

**REPORT ON  
SECURITIES ACTIVITY ON THE INTERNET II**



**IOSCO-IOSCO**

**REPORT FROM THE  
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## **REPORT ON SECURITIES ACTIVITY ON THE INTERNET II**

The Report addresses the current use of the Internet by investors, the securities industry and regulators, reviews the implementation of the recommendations made in the 1998 Report, and explores the issues raised by the evolution of the Internet. It is also accompanied by four annexes which are intended to provide the industry and regulators throughout the world with an overview of securities regulatory provisions relating to the Internet: Annex I illustrates the Internet-related regulations by individual jurisdictions and is an update of the Annex of the 1998 Report. Annex II illustrates in detail, by means of a jurisdiction-by-jurisdiction description, the use of the Internet by the securities industry and regulators of the countries represented in the Task Force. Annex III contains a consolidated list of all official web addresses of regulators, self-regulatory organisations and other securities-related entities, whereas Annex IV reviews the work of other International Fora and Committees relating to the Internet.

IOSCO published its first Report on Securities Activity on the Internet in September 1998. Since then, regulatory interest has turned to a growing range of new issues. The question of liability for the content of web sites or hyperlinks has become of major importance for the industry. Regulators are increasingly faced with new Internet activities such as day trading or fraudulent behaviour on Internet discussion sites. Equally important is the question under which circumstances it is possible to obtain information from Internet service providers. The Internet Task Force has dealt with these issues in its second Report.

As market participants increasingly use the Internet to route orders and place trades, the technological **capacity, resilience and security** of online brokers is becoming of greater moment. As a result, the Report makes it clear that brokers need to ensure that periodic spikes in message traffic do not overwhelm their systems. The recommendations given in the Report focus on the incentives for online brokers to ensure capacity, resilience and security and identify specific measures available to brokers, including capacity testing, investor education and risk disclosure.

Also, as websites progressively become the medium of choice for communicating with investors, and as Internet use has become more prevalent, issuers and intermediaries have raised a number of questions regarding the scope of their responsibility for Internet communications. There seems to be particular interest in understanding the scope of **liability for maintaining a website during registered offerings** and **for hyperlinks to third party information**. While these questions may be resolved by reference to current law, the Report provides a description of existing regulatory approaches to hyperlinks and websites. This description might be of service to regulators and the securities industry.

Of growing concern has been the facilitation of **day trading** by the Internet. In the past, day trading was confined to the offices of professional intermediaries. However, recent developments in Internet order-routing mechanisms have led to an environment that makes day trading for retail investors not only feasible but attractive. The primary regulatory concern with respect to day trading is investor protection. While investors are ultimately responsible for their trading decisions, as soon as day trading became available to retail investors, it became apparent that day trading undertaken without sound knowledge of markets and trading conditions, and without sufficient capital, could potentially result in serious financial difficulties for investors. Dangers for inexperienced investors lurk not only in the competition with professional traders but also in the high cost of repeated trading. The Report describes some of the measures regulators can take to address day trading, e.g. risk and cost disclosure. These measures include increased investor education and the establishment of specific regulatory requirements for day trading accounts.

A great deal of information and opinions about securities investment are available through **Internet Discussion Sites (IDS)**, chat rooms and similar multi-user mechanisms. Of particular significance for regulators is the fact that IDSs can be a cheap and effective way of disseminating false or misleading information about securities markets. Regulators should therefore be aware of the risk that IDS facilities might be misused, and consider how best to deal with that risk in the context of the regulatory framework that operates in their jurisdiction. The Report describes – with regard to the different regulatory frameworks – the different possible approaches to dealing with this issue.

Another significant issue is **Internet Enforcement**. Regulators investigate various securities violations that occur over the Internet. The growing use of the Internet to commit securities fraud and undertake market manipulation has led to an increasing need of regulators to obtain information from Internet Service Providers about subscribers and their communications. When the misconduct emanates from another jurisdiction, regulators often must rely on cooperation of their foreign counterparts to obtain this information. The Report points out that, in order to investigate and prosecute domestic and cross border securities violations, regulators should encourage or endeavour to ensure that subscriber data and certain traffic data are maintained by ISPs and that such data is available. The Report urges that this matter be further explored by IOSCO's Standing Committee on Enforcement and Information-Sharing.

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## INTRODUCTION

The Internet is revolutionizing the securities business, and its use by investors and the securities industry<sup>1</sup> presents a number of regulatory challenges. The regulatory challenges result from the fact that, among other things:

- the Internet is a global, virtual medium that ignores geographic boundaries;
- the Internet makes possible significantly greater retail customer access to securities and investment services;
- the Internet harnesses the power of information technology and brings with it the important consequences of increased transaction speed, access to a greater volume of information and reliance on technology; and
- the Internet is re-engineering business processes, enabling new players (including non-financial firms) to enter the market, increasing investor choice.

In 1998, IOSCO published a Report entitled “Securities Activity on the Internet” (the “1998 Report”)<sup>2</sup> that set forth a number of recommendations designed to address some of these challenges. The recommendations were well-received, and the fundamental principles contained therein appear as relevant today as in 1998. However, since publication of the recommendations, there has been a significant increase in the use of the Internet as a communication network and as a mechanism for handling trading orders. These developments, and related regulatory issues, merit discussion.

This Report will review the implementation of the recommendations found in the 1998 Report. The Report will also address current use of the Internet by investors, the securities industry and regulators. Finally, the Report will explore the issues raised by the evolution in Internet use and either, as

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<sup>1</sup> In this Report, where the context permits, the term “issuer” encompasses all issuers of securities including collective investment schemes; “intermediary” encompasses brokers, dealers, investment advisers, underwriters and banks; “securities” and “securities markets” refer to the various market sectors and also, where relevant, should be understood to include the derivatives markets (the same applies to the use of the term “securities regulation”); and the “securities industry” encompasses issuers, intermediaries and securities and futures markets.

<sup>2</sup> The 1998 Report is available online at [www.iosco.org/docs-public/1998-internet\\_security.html](http://www.iosco.org/docs-public/1998-internet_security.html).

appropriate, propose recommendations or identify a range of possible regulatory responses.<sup>3</sup>

As was the case with the 1998 Report, this Report acknowledges that the objective of securities regulation, as stated in the IOSCO core principles, do not change based on the business medium. It also is important to note that this Report focuses solely on Internet use. It does not address other electronic media through which individuals and entities may trade securities.

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<sup>3</sup> This Report identifies Internet issues that should be considered by each IOSCO member jurisdiction, where appropriate, and provides recommendations or guidance on how to approach those issues. It is not the role of IOSCO, however, to provide legal interpretations or set universal standards with respect to use of the Internet by securities regulators or the financial services industry. These issues must be addressed under the domestic statutory schemes of each jurisdiction.



## **PART I: REGULATION AND FACILITATION OF INTERNET USE BY THE SECURITIES INDUSTRY**

Acknowledging that Internet use might not fit neatly within the parameters of statutes, regulations and directives originally intended for a paper-based environment, and recognizing that the Internet challenges traditional notions of jurisdiction and territoriality, IOSCO undertook to examine and provide guidance regarding regulation of securities activity on the Internet.

This resulted in the formulation of 24 key recommendations (the “Recommendations”) set forth in the 1998 Report. These Recommendations were underpinned by five basic precepts:

1. The fundamental principles of securities regulation do not change based on the medium.
2. Consistent with the fundamental principles of securities regulation, regulators should not unnecessarily impede the legitimate use of the Internet by market participants and markets.
3. Regulators should strive for transparency and consistency regarding how their regulations apply in an Internet environment.
4. Regulators should cooperate and share information to monitor and police securities activity on the Internet effectively.
5. Regulators should recognize that electronic media and the use of such media is likely to evolve.

The 1998 Report classified the Recommendations into four categories:

- Clarification as to the application of domestic regulatory requirements to securities activities on the Internet;
- Clarification as to the circumstances leading to the exercise of regulatory authority over cross-border securities activities on the Internet;
- Use of the Internet to foster investor education and transparency; and
- Use of the Internet to enhance cooperation in enforcement matters.

