apparently all they want to do is regulate; and they should because otherwise the market would probably collapse. However, I insist that we have come to a point where financial organizations in México such as “IMEF”- Instituto Mexicano de Ejecutivos de Finanzas (Mexican Institute of Finance Executives) have formed corporate governance committees that sell corporate governance. I was invited to one at a national level, but I soon found out that I was the only member that did not belong to an audit or a law firm, and that they all celebrated the benefits of corporate governance. The new legal requirements of SOX and of the new Mexican Securities Law were discussed and it was said they were great, hence it is clear that there are economic interests and that it is business to them. I would tell them that this new requirements bring forth an issue of cost benefit and that all they
talk about is benefit expecting everyone to adjust. It may be good for some, but you can’t take everyone on the same path, especially if you analyze each particular case and find out that the cost is such that trying to do something good will end up being bad. In fact, it may lead some financial markets to disappear, regardless of how good they may be, for trying to be too strict. Said committee has worked very little; IEMF published periodically on issues of corporate governance, which it handles very well, but evidently for business interests. I remember a foldout in a business magazine where there is a little boy with a pitcher of lemonade glasses and a sign that says “Lemonade for 5 cents”. The boy has a very sad expression and is looking at a bunch of books and regulations on lemonade that are next to him; the title of the ad says “Squeeze the Lemon, not the Spirit”. I believe that is exactly the message, considering that too much regulation kills the entrepreneurial business spirit, which requires certain liberty of action and an environment of trust; of course sometimes it is necessary to take action against those who abuse, but there should be a liberty gap so that the market may move freely.

III. Organization: KPMG Cárdenas Dosal, S.C.  
(http://www.kpmg.com.mx/)

A. Interviewee: C.P. Rafael Gomez Eng, Managing Partner (North Region) and National Market Director  
(http://sec.edgar-online.com/2003/04/08/0000950172-03-001154/Section28.asp)

B. Firm Profile: (http://www.kpmg.com/About/)

- KPMG in México.
- Auditors of CEMEX (Cementos Mexicanos)

"KPMG is a global network of professional firms providing Audit, Tax, and Advisory services. We operate in 148 countries and have more than 113,000 professionals working in member firms around the world.

Our purpose is to turn knowledge into value for the benefit of our clients, our people, and the capital markets. Our member firms aim to provide clients with a globally consistent set of multidisciplinary financial and accounting services, based on deep industry knowledge.

Our values determine how we behave, with clients and each other. They define what we stand for and how we do things, helping us to work together in the most effective and fulfilling way. This enables us to create a strong organizational culture—consistently—throughout the network."
We play an important role in the capital markets, and are highly active in supporting positive reform within our industry to strengthen credibility and confidence. We believe corporate social responsibility is at the heart of all great organizations, and are committed to making a real difference to the communities in which we operate."

C. Interview:

- There aren’t many Mexican corporations that to this date have delisted from U.S. Markets and SOX is not necessarily the cause. For instance in the case of IMSA, following its delisting, the company was sold to other family members of the former owners, hence, they probably wanted to avoid being subject to U.S. regulations in order to simplify the transaction.

- Nonetheless, it is evident that SOX will inhibit other Mexican corporations significantly from listing in U.S. Markets in the future, particularly the smaller and medium sized organizations that will take on account a cost/benefit issue before considering joining U.S. Markets.

- We are auditors of CEMEX and SOX did not affect them as hard. However, that was considering that they had for business issues and policies started the "THE CEMEX WAY" strategy of standardizing their internal processes and information in order to have a common platform of operation in all its worldwide operations. However, SOX has been somewhat of a burden in relation to other recent acquisitions that they have undergone. Nonetheless, for other corporations that are not listed in U.S., it will be a strong inhibitor; even for corporations that participate in the Mexican Stock Exchange and or now subject to significantly high standards of the new Mexican Securities Law.

- The New Mexican Securities law is evidently stricter that it was before, but it is reasonable, especially in comparison to the high requirements of SOX, which involve much higher costs and accountability issues. The way in which the process of due diligence is carried out has also gained considerable importance and the level of enforcement has increased dramatically as well in México. In fact even, U.S. authorities have approached the Big Four audit firms in México in order to revise how we are conducting due diligence. We have told them that we were not used to such requirements and that we needed more information and details as to how they want us to review.

- Finally, we as auditors do not sell corporate governance to corporations as a value added and a must, in order to fulfill our economic and professional interests, it only means complying with the minimum standard required.
IV. Organization: Grupo Famsa, S.A. de C.V.
(http://www.grupofamsa.com/grupo/english.html)


B. Firm Profile:
(http://www.grupofamsa.com/grupo/ENGLISH/quiennesemosFrames.html)

- Mexican Corporation listed in the Mexican Stock Exchange.

"FAMSA is one of leading consumer finance retailer in México, with more than 300 stores distributed in México and the U.S.. Grupo FAMSA has presence in 71 cities in México; and in 4 of the U.S., where the biggest concentration of Hispanics resides.