As discussed in more detail herein, it appears that many IOSCO jurisdictions have implemented a significant number of the Recommendations, and have done so in a manner consistent with the five precepts stated above. The following briefly reviews implementation of the four categories of Recommendations by 19 jurisdictions surveyed by IOSCO. For a more detailed description of the implementation of the Recommendations by jurisdiction, see:

- **ANNEX I: LIST OF SIGNIFICANT INTERNET-RELATED REGULATIONS, POLICY AND GUIDANCE FROM INDIVIDUAL JURISDICTIONS**

This list is also available on the IOSCO website at [www.iosco.org](http://www.iosco.org) under the icon entitled “Internet Laws and Regulations.”

**A. CLARIFICATION AS TO THE APPLICATION OF DOMESTIC REGULATORY REQUIREMENTS TO SECURITIES ACTIVITIES ON THE INTERNET**

Most of the securities regulators surveyed addressed industry use of the Internet without needing to revise their regulatory regimes. Indeed, these regulators simply clarified the application of existing domestic regulatory requirements to Internet activity through guidance and interpretive releases. The guidance and releases for the most part covered: Internet offers and advertisements, record-keeping and use of the Internet for delivery of disclosure documents.

However, some regulators found that certain Internet use required that laws be enacted or amended. For example, in a number of countries it is not possible, under current law, to hold shareholder and directors’ meetings, disseminate voting information, or vote by proxy via the Internet. In certain jurisdictions, company laws require physical meetings to be held. Some company laws require paper-based prospectuses, contract notes and statements of account. In addition, some laws require proxy voting to be effected in person. In light of these restrictions, several jurisdictions are now considering new or amended legislation to facilitate use of the Internet for voting and holding shareholder meetings.

Some overarching observations can be made about the manner in which domestic regulatory requirements have been applied to Internet activity. In general, Internet prospectuses must satisfy the objectives of existing prospectus provisions, *i.e.*, to allow investors to make informed decisions about securities offers. With respect to Internet offerings and advertisements, guidance and interpretive releases by and large indicate that regulators rely on fact-based determinations to define what constitutes an “offer.” As regards delivery of disclosure documents, regulators generally allow for Internet notice, Internet access and electronic evidence of delivery. Finally, record-keeping requirements established by regulators appear to be largely the same for Internet-based and non-Internet based securities activities.

**B. CLARIFICATION OF THE CIRCUMSTANCES LEADING TO THE EXERCISE OF REGULATORY AUTHORITY OVER CROSS-BORDER SECURITIES ACTIVITIES ON THE INTERNET**

One of the most significant Recommendations in the 1998 Report urged regulators to clarify the circumstances under which they would exercise regulatory jurisdiction over cross-border securities activity.<sup>4</sup> The recommendation suggested that the assertion of regulatory jurisdiction (*i.e.*, the imposition of licensing, registration, reposting and other requirements) be predicated on (1) the offeror of securities or services being located in a regulator's own jurisdiction; or (2) the offer of securities or services having a significant effect upon residents or markets in a regulator's jurisdiction. In determining whether the offer meets the second test, regulators were to consider whether, among other things,

- the offer targets residents of the regulator's jurisdiction;
- the offeror accepts orders from or provides services to residents of the regulator's jurisdiction; and
- the offeror uses e-mail or other media to "push" the information to residents of the regulator's jurisdiction.

Conversely, regulators could find the second test was not met if, among other things:

- the offeror clearly states to whom the Internet offer is directed, rather than appearing to extend the offer into any jurisdiction;
- the offeror provides a statement on its website listing the jurisdictions in which it is (or is not) authorized to offer or sell its securities or services; or
- the offeror takes precautions that are reasonably designed to prevent sales to residents in the regulator's jurisdiction (e.g., screening addresses and other residency information of respondents).

Almost all of the 19 jurisdictions surveyed have, through guidance or interpretive releases, clarified the circumstances leading to their exercise of regulatory authority. To the benefit of the globally-active securities industry, these statements indicate that the assertion of regulatory jurisdiction revolves primarily around the readily identifiable and constant set of factors set forth above and in the 1998 Report.

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<sup>4</sup> The 1998 Report did not address the circumstances under which regulators would assert enforcement jurisdiction.

### **C. USE OF THE INTERNET TO FOSTER INVESTOR EDUCATION AND TRANSPARENCY**

The regulators surveyed are actively using the Internet for purposes of investor education and regulatory transparency. Among other things, regulators are using the Internet:

- to provide a database of filings (see Part II.C);
- to advise investors regarding risks of investment, online trading and fraud;
- to list registered issuers and intermediaries (including registered representatives);
- to post proposed and final rulemaking;
- to accept investor complaints about specific events via e-mail;
- to post litigation and press releases;
- to assist investors' research by providing hyperlinks to websites of self-regulatory organizations and international organizations;
- to post administrative decisions in enforcement matters; and
- to provide a list of websites identified as advertising fraudulent schemes or unlicensed activity.

### **D. USE OF THE INTERNET TO ENHANCE COOPERATION IN ENFORCEMENT MATTERS**

Regulators spend considerable resources monitoring Internet securities activity. They have established Internet surveillance programs with staff trained to detect, investigate and prosecute illegal use of the Internet. In order to share expertise and knowledge, regulators have organized international sessions to discuss their surveillance techniques and observed trends in Internet fraud. For example, in June 2000, representatives from regulators in 20 jurisdictions participated in an IOSCO program, which included discussions on:

- setting priorities in Internet surveillance;
- techniques for detecting securities and futures violations on the Internet;
- identification, preservation and authentication of information for use in proceedings; and
- organization of Internet surveillance and Internet enforcement.

Today, instead of simply monitoring the medium, regulators use the Internet as a tool for international enforcement and cooperation. It can serve as a source of information regarding foreign individuals or entities whose activity is subject to investigation. For example, as indicated above, there are a number of websites that list firms and individuals against whom enforcement or disciplinary actions have been taken by a foreign authority. Frequently, registration or licensing status of firms and individuals is also available via websites. These sources of information can be of substantial assistance to a regulator developing an

investigative record in a matter involving cross-border misconduct. Cooperative enforcement efforts are also facilitated by closed global discussion fora regarding e-enforcement issues.

Finally, regulators are using the Internet to coordinate enforcement efforts. To this end, IOSCO sponsored “surf days” in March 2000 and April 2001. In the March 2000 surf day, regulators from 18 countries coordinated their efforts to identify securities fraud on the Internet. The participating regulators visited almost 10,000 sites, of which more than 1000 were identified for follow-up review by individual IOSCO members. Of these, over 250 sites involved cross-border activity. Due to the success of the 2000 surf day, IOSCO sponsored a surf day in April 2001 in which regulators from many additional countries participated. The 2001 surf day featured regulators from 37 countries who visited over 25,000 sites, of which more than 2200 were identified for follow-up review by individual IOSCO members. Of the sites visited, over 8000 involved cross-border activity. In light of the increasingly global nature of Internet fraud, IOSCO is likely to sponsor future surf days.

## **PART II: DEVELOPMENTS IN USE OF THE INTERNET BY INVESTORS, THE SECURITIES INDUSTRY AND SECURITIES REGULATORS**

In the last few years, there has been a rise in Internet use by investors, the securities industry and regulators. Investors increasingly obtain information and trade online.<sup>5</sup> Issuers, with greater frequency, disseminate investment information and communicate with investors via the Internet. Intermediaries now also frequently advertise, provide advice and communicate with investors utilizing the Internet. Markets, in turn, increasingly use the Internet to disseminate investment information and to interact with the public and regulators. Finally, regulators use the Internet to undertake broad-scale investor education, to allow for electronic transmission of issuer filings, and to improve access to registration and licensing information. Below is a short summary of Internet use. For a more detailed description of the securities industry and regulators' use of the Internet by country or region, see the following annex:

- **ANNEX II: NEW DEVELOPMENTS** (describing new developments in individual jurisdictions)

### **A. MARKET PARTICIPANTS**

**Investors.** The Internet allows investors to buy and sell securities quickly and at low cost. Consequently, the amount of online trading has skyrocketed over the past few years, and is projected to continue. During the first quarter of 2001, however, US online trading volume was down approximately 30% from the first quarter of 2000.<sup>6</sup> According to recent estimates, there are 7.8 million online US investors making 807,000 trades per day, and approximately 18.5 million online accounts. This represents a major increase from June 1999, when online US investors numbered only a little over 2 million.<sup>7</sup> Interestingly, one account indicates that 50,000 investors account for 80% of US online trades.<sup>8</sup> In Canada, a study conducted by the Toronto Stock Exchange in the spring of 2000 found

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<sup>5</sup> In this context, "online trading" encompasses all trading of securities using the Internet, including trading through full-service brokers as well as discount brokers.