Main operation center is based on Monterrey, Nuevo Leon, México; FAMSA is a leading consumer finance retailer which commercialize goods and services throughout appropriate installment sales program aiming to most of the Mexican and Hispanic population.

Grupo FAMSA is been recently authorized by the Mexican ministry of finance in order to establish and operate a commercial bank.

These are some of the products and services that FAMSA offers to its customers: Small Appliances, Home Appliances, Furniture, Clothes, Automotive, Cellular communications, Travel Agency; and other lasting goods and services."

C. Interview:

- CEO: The general perception of officers and directors of Mexican corporations is that SOX is quite complex and the costs involved in gathering the information and complying with the requirements is quite considerable. Hence as long as the Mexican Stock Market continues to get stronger and provides good opportunities of marketability and if foreign investors go on agreeing to invest through the Mexican Stock Market, it is not worth it to explore other markets that are more complex than ours. When we analyzed to become public, our advisors did not even consider participating in the U.S. markets given the cost/benefit involved; extremely high requirements, costs and accountability.

- CFO: Given the amount of our issuance it was not worth it separating the bursatility of our share, since we would have to place one part in México and the other in the U.S. and that would mean loosing marketability;
hence concentrating everything in México was a better driver. In addition U.S. market requirements with SOX are hard to comply, involving considerable legal fees, back-office and other costs that come with being registered.

- **Legal Director:** Besides U.S. legislation being very strict, any irregularity may bring forth strong sanctions that punish your share value directly, very short periods of response are provided and officer and director personal criminal liability is also a relevant issue to consider.

- **CFO:** The Comisión Nacional Bancaria y de Valores (CNBV) has strived to homologate as much as possible corporate standards to those of the U.S. and there is a clear intention of achieving more sane and higher corporate standards through the new Mexican Securities Law.

- **CEO:** It is clear that the authorities have achieved such purposes and practically saved the Mexican Stock Market, which around 4 or 5 years ago was destined to collapse and disappear. Now it is breaking one record after the other in terms of bursatility and it is perceived that México has stability and has come to stay. The new corporate practices and standards do seem to invite investors.

- **CEO:** I am not sure that Mexican corporations will stop going to the U.S. and choose to stay in México solely because of SOX; in fact very few Mexican corporations have actually delisted. However, the fact that the Mexican Market is becoming very attractive as well as other macroeconomic factors may lead corporations to stay in México. In addition SOX definitely will inhibit corporations from going to the U.S.. For instance, considering the cost/benefit factor, it was not justified to take our corporation to U.S. markets. Maybe for larger companies like CEMEX or TELMEX it is a must and for them it may bring about benefit given the huge volumes that they manage. Nonetheless we are doing good here and hence have not even considered going over there.

- **CFO:** Besides, there are other alternatives not to go to the U.S., and for instance European Institutional Investors invest through the Mexican Market and we are analyzing the possibility of going to the Madrid Market; there are other options for improving marketability without going to the U.S.

- **Legal Director,** Regarding enforcement, I believe it has become a lot more rigorous than before. However we try to have a good communication with the authorities in order to comply promptly.

- **Legal Director:** The Mexican Stock Exchange and its regulation is strict but reasonable and I believe it is for the best. It educates us in managing
our information and capital in a better way. There is new tendency of
disclosure but I do not feel it is to excessive, considering it simply makes
you analyze and control your information more efficiently and improves
your decision making. It also helps in controlling and monitoring the
corporate duties of officers and directors. Nonetheless the U.S. with SOX
is much more excessive.

- **Legal Director:** The high requirements of SOX will definitely inhibit
Mexican corporations from continue to enter U.S. Markets, given its high
requirements, infinite responsibility, costs, and sanctions; it may be a
mistake or an involuntary action or omission, without bad faith, but you
will be subject to serious consequences and be exhibited in the main stock
market in the world.

- **Legal Director:** We did not even consider going over, and the new
Mexican Law is strict, but also healthy and more reasonable. With the new
Mexican Securities Law, accountability is very considerable and we have
to constantly be aware and monitor all our actions, but the interesting
thing is that we are being educated to higher standards. It is like the birth
of a child, at first it hurts, but once the labor is completed everything is
happiness; it is a gradual process of transition and education. No one
wants to be imposed measures after being totally free, and it is hard to
accept being imposed new burdens, but I welcome it as long as it
maintains a proper balance. In fact, I believe it is a way, among many
others of reducing corruption, regardless if the human being is naturally
corrupt. Our standards will probably be raised even more in the future, as
the homologation to U.S. standards continue, but I do believe SOX is
excessive.