<sup>6</sup> See, e.g., first quarter 2001 10-Q filings (filed with the US Securities and Exchange Commission) for the broker-dealers Schwab, Ameritrade, SCFBDirect and Fidelity, available on the SEC's EDGAR database at [www.sec.gov](http://www.sec.gov).

<sup>7</sup> *Online Financial Services Update*, U.S. Bancorp Piper Jaffray (April 2000); *More Investors Go Online*, New York Times, August 15, 2000, at C8.

<sup>8</sup> See Kutler, Jeffrey, "Trading Up," Institutional Investor Online, April 1, 2001, available at [www.iimagazine.com/channel/technology/20010409000398.htm](http://www.iimagazine.com/channel/technology/20010409000398.htm).

that 62% of its investors invest online.<sup>9</sup> As regards Asia, figures indicate that the number of online investors will surpass 374 million by 2005, up from just over 39 million in 1998.<sup>10</sup> With respect to Europe, a February 2001 report estimates that there were 3.74 million online accounts as of January 2001 and that the number of online securities customers in Europe will rise to 6.3 million in 2001 and 10.5 million in 2003.<sup>11</sup>

Investors also use the Internet as a source of information regarding securities. Through the Internet, investors may be able to obtain financial information about public issuers, review disciplinary histories of financial service providers, receive general warnings of securities frauds, and lodge complaints. In addition, investors rely on the Internet to review research concerning issuers, market data, and ratings and to chart historical data, monitor portfolios, access real-time stock quotes and receive notices of price moves. Furthermore, investors can access websites that provide educational information. For example, many intermediaries offer tutorials on trading strategies or collective investment scheme investing. Investors also depend on the Internet to communicate with each other. They use Internet discussion sites, chat rooms and newsgroups to discuss investment strategies and company performance.

Among the newer developments is growing investor interest in mobile telephony and interactive television as a means of trading and obtaining information regarding specific securities. Currently, data transmission using Wireless Application Protocol (“WAP”) technology appears to be slow; however, the transmission speed is expected to increase remarkably as the technology matures.

Mobile telephony likely will benefit investors and the securities industry, but may raise regulatory issues relating to security, interoperability, disclosure and crime. As regards security, questions may arise with respect to the level of control and responsibility exercised by intermediaries when transmitting personalized data.<sup>12</sup> As regards interoperability, issues could arise concerning the extent to which an

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<sup>9</sup> *2000 Canadian Shareholders Study*, Toronto Stock Exchange (June 2000). Executive Summary available online at [www.tse.com](http://www.tse.com), “research bulletins” section.

<sup>10</sup> *An e-Infrastructure for a leading e-Economy*, Yankee Group Report on the Enhancement of the Financial Infrastructure in Hong Kong, September 1999.

<sup>11</sup> JP Morgan Chase Report, February 2001, discussed in *Europe’s Online Broking Grows*, Financial Times, February 21, 2001.

<sup>12</sup> For example, using current technology, problems can arise regarding end-to-end security, since secured wireless communication is converted to secured Internet communication, and in the conversion process the information is temporarily unencrypted. If a system were penetrated during the conversion process, it is possible that non-authorized users could have access to unencrypted data, including payment details.

intermediary providing services through a range of platforms (e.g., branches, telephone, interactive television, personal computers, and mobile telephony) can ensure that different systems work off the same core databases without corrupting the data or impairing performance. As regards disclosure, the size of the screens may raise questions as to the adequacy of disclosure made via mobile phones. Finally, as regards crime, the use of pre-paid WAP phones may make it harder to trace fraudulent e-mails and bulletin system messages.

**Issuers.** Issuers continue to use the Internet to communicate directly with shareholders, investors and analysts. Through the Internet, they disseminate, among other things, corporate information, financial information, product information, transfer agent information, security price history, ratings information, and expected earnings release dates. Furthermore, the Internet is being used for investor meetings and electronic roadshows.<sup>13</sup> In addition, issuers in a number of jurisdictions are developing systems to allow for online proxy voting and online shareholder and director meetings.

Issuers are also using the Internet to advertise. Moreover, they maintain Internet discussion sites to allow investors to express interest in buying or selling securities. These sites raise regulatory concerns to the extent they can be used to manipulate securities markets. Issuers and regulators will need to be vigilant regarding the misuse of Internet discussion sites and consider how best to prevent, detect and take action against market manipulation via these sites. For a more detailed discussion of regulatory issues regarding Internet discussion sites, see **Part III.D** below.

**Intermediaries.** Market intermediaries continue actively to use the Internet for marketing and advertising purposes, for presenting information on portfolio analysis and market information, and for communicating with and receiving orders from investors. Intermediaries now also provide investment advice, including software-based advice programs, over the Internet. Increasingly, intermediaries are using the Internet to advertise multiple financial services (such as banking, securities and insurance services) and make available Internet discussion sites.

In addition, many intermediaries presently allow their clients to conduct after hours trading via the Internet and allow for automatic processing of Internet orders and real-time routing of those orders. More recently, intermediaries have devised new ways to use the Internet during the offering process. Intermediaries currently undertake electronic IPO distributions whereby they accept customers'

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<sup>13</sup> A "roadshow" is a presentation by an issuer of securities to potential buyers about the merits of the issue. In the past, management personnel of an issuer would travel to various cities to present financial information and an outlook for the company and to answer the questions of analysts, fund managers and other potential investors. Electronic roadshows are presentations performed via the Internet, thereby eliminating the need for issuer personnel to travel to make a presentation.



electronic indications of interest in IPOs. Furthermore, intermediaries conduct online auctions on behalf of issuers whereby they take bids over the Internet.

As a general matter, we note that many intermediaries have begun to restructure their businesses around the Internet. The outsourcing of solicitation, order routing, customer relations management, settlement and back office functions is affecting the structure of intermediaries businesses and may alter the regulation of these functions.

A major new development in this regard is the use of Internet portals by intermediaries to attract customers. Generally, a portal provides an appealing entry point to the Internet by aggregating information, search engines, and hyperlinks to other locations on the Internet. Financial portals, in particular, focus on money management and provide a central location where investors can find a variety of financial information and services, including stock quotes, research, and investment services. Securities regulators are considering whether portals should be subject to regulatory obligations as a consequence of the nature of their business or their compensation arrangements with regulated firms.

## **B. MARKETS**

**Regulated Exchanges.** The use of the Internet by securities exchanges as a tool for disseminating information to the public and advertising their products and services has become a matter of course. Via their websites, exchanges transmit market information and make available their trading rules. However, exchanges are now beginning to use the Internet for receiving orders (using encryption technology and password access) and certain open-outcry exchanges have introduced Internet systems that allow exchange members to route orders to the trading floor. A number of newly-approved exchanges are entirely Internet-based (from order placement through clearance and settlement) and allow subscribers to access the system using web-browser software on personal computers connected to the Internet.<sup>14</sup>

As exchanges increasingly rely on the Internet to receive customer orders, they will, as is the case with online brokers, need to ensure adequate system capacity, resilience and security. Indeed, many of the capacity and security issues relating to online brokerage systems discussed in Part IV of this Report will be equally relevant to exchanges that increasingly incorporate Internet components to their systems.

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<sup>14</sup> For example, the US Commodity Futures Trading Commission recently designated two futures exchanges as contract markets; however, these markets have not yet commenced operations.

**Electronic Bulletin Markets.** The Internet is also being used as a market for direct trading between investors, as evidenced by issuer and third-party electronic bulletin markets. An issuer bulletin market is essentially a forum for investors to advertise offers of securities. A third-party bulletin market is similar to an issuer bulletin market, except that it is established and maintained by someone other than the issuer.<sup>15</sup> On either type of market, transactions between buyers and sellers are effected wholly independently of the bulletin market.<sup>16</sup>

These bulletin markets have the potential to decrease transaction costs. They also may be an effective means of facilitating transactions in the securities of emerging companies, which often do not have liquid markets.<sup>17</sup> However, the use of electronic bulletin markets raises a number of issues. For example, although investors can save brokerage commissions and avoid the spread between market makers' bids and asks by using a bulletin market, they still have to pay costs associated with settling transactions and transferring record ownership. These costs can exceed traditional transaction charges. Moreover, when financial intermediaries are not involved in the transaction, investors may be exposed to additional liquidity, credit and transactional risks.

Another consideration is the fact that the transactions between buyers and sellers using electronic bulletin markets are not governed by established market rules ensuring transparency. In addition, reliable arrangements for trade

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<sup>15</sup> Currently, issuers operate most electronic bulletin markets on the Internet. Broker-dealers, as third parties, can operate similar systems for facilitating trades of illiquid small securities. A system operated by a broker-dealer could be regarded as an alternative trading system rather than a third-party bulletin market.

<sup>16</sup> A securities transaction on an electronic bulletin system is often carried out as follows. A prospective buyer or seller posts a message on the bulletin system. Normally, investors are required to input an indication of interest to purchase or sell the security at a certain price, trading amount and contact information (*i.e.*, e-mail address, telephone number). Then, another investor who sees the information on the bulletin system contacts the buyer or seller. The two parties negotiate over the Internet or phone and, when the terms are agreed upon, they exchange funds and securities independently of the issuer and its transfer agent. The appropriate documentation is then submitted to the issuer's transfer agent in order to transfer record ownership from the seller to the buyer. In some jurisdictions, to avoid triggering various regulatory requirements, the issuer or third party does not play any role in effecting the transactions and does not receive compensation for creating or maintaining the system. Additionally, the issuer or third party does not participate in any purchase or sale negotiations, does not provide advice as to whether an investor should buy or sell the security, and does not receive, transfer or hold funds or securities as part of its operation of the system. The issuer may be required to keep records of all quotes entered into the system and make them available upon request to the regulator and any market on which the securities are listed.

<sup>17</sup> The securities of emerging companies generally are not traded actively in an organized market (regulated exchanges or organized OTC markets) and often do not satisfy the listing requirements of those markets.

confirmation, delivery of the securities and secure payment, which are indispensable to the smooth functioning of any trading system, may not be available in the absence of a financial intermediary.

**Business-to-Business Markets.** An additional development is the advent of closed Internet markets. These websites that trade contracts among members -- generally a group of companies engaged in the same type of activity (e.g., energy suppliers) -- where access to the website is restricted (e.g., via password protection) to members. This type of Internet market raises issues for regulators, including whether these markets trade securities and whether, as a consequence, they must be registered as broker-dealers or exchanges and subject to regulatory requirements.

### **C. SECURITIES REGULATORS**

Since the publication of the 1998 Report, securities regulators have expanded their use of the Internet to provide investor education and increase transparency. These enhancements are discussed below.

**Investor education.** Many regulators use their websites to promote investor education. These sites contain advice on the relevant risks of investments in securities, as well as specific warnings to investors about how to avoid becoming victims of fraudulent schemes. These sites also allow the public to submit complaints relating to potential violations. Recently, many regulators have remodeled their websites so that advice is now better organized and more inclusive. Indeed, in some jurisdictions, information regarding securities violations is compiled into a single database made available through the Internet.

The following information illustrates the widespread use of regulators' websites and the numerous enhancements to Internet-based investor education programs.

The Australian Securities and Investments Commission has established a separate but linked website<sup>18</sup> specifically directed at consumer and investor education. The site addresses shares, managed investments, deposit taking and superannuation, and includes Australia's first online directory of consumer education covering all aspects of investment and financial services. In the months following the establishment of that site, the number of hits increased fourfold.

Between March and December 2000, the website of the German Bundesaufsichtsamt für den Wertpapierhandel was visited by approximately 1.4 million people. The most popular sections of the website were: press releases and publications; laws and regulations; databases; and annual reports.

In Hong Kong, the Securities and Futures Commission's ("SFC") website had an average of 367,024 hits per day in March 2001. The site has almost 2000 pages, including a dedicated investor education section that explains investors' rights and self-responsibilities in the financial markets. This includes illustrations of common problems encountered by investors and the SFC's advice, interactive games to test investors' awareness of market pitfalls and how to make informed decisions, answers to top questions from investors and "Investor Alerts" which list the names of unlicensed overseas brokers. In addition, during the same time period, the SFC's Electronic Investor Resources Centre website, which provides educational information and research facilities for investors with direct links to almost 450 websites of regulators, market institutions and Internet content providers, had an average hits of 20,864 per day.

The website of the Monetary Authority of Singapore received an average of more than 46,000 hits per day during the year 2000. The Swiss Federal Banking Commission's website received approximately 100,000 visitors each month during the first quarter of 2001. Approximately 330,000 people visited the website of the United Kingdom Financial Services Authority during the first quarter of 2001.

In February 2001 investors could access more than 1.7 million documents through the website of the United States Securities and Exchange Commission, and the website received about a million hits per day.<sup>19</sup> The enhanced website features streamlined graphics for quicker downloads, two new search engines, and interactive tools for investors, including

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<sup>18</sup> The website is [www.fido.asic.gov.au](http://www.fido.asic.gov.au).

<sup>19</sup> SEC Press Release 2001-22, available at [www.sec.gov/news/press/2001-22.txt](http://www.sec.gov/news/press/2001-22.txt).

mutual fund and margin cost calculators. The website also allows investors to lodge complaints online.

In the interest of investor education, IOSCO has taken the initiative to establish a consolidated list of official web addresses of regulators, self-regulatory organizations and other securities-related entities. This list, attached as **ANNEX III**, is intended to facilitate investors' ability to determine whether a given security or intermediary is registered or licensed.

**Issuer filings.** In most jurisdictions, issuers offering securities to the public are required to file documents about themselves and the securities with a regulator. Many regulators now permit prospectuses, investment adviser forms and financial statements to be filed via the Internet. In some jurisdictions, these documents are then made available to the public through a database on the regulator's website.

**Registration information.** In addition to issuer information, some regulators make available information regarding the registration or licensing status of intermediaries. Certain regulators have gone further and are listing on their websites persons or entities known to be undertaking unauthorized activity in their jurisdiction.

**Disseminating proposals, rules, notices and announcements.** Most regulators are now using the Internet as part of the public consultation process. Even where traditional paper communication is required, communication through the Internet is becoming an important medium for dialogue among regulators, market participants and investors. The broader availability of proposed regulatory initiatives has facilitated public comment, especially by small investors, and contributes to regulatory transparency.

**Internet-based surveys.** Regulators are using the Internet to learn information from investors about their use of the Internet. Surveys can serve to explore investor knowledge and experience, investor expectations of firms, trading behavior, and how investors analyze risk.

## **D. CONCLUSION**

Internet use by investors, the securities industry and regulators has grown considerably since 1998. Some of the investor and industry uses are relatively novel and raise regulatory issues of first impression. These are matters of ongoing regulatory consideration. Certain other uses raise issues that have already engendered regulatory responses. The latter uses, issues and responses will be the focus of Part IV of the Report.

### **PART III: REGULATORY ISSUES RELATING TO DEVELOPMENTS IN INTERNET USE AND THE RANGE OF REGULATORY RESPONSES**

As market participants increasingly use the Internet to route orders and place trades, the technological **capacity, resilience and security** of online brokerage systems becomes of greater moment. Online brokers need to ensure that increased volume or periodic spikes in message traffic do not overwhelm their systems. As Internet servers reach their maximum capacity, investors may encounter delays in accessing online brokers, and brokers may have difficulty routing customer orders to the designated market for execution in a timely manner. Accordingly, it may be opportune and relevant for regulators to consider assessing online brokers' interest in ensuring the technological adequacy of their Internet-based trading systems.

Also, as websites progressively become the medium of choice to communicate with investors, and as Internet use becomes more prevalent, issuers and intermediaries have raised a number of questions regarding the scope of their responsibility for Internet communications. There seems to be particular interest in understanding regulators' views regarding the scope of: **liability for hyperlinks to third-party information** and **liability for maintaining websites during registered offerings**. While these questions may be resolved by reference to current law, a description of the underlying regulatory motivations might be of utility to regulators and the securities industry.

Another growing concern has been the Internet's facilitation of **day trading**. Day trading is generally understood to represent an investor's intra-day purchases and sales of securities for purposes of short-term profits. The goals of "day trading" may be different from "investing," thus potentially calling for different regulatory requirements. Regulatory responses to the phenomenon have varied.