V. **Organization:** Value, Grupo Financiero
(https://www.value.com.mx/ingles/entrar.html)

A. **Interviewee:** Lic. Jaime de la Garza, Legal Director.

B. **Firm Profile:**
(https://www.value.com.mx/ingles/entrar.html)

"Value's origin goes back to 1988 when a group of investors from
Monterrey, México established a factoring company called Fina Factor. In 1991 a
leasing firm was established and later in 1992 with the acquisition of Value
Brokerage Firm, Fina Value Financial Group was constituted.

The year 1993 marked the beginning of a new era for Value. A group of
investors and executives with years of experience and knowledge in the financial
sector joined Fina Value Financial Group, investing new capital and renewing its administration. Since then the Group began a new stage of consolidation and expansion.

In the year 2000 the Group changed its name to Value Financial Group and the subsidiaries to Value Leasing, Value Factoring and Value Consulting.

In Value Financial Group we are fully aware of the responsibility implied in advising you in the best use of your capital, for this reason, creativity, efficiency and professionalism are our ruling attitudes."

C. Interview:

- Regulation is perceived as something positive in the Mexican market; it provides trust and investors feel there is support and protection on the part of the authority. Our legislation has recently adopted and totally migrated to a perspective of disclosure.

- The New Mexican Securities Law expressly relates in its statement of motives to the importance of disclosure, and it definitely has raised the bar, but even if it is stricter, the process has been gradual and began before SOX and the Enron. México has been part of the a world wide corporate governance movement and at first it crystallized through the Código de Mejores Practicas Corporativas (Better Corporate Practices Code), which is a document issued by the Consejo Coordinador Empresarial (Business Coordination Counsel), through a committee conformed by authorities and business people. It tries adapt higher corporate practices to the Mexican reality, according to which even the largest public corporations are still closely held with a group of controlling shareholders fairly recognizable. The purpose is to protect investors but also to attract foreign investors.

- Said Better Practices Code introduced figures like independent directors and audit committees and defined the obligations of officers and directors among other issues but it was only a recommendation or ethics regulation. Nonetheless there were studies according to which the market perceived them as good practices and corporations started to adopt them. Later said code was added as an exhibit or attachment to the mandatory Circular Única de Emisoras (Sole Issuers Regulation) which was an attempt to unify all the hundreds of regulations that had been issued, into one code.

- In addition, even if standards are higher in México, it is possible to comply with them; considering it was a gradual process that was not mandatory at first. As a said, what was optional became mandatory in 2001 with reforms to the old Mexican Securities Law, introducing timidly issues of disclosure and independent directors, but it then achieved greater
depth and detail through the new law expressly introducing the Duties of Care and of Loyalty as in the U.S. Jokingly, regarding the Duty of Care we refer to the Mexican sayings: “Metro la pata” or “I put one foot in it” (as in “I mistakenly screwed up”) but in relation to the Duty of Loyalty it would be: “Metí las manos” or “I put my hands in it” (as in I deliberately stole) (laughs). Having been gradual it hasn’t been felt as much to those who where already involved in adopting such practices. There comes a moment in which it even becomes more simple and you are aware of it and plan ahead.

- Judicial action regarding such duties are yet to start in México, but now it is clear on what grounds it may be pursued as opposed to prior legislation.

- The “Statement of Motives of the New Mexican Securities Law expressly stated that the objective was by no means to reach the extremes of SOX. Nonetheless the law is stricter and harder to comply given the Mexican reality. For instance it is difficult to reach the independent director quota; the board used to be closely held with the same directors serving in every corporation and now it is necessary to go out and look for them, plus the law now requires two mandatory committees conformed of independent directors, the audit, with very detailed functions, and the corporate practices committee, whose functions are not as determined. Also, with the accountability issues not everyone wants to be a director.

- Regarding SOX, the requirements are much higher. Even in México, important issuers are concerned about the new Mexican regulations like the Circular Única de Emisoras in accordance to which it is mandatory to prepare a detailed prospectus periodically and it implies high costs. Cost/benefit becomes an issue and many conclude it is not worth it; imagine going to the U.S.

- Double enforcement is not an issue, considering you already are listed in the U.S. The information is basically the same. If you are in the U.S. the Mexican requirements will of course not represent a problem. The Mexican legislator knows that requirements in the U.S. are higher and hence did not consider necessary including more; it was said that it was unthinkable to reach such extremes.

- Nonetheless it is clear that the Mexican Securities Law was an effort to homologate U.S. corporate practices, and also, enforcement has been raised very significantly in México and we are surprised with the control that Mexican authorities now have. Now legal risk is not measured solely on law suits and other contingencies as it was traditionally, now it is a matter of administrative sanctions and fines by the securities authorities, there are annual audits by the authorities and extraordinary ones as well. The authorities are much more prepared and evidently have a system and a
well planned methodology. They know what they are looking for and go right to the point. They have made a strong effort to create systems of control.

- Regarding Directors and Officers accountability, it is all based in the information that you provide and the new liability level is very high and the obligations are very well defined. In consequence, we are constantly monitoring and measuring risk.