In addition, issues have arisen with respect to fraud and manipulation on **Internet discussion sites**. Some regulators have considered regulating these venues in order to combat such activity. Indeed, depending on the jurisdiction, an opinion regarding a security provided through a discussion site could constitute "investment advice," and the site could be regulated as an investment adviser. In other jurisdictions, such regulation would raise thorny questions regarding whether opinions represent protected speech or whether they can be subject to regulation absent "personalization." In these jurisdictions, such activity may be better fought by vigorous enforcement of the anti-fraud and anti-manipulation provisions of the securities laws.

Finally, the types of records maintained by **Internet Service Providers**, the length of time that records are maintained, and the ability of regulators to obtain and share such information are increasingly of concern in connection with the investigation of securities fraud on the Internet. It will be useful for regulators to share views regarding (1) the type of information useful to the conduct of investigations and enforcement proceedings and (2) the manner in which to engage Internet Service Providers and governments in a discussion regarding these issues.

The following sections discuss the regulatory issues identified directly above and set forth recommendations or describe a range of possible regulatory responses, as appropriate.

## **A. SYSTEM CAPACITY, RESILIENCE AND SECURITY**

The Internet's ability to reach a large number of market participants instantaneously has reduced the cost of trading securities, and broker-dealers increasingly solicit investors to trade online. This development has led to a significant growth in the number of securities accounts.

Online trading has the potential to change the channels people use to interact with markets. However, it also tests trading systems' capacity to handle increased trading volumes. Online trading can also test trading systems' resilience in responding to a system breakdown, unenvisioned spikes in user demand or unexpected influx of orders across different media and platforms. In addition, it can challenge the integrity of systems by providing a gateway for security breaches.

It is important for broker-dealers to be able to handle increases in trading volume (including sudden spikes at times of volatility) occurring through various trading media, including the Internet. It is also important for a trading system to be resilient in the face of unexpected levels of trading or when significant components of the system have failed. System resilience is especially important where broker-dealers offer Internet only trading and have limited back-up options (such as trading via the telephone access) in the event of a partial failure of their Internet systems. Robust security is also of the utmost importance, especially where details of client assets or the assets themselves might be vulnerable to unauthorized access through criminal hacking.

There are several potential consequences should the capacity, resilience or security of an Internet-based trading system founder. A breakdown in capacity that impairs access to markets can compromise the trading (and thus financial) position of investors. Security breaches can undermine investors' privacy interests, have a damaging effect a firm's reputation, lead to a loss of trust in the

Internet as a safe business medium, and ultimately cause a loss of market confidence. Moreover, depending on the scale of the business operation, there could be systemic consequences if a firm fails due to a breakdown in capacity, inadequate resilience or a breach in security. Indeed, the failure of a firm with a sizeable operation could affect price discovery and market liquidity.

In light of the above, regulators may wish to consider whether online brokers have an interest in properly addressing risks relating to system capacity, resilience and security. Regulators may also wish to ascertain broker-dealers' interest in developing adequate contingency plans in the event of a failure in capacity, resilience or security. This does not mean that regulators should impose specific technology. Because information technology is an area in which new developments occur extremely quickly, there is a risk that such a prescriptive approach could result in systems that are inappropriate, inefficient and out of date.

*Recommendations Relating to Capacity, Resilience and Security*

Regulators may wish to consider whether online brokers, as a matter of business interest, legal requirements or regulatory guidance, are prepared to address risks relating to system capacity, resilience and security, by, among other things:

- managing capacity to accommodate growth;
- conducting periodic capacity stress tests;
- assessing technological performance and vulnerabilities;
- developing backup technology systems to handle outages;
- developing procedures for handling system capacity problems;
- providing for notification and alternative means to place orders when Internet access is slow or unavailable;
- providing adequate investor telephone access;
- installing systems to help detect, prevent and deter unauthorized access;
- implementing ongoing monitoring and crisis management procedures;
- implementing systems to maintain data integrity whether stored, in transit or displayed on the client's screen;
- instituting controls to maintain the integrity of software source code;
- undertaking regular expert security testing, whether in-house or outsourced;
- using encryption, authentication and non-repudiation techniques (e.g., the use of digital certificates from certification authorities) as appropriate;
- protecting the system against viruses;
- utilizing audits by professional IT auditors;
- maintaining records enabling the reconstruction of financial transactions;
- establishing an efficient machinery for handling complaints; and
- undertaking investor education.



Regulators may also wish to assess online brokers' legal or business interest in adopting specific measures relating to capacity, resilience and security of online systems. A brief description of a number of possible measures is set forth below.

Availability measures. Availability includes allocating and maintaining resources to ensure that appropriate system capacity is available; checking assumptions built into volume forecasts; ensuring system scalability; deploying tools and techniques to monitor system availability and take corrective action, where necessary; installing back-up power supply; and reducing single points of failure.

IT recovery measures. IT recovery encompasses providing back-up facilities for both a firm and, where functions are outsourced, its supplier; maintaining procedures for customers to access the system whether the problem lies with their equipment or that of their service provider; instituting procedures for authenticating customers when there is an outage; maintaining business continuity plans; and regularly testing the effectiveness of recovery systems and business continuity plans.

Change control procedures. These procedures include: adopting test procedures; ensuring proper segregation between the live and test environment; and updating software in a timely and controlled manner.

Systems maintenance measures. These measures include ensuring there is an adequate number of skilled IT staff with sufficient and current documentation of network operating procedures and programs.

Management and escalation measures. This includes maintaining effective crisis management procedures to ensure that senior management is involved in determining actions to be taken in the event of a significant operational difficulty and developing contingency plans concerning information that will be conveyed to customers, investors and the media to minimize unnecessary damage that might otherwise be done to the reputation of the firm.

Adequacy measures. These measures should include plans and procedures to deal with systems outages, capacity issues, security breaches and adequate arrangements for back-up services.

Other measures. Other measures include ensuring that there is proper management oversight of outsourced IT functions; ensuring proper record-keeping arrangements; ensuring compliance with data protection and customer privacy laws, including situations where storage of client records is outsourced to other jurisdictions; obtaining independent reviews of the reliability of the system, its operation and controls; and maintaining

procedures to ensure non-violation of all appropriate regulatory requirements.

### *Recommendations Relating to Disclosure*

People with little or no prior investment experience are opening accounts online. To help inform these investors and avoid subsequent complaints arising from their inadequate knowledge of online securities trading, regulators, where necessary, should encourage or require online brokers to enhance their websites to provide a basic explanation of the risks of securities trading, particularly the consequences of outages or failures of online trading systems. Relevant information could include:

- a general statement and information regarding the manner in which orders are accepted, processed, settled and cleared via the Internet;
- a statement of policies regarding the manner in which operational difficulties such as systems outages or power outages will be handled, including alternatives available to investors during disruptions;
- notification in a timely manner via e-mail, websites or otherwise of significant operational difficulties;
- notification to customers with online access regarding the manner in which orders will be handled when regulatory trading halts are imposed;
- procedures to cancel pending orders during system failures (a feature especially important in volatile markets); and
- in light of the capacity issues, an explanation of how limit orders (as opposed to market orders) may protect online investors.

## **B. WEBSITES: LIABILITY FOR HYPERLINKED INFORMATION AND COMMUNICATIONS DURING THE OFFERING PROCESS**

Issuers and intermediaries now use the Internet to communicate with the public. Many publicly-traded companies have incorporated Internet-based technology into their routine business operations, including setting up websites to furnish company, market and industry information. Intermediaries offer and sell securities and communicate with their customers through the Internet. Collective investment schemes use the Internet to provide investors with fund-related information, security holder services and educational materials. In some jurisdictions, issuers of local and national government securities are also beginning to use the Internet to provide information about themselves and their new or outstanding offerings.

These Internet functions are complemented by issuers and intermediaries ability to hyperlink to additional third-party information including:

- educational material;
- press announcements; and
- research reports.

### **Liability for Hyperlinked Information**

Use of the Internet by issuers and intermediaries as a means of broadly disseminating information presents both opportunities and risks. The Internet enables issuers and market intermediaries to communicate more effectively with investors. It also enables investors to gain access to more information about issuers and industries than previously was possible. At the same time, it raises concerns regarding issuers and intermediaries' liability for the content of their communications. Liability is of particular concern when an issuer or intermediary establishes a hyperlink to a third party's website.

Generally, securities law imposes liability for statements to investors that contain an untrue statement of a material fact, or omit to state a material fact necessary to make the disclosures not misleading. Issuers and intermediaries are responsible for the accuracy of statements likely to reach investors or markets that they make, sponsor or endorse, regardless of the medium of communication. This includes Internet communication.

The question arises as to whether issuers and intermediaries should be liable for false or misleading information to which they have hyperlinked. At its core, the issue is whether investors might perceive such information as being attributable to an issuer or intermediary. Ultimately, attribution should depend on whether the issuer has involved itself in the preparation of hyperlinked information or has endorsed or adopted the information. In other words, liability generally should be a question of fact, determined on a case-by-case basis using certain factors.

#### ***Recommendations relating to Liability for Hyperlinked Information***

In such fact-based determinations, regulators should consider certain factors regarding whether an issuer or intermediary has "*prepared*," "*endorsed*" or "*adopted*" hyperlinked information, including:

- the context of the hyperlink – what the market participant says about the hyperlink (e.g., whether there is a disclaimer about the hyperlink on one hand, or a statement endorsing the information on the other);
- any clear and prominent indication that the viewer is leaving the market participant's website;
- framing<sup>20</sup> and inlining<sup>21</sup> (so-called inverse hyperlinking);

<sup>20</sup> Framing involves a type of hyperlinking whereby upon clicking highlighted text, graphics or a button, information from a separate website is imported into the website on view and

- whether the market participant has paid, or otherwise compensated, the third party for posting the information;
- whether the market participant has been paid, or otherwise compensated, by the third party for posting the information;
- whether the market participant embeds a hyperlink into a document that is required to be filed with a securities regulator or delivered to investors or others; and
- the effort of markets and intermediaries to direct investors to certain and not other hyperlinks.

Regulators may find it appropriate to place greater weight on some factors as opposed to others, depending on the circumstances. It also should be noted that no one factor listed above is necessarily determinative of liability for hyperlinked information, nor should the above list be considered exhaustive.

### **Liability for Website Communications During The Offering Process**

Securities laws are intended to ensure full and fair disclosure to investors. These disclosure requirements are designed to enable investors to make informed investment decisions. To this end, securities laws in many jurisdictions impose transactional disclosure requirements in connection with public offerings. In addition, these laws often limit certain communications during an offering so as not to influence investors with materials outside the prospectus.<sup>22</sup>

As a result, when an issuer is engaged in a registered public offering, in many jurisdictions, both the issuer and intermediaries participating in the offering are subject to restrictions on the communications with potential investors, or must ensure that direct or indirect references to the public offering refer potential investors to the prospectus or offering document.

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is displayed with a constant on-screen border or frame. Information from both websites is visible at the same time. Indeed, the reader may not be aware that information has been imported from a separate website.

<sup>21</sup> Similar to framing, except without the border.

<sup>22</sup> In many jurisdictions, the first stage of the public offering process is the pre-filing period. During this period no written or oral offers of the security are permitted and no activities (written or otherwise) may be undertaken by the issuer that might arouse investor interest in the securities. During the offering period (which generally commences once the prospectus has been filed with the regulator and ends once the regulator declares a prospectus effective), the issuer and underwriters may solicit indications of investor interest, but may not sell any securities. Any written solicitation efforts during this period must be made by means of a preliminary prospectus that complies with the applicable securities laws. Finally, during the sales period, offers and sales may only be made using the final prospectus, a copy of which must be delivered to each investor before or at the same time as the written sale confirmation.

Because of their increasing use of websites to communicate with security holders, customers, suppliers and others, issuers and intermediaries should consider carefully during the offering process the content of information available on their websites or through hyperlinks. The fact that an issuer or intermediary is engaged in a registered public offering may affect what can appear on its website or be the subject of a hyperlink.

*Recommendations relating to Liability for Website Communications During The Offering Process*

Regulators should be alert to the risk of non-compliance with public offering rules by issuers and intermediaries who use websites to disseminate information. As a general matter, we recommend that regulators allow issuers and intermediaries to maintain communications with the public during the public offering process as long as the communications comply with the rules relating to public offerings.

In some jurisdictions, this means that information that can be put on the website will be limited to ordinary-course business and financial information. This type of information may include the following:

- advertisements concerning the issuer's products and services;
- periodic reports filed with regulatory authorities;
- proxy statements, annual reports to security holders and dividend notices;
- routine press announcements concerning business and financial developments;
- answers to unsolicited inquiries concerning business matters for securities analysts, financial analysts, security holders and participants in the communications field who have a legitimate interest in the issuer's affairs; and
- security holders' meetings and responses to security holder inquiries relating to these matters.

In certain jurisdictions, an issuer preparing for its first registered public offering and contemporaneously establishing a website may need to proceed especially cautiously when evaluating its website content. A new issuer may not have established a history of ordinary-course business communications with the marketplace. Thus, its website content may condition the market for the offering and, due to the unfamiliarity of the marketplace with the issuer or its business, investors may be unable to view the issuer's communications in an appropriate context or distinguish offers to sell securities from product or service promotional activities or other business or financial information.

### C. DAY TRADING

There is no agreed-upon definition of day trading. Generally, day trading comprises all business relationships enabling a trader to carry out frequent transactions, usually within a day or a few days. For example, relationships allowing a trader to purchase and sell a product within the same day or demand that all positions are entered and closed within the same trading day are considered day trading relationships. One of the reasons for the popularity of day trading is that it allows the trader to take advantage of inefficiencies in markets, as well as market volatility.<sup>23</sup> Frequently, the investor employs technical trading devices (e.g., "real-time trading" or "analysis software") in order to benefit from even the slightest changes in prices.

Day trading is Internet related in that the Internet establishes the basis for executing the day trading business. In the past, day trading generally occurred only in the offices of professional intermediaries. However, revolutionary developments in Internet order-routing mechanisms and the wealth of information on the Internet regarding securities, such as real-time stock price quotes, have led to an environment that makes day trading for retail investors not only feasible but attractive. Day trading providers enable their customers not only to get immediate and real-time access to securities information and markets, but also to buy and sell securities as often as they want.

The primary regulatory concern with respect to day trading is investor protection. As soon as day trading became available to retail investors, it became apparent that day trading undertaken without sound knowledge of markets and trading conditions, and without sufficient capital, could potentially result in serious financial difficulties for an investor. Dangers for inexperienced investors lurk not only in the competition with professional traders but also in the high cost of repeated trading. Costs include transaction costs (e.g., "round-turn") and other costs incurred by entering and closing a position, as well as the possibility of creating over-confidence. In addition, day traders can become innocent agents for persons who disseminate false or misleading information with a view toward manipulating the market.

Investors are ultimately responsible for their trading decisions. However, there are a number of measures regulators can take to address risks associated with day trading. These measures include increased investor education and the establishment of specific regulatory requirements for day trading accounts. Below is a description of the range of measures available to regulators.

<i>Range of Regulatory Measures relating to Day Trading</i>
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<sup>23</sup> Day trading saw significant growth in the mid-1990s but has since tapered off. It consequently does not currently appear to present any systemic concerns.

### Risk Disclosure

Regulators may impose on day trading providers an obligation to inform the investor about the specific risks and highly speculative nature of day trading. Some regulators require day trading providers to tell their prospective customers that, among other things:

- day trading requires in-depth knowledge of the securities markets, of trading techniques and strategies, and of financial instruments;
- a person attempting to benefit from day trading must compete with professional and financially powerful market participants;
- day trading may involve high costs due to the commission fees charged;
- because of possible system capacity problems, a day trader may be unable to execute trades immediately; and
- options and futures transactions may lead to losses exceeding the margin provided and the trader might face losses much greater than the amount of initial investment.

### Cost Disclosure

Regulators also may require disclosure of certain costs associated with day trading including:

- before conclusion of the contract with a day trading provider, requiring the day trading provider to inform the investor of the transaction and other fixed costs;
- requiring the day trading provider to inform the investor of the conditions for using or ceasing to use technical facilities or trading centres, and of the related costs to be incurred by the customer; and
- requiring the day trading provider to inform investors at the end of each calendar month of all the day trading costs and losses incurred - broken down in such a way as to enable the customer to see which part of the loss can be attributed to the costs of day trading.

### Margin

Regulators could also require a minimum initial deposit and marking to market at market close. Additionally, the day trading provider could be obliged to inform the customer without delay if the margin has dropped by a certain amount and confirm the customer's receipt of the margin warning. Day trading providers could consider procedures for notifying customers of securities that have higher margin requirements, as well as providing interest rates to be charged on margin balances, or explanations of how the interest rates will be calculated. In addition, regulators could restrict intermediary lending to a percentage of a client's portfolio value, and could prohibit loans between clients.

### *Suitability And Appropriateness*

Some regulators have imposed “suitability” or “appropriateness” requirements for day traders. These requirements can take various forms. Some regulators restrict day trading to persons that have prior knowledge of investments, have a very high risk tolerance, or trade only for themselves. Under this approach, regulators require that the day trading provider make a threshold determination that day trading is generally appropriate for the customer, basing its assessment on the experience, objectives and financial situation of the customer. Alternatively, some regulators require that suitability be determined for each specific transaction, *i.e.*, that a specific transaction is appropriate for a specific customer.

### *Restrictions on Advertising*

Some regulators impose restrictions on day trading providers regarding the content of their advertising. Regulators require that any advertising used by day trading providers for client solicitation be subject to prior approval. Approval would take into account whether the advertising renders a balanced presentation or is misleading or confusing because, for example, it states exceptional yields without also clearly identifying the risks involved in day trading.

## **D. INTERNET DISCUSSION SITES**

A great deal of information and opinions about securities investment are available through Internet discussion sites, chat rooms, mailing lists and similar multi-user mechanisms (“IDSs”)<sup>24</sup> that enable people to send messages and information to one another. Some IDSs are the result of initiatives taken by investors collectively. Others, however, are operated for profit by professional providers. In some instances, the providers are issuers and securities market professionals, such as securities firms or professional advisers. Other times, providers are in the business of making available Internet facilities and have no connection with the securities industry.

IDSs can be a source of benefit. In particular, IDSs can be an effective and cheap way for investors to educate themselves by sharing experiences with others in a similar position. They can also be used as the entry point for

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<sup>24</sup> In some industry contexts, a distinction is made between discussion sites and chat rooms. In this paper the term "Internet Discussion Site" (“IDS”) is used broadly for any Internet based facility that allows multiple parties to communicate with one another by sending a single message to a central, publicly accessible site. It does not address portals or aggregators.



investors to locate information, such as research reports that help them decide to buy, sell or hold securities. However, IDSs can also be a rapid, cheap and effective way of disseminating false or misleading information about securities and securities markets, particularly in the interest of influencing the price of a specific security.

There are an increasing number of examples of this type of conduct in jurisdictions where IDSs are widely used by investors. Examples involve carefully planned and executed schemes to manipulate the market in a particular stock, or to use an IDS facility for a traditional "pump and dump" scheme.<sup>25</sup> Activity of this kind is not peculiar to IDSs or the Internet. However, the costs of carrying out a scheme are significantly reduced by using an IDS, because often no infrastructure is required other than access to one or more IDSs and the ability to effect trades when the market price has, in reliance on the false information, moved to the desired point.

Regulators should therefore be aware of the risk that IDS facilities will be misused in this or similar ways, and consider how best to deal with that risk in the context of the regulatory framework that operates in their jurisdiction. It is reasonably clear that existing laws on market manipulation and other abusive practices apply regardless of the medium through which they are carried out, so the starting point for regulatory consideration will most often be the application of those existing laws to the IDS context.<sup>26</sup>

The potential to use IDSs to manipulate markets has led to a number of regulatory and industry responses. Some jurisdictions regulate IDSs directly, while others rely on vigilant surveillance of IDSs and enforcement of violations. The following represents the range of possible responses.

#### *Range of Regulatory Measures relating to IDSs*

##### *Regulation Of IDSs*

In some jurisdictions, a person who operates an IDS facility may be subject to direct regulation. Indeed, in these jurisdictions, both an IDS facility and the persons making postings may qualify as investment advisers or broker-dealers.<sup>27</sup> These jurisdictions may, in the interest of combating fraud and

<sup>25</sup> For one regulator's description of "pump and dump" schemes as they relate to the Internet, see "Pump & Dump.con: Tips for finding Stock Scams on the Internet," available online at [www.sec.gov/investor/online/pump.htm](http://www.sec.gov/investor/online/pump.htm).

<sup>26</sup> See IOSCO, Objectives and Principles of Securities Regulation, September 1998, Principle 28 and discussion at ¶ 13.6, "Prohibition of Manipulation and Other Unfair Trading Practices," available online at [www.iosco.org/docs-public/1998-objectives.html](http://www.iosco.org/docs-public/1998-objectives.html).

<sup>27</sup> In these jurisdictions, to qualify as an "investment adviser" it suffices that one:

manipulation, subject IDSs to the requirements imposed upon investment advisers or broker-dealers. Generally, this would require IDSs to do the following:

- meet licensing requirements relating to qualifications, fitness, integrity and experience;
- disclose any conflicts of interest; and
- provide advice that is reasonable, under the circumstances and is tailored to the client's needs.

*Exempting IDSs From Regulation*

A regulator authorized to regulate IDSs as investment advisers or broker-dealers might instead opt to exempt IDSs, subject to certain disclosure, record-keeping and self-regulatory requirements. This would allow the regulator to address enforcement concerns by providing a mechanism by which the regulator could use its compulsory powers to obtain information from the entity, while allowing the entity to bypass certain regulatory costs.

Mandatory disclosure to persons viewing postings could include:

- a warning that neither the IDS nor persons making postings are registered or licensed investment advisers;
- a warning that persons viewing postings should consider consulting a licensed adviser before investing in a security discussed at the site; and
- encouragement to contact the securities regulator if a person viewing postings suspects that any posting is inaccurate or based on inside information or likely to mislead or deceive viewers.

Mandatory disclosure to persons making postings could include:

- notice that persons making postings are personally responsible for the authenticity and accuracy of their postings;
- notice that the identity of persons making postings may be disclosed to regulators upon request; and

- 
- *make available to the public*
  - *advice, reports and analysis about securities*
  - *with system, repetition and continuity.*

In some jurisdictions, registration as a broker-dealer is required if the person or company trades in a security or does any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade in a security. Depending upon the facts, the operation of an IDS for discussions about securities could be an act in furtherance of a trade requiring registration as a broker-dealer.

- notice that persons making postings are expected to disclose any vested interest in a security about which they post.

Obligations imposed on operators of IDSs could include:

- requiring operators to monitor for misleading or deceptive postings or postings likely to be part of a scheme to defraud investors or manipulate the market;
- requiring operators to withdraw immediately the rights of access of a person making postings of the type described directly above;
- requiring operators to notify the regulator within a reasonable time of any suspicious posting, complaints about suspicious postings and the identity of persons making such postings;
- requiring operators to achieve and maintain confirmation about the identity of persons making postings for a certain period of time; and
- requiring operators to archive and maintain postings for a certain period of time.

#### *Surveillance And Enforcement*

In other jurisdictions, the regulation of IDSs as investment advisers or broker-dealers raises serious questions regarding whether opinions posted on the site represent expressions that are protected by constitutional rights to free speech. Questions also arise as to whether postings are “personalized” or specific enough so as to constitute investment advice. In such jurisdictions, regulators have in the alternative instituted vigorous Internet surveillance and enforcement programs. Elements of programs that successfully combat illegal securities activity on IDSs include:

- teams of investigators that regularly surf the Internet and visit IDSs to identify fraudulent or misleading postings;
- automated search engines that review postings for fraudulent or misleading IDSs;
- electronic complaint centers to which users of IDSs may forward concerns regarding suspicious postings;
- successful enforcement actions focusing on securities fraud or market manipulation via IDSs, which serve as deterrents; and
- establishing a dialogue with the IDS industry to assist law enforcement.

#### *Disclosure and Investor Education*

Regulators may also consider whether they should seek to ensure that investors and users of IDS sites are fully informed about the risks of acting on information obtained from an IDS site. This might include ensuring that IDS users are aware that IDS can be and have been used to manipulate securities market prices. Education of this kind could be undertaken directly by the

regulator, or in collaboration with IDS operators or securities industry participants.

*Codes Of Good Practice*

Some IDSs may voluntarily formulate and adopt codes of practice that include some of the measures described above. Such codes will be more effective if they include provisions allowing a mechanism to enforce compliance with the code. The relationship between codes of practice and the legislative regime will vary from jurisdiction to jurisdiction, as will the use to which regulators put codes of practice in the IDS context.

**E. ENFORCEMENT AND INTERNET SERVICE PROVIDERS**

Internet Service Providers (“ISPs”) are in the business of connecting people to the Internet through dial-up Internet accounts. Once connected, a subscriber’s computer becomes part of the Internet, allowing the subscriber to access information available on websites and to interact with other connected parties via e-mail, chat rooms and bulletin systems.

Regulators investigate various securities violations that occur over the Internet. The growing use of the Internet to commit securities fraud and manipulate the market has led to an increasing need of regulators to obtain information from ISPs about subscribers and their communications. When the misconduct emanates from another jurisdiction, securities regulators often must rely on the cooperation of their foreign counterparts to obtain this information. Successful cooperation will depend on whether regulators have access to information maintained by ISPs and whether ISPs maintain the information necessary to allow regulators to construct audit trails leading to the source of the misconduct.

Information useful to regulators includes both subscriber data<sup>28</sup> and traffic data.<sup>29</sup> ISP data retention is relevant to the efforts of regulators to investigate Internet fraud emanating from within or without their jurisdiction. However, not all ISPs maintain subscriber data and traffic data, and many ISPs that do maintain such information keep it for extremely abbreviated periods of time. Even when the data is maintained, it is not always accessible to regulators. The powers granted a regulator may not contemplate compulsory access to subscriber and traffic data, and privacy laws may limit government access to such information, or both.

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<sup>28</sup> Subscriber data comprises the following information: subscriber name and address, any screen names used by the subscriber, account number, telephone number, and billing information, such as credit card information and billing address.

<sup>29</sup> Traffic data comprises the following information: date, time, size, duration, and content of communication, and permanent, semi-permanent or dynamic Internet Protocol (“IP”) number assigned to the subscriber.

*Range of Measures Available for Improving Access to ISP Information*

The availability of information from ISPs is important to enforcement actions. In order to investigate and prosecute domestic and cross-border securities violations, we recommend that regulators encourage or endeavor to ensure that ISPs maintain subscriber data and certain traffic data. Options available to regulators could include:

- engaging in dialogue with ISPs and ISP associations to identify the types of information regularly required to investigate fraud and to ensure that relevant data is being collected and retained voluntarily (this could be achieved through MOUs with ISPs);
- pursuing legislative or regulatory initiatives that oblige ISPs to maintain records relevant to the investigation and prosecution of securities fraud via the Internet (e.g., subscriber and traffic data);
- seeking statutory power to compel relevant data from ISPs and to share such information with foreign counterparts;
- seeking amendments to privacy laws that allow regulators investigating Internet fraud to access data maintained by ISPs;
- exploring the possibility of invoking the assistance of another domestic authority that can compel relevant data from ISPs in the context of a foreign or domestic investigation of illegal securities activity;
- having qualified technical personnel and adequate resources to keep in pace with technological development; and
- ensuring system integrity in retrieving and storing data from ISPs for use in proceedings, including contracting agreements to allow transmission of non-public information.

Regulators, individually and collectively, should explore these options in the interest of facilitating domestic and cross-border investigation and prosecution of securities fraud via the Internet. Indeed, this is a matter that should be further explored by IOSCO's Standing Committee on Enforcement and Information-Sharing.

**REPORT ON  
SECURITIES ACTIVITY ON THE INTERNET II**

**ANNEX I**

**LIST OF SIGNIFICANT INTERNET-RELATED REGULATIONS,  
POLICY AND GUIDANCE FROM INDIVIDUAL JURISDICTIONS**

The following is a list of significant Internet-related regulations, policy statements and guidance that have been issued in the following jurisdictions since the publication of the 1998 Report:

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## 1. ARGENTINA

The use of the Internet, although increasing over time, is in an early stage in Argentina. Out of a population of 37 Million, 2 Million, or approximately 5.41%, have access to Internet facilities.

The Comisión Nacional de Valores (CNV) is the federal regulatory agency of the securities and futures markets in Argentina.

The banking system is under the surveillance and supervision of the Superintendency of Banks from the Central Bank of Argentina.

Mutual funds, financial trusts and rating agencies fall under the supervision of the CNV.

Since securities trade within SRO, the SRO are the responsible for issuing the rules the intermediaries must comply in the use of Internet facilities.

Up to now it is allow for potential investors to open accounts with a registered intermediary through Internet, to set orders (buy or sell) and the acceptance of the order via Internet as well, but the matching of the order is made in the SINAC (Integrated Computer assisted Trading System).

### **Mutual Funds**

On June 8, 2000, the CNV passed General Resolution (GR) # 354 on Buying and Selling Shares of Mutual Fund Via Internet. The GR recognizes the growing use of Internet and establishes requeriments in order to grant transparency and security to the transactions via Internet.

In order to sell and buy shares of mutual funds via Internet the system must be registered with the CNV. It is required to present:

- A general description of the system.
- Security measures enable during the transactions.
- Back-up devices and contingency planning.
- External and independent audit opinion on the level of security, contingency planning and back-up policies.

On the Web page the mutual fund has to inform that the system was registered with the CNV.



The system cannot be able to accept any order before the investor gets the prospectus of the fund. It is mandatory to record the day and time when the investor gets the prospectus and by what means.

Whenever the investor can obtain his/her state of account via Internet it will be no longer obligation for the fund to mail the state of account free of charge.

### **Derivatives**

Regarding CNV regulations, although there are no specific regulations regarding Internet issues, CNV general rules applied. So, according to Section 8, subsection c), Chapter XIII of CNV Rules (N.T. 1997), only those brokers who are registered in a self regulatory organization can perform a public offering on futures and options contracts, and according to Section 9 of the same Chapter, in order to trade such contracts in Argentina, it will be necessary to obtain the previous public offering license from a self regulatory organization.

In this sense, CNV has conducted investigations that concluded in CNV enforcement actions, where CNV required to immediately cease any public offering in Argentina of negotiation in futures and options markets as long as it does not have the previous authorization of the CNV (CNV Resolution N° 13.021 September 30, 1999).

## 2. AUSTRALIA

ASIC aims to ensure that industry and consumers can conduct business electronically when appropriate. Working towards this goal, ASIC continually reviews the need for further policy initiatives.

The following policy material is particularly relevant to the Internet and e-commerce.

These materials are all available through the ASIC homepage at <http://www.asic.gov.au> or directly within our e-commerce page at <http://www.asic.gov.au/policy/index.cfm-id=65C50A95-EC09-11D3-A4CF009027DE39A4&Method=Full&story=yes.htm>.

### **Electronic Prospectuses (PS 107)**

Policy Statement 107 released in September 1996 focuses on electronic prospectuses issued on the Internet or on other computer networks, CD-ROM and floppy disk. ASIC's policy aims to ensure that electronic prospectuses satisfy the key objective of the Corporations Law's prospectus provisions, namely that consumers can make informed investment decisions based on a prospectus containing all information about the securities being offered and the issuer.

In June 1999, ASIC amended the electronic prospectuses relief to allow hosts of Internet websites to act as service providers and publish third parties' electronic prospectuses on their websites. ASIC will be continue to review PS 107 in light of the CLERP Act.

### **Investment advisory services — Media, computer software and Internet advice (PS 118)**

Policy Statement 118 released in March 1997 sets out ASIC's guidelines and enforcement policy for people who give investment advice on the Internet, in the media and in computer software and books.

### **Offers of securities on the Internet (PS 141)**

Policy Statement 141 released in February 1999 sets out when ASIC will regulate offers, invitations and advertisements of securities that appear on the Internet and can be accessed in Australia. PS 141 is part of ASIC's continued co-operative efforts with international regulators to co-ordinate regulatory approaches and develop effective enforcement strategies on the use of the Internet for fundraising.

### **Electronic applications and dealer personalised applications (PS 150)**

Policy Statement 150, released in February 2000, sets out when ASIC will give relief from the Corporations Law so that electronic applications for securities need not use the forms or processes required for applications on paper forms. Licensed dealers may personalise and issue application forms created by themselves or by issuers.

### **Lodgment of disclosure documents (PS 152)**

Policy Statement 152 was released in February 2000 with effect from 13 March 2000. This PS covers, among other things:

- ASIC's expectation that issuers of a required or permitted offer document will make their offer document generally available during the 7 to 14 day 'exposure period' commencing after lodgement of the offer document with ASIC. During the exposure period, an issuer is not permitted to accept an application for securities under the offer document. ASIC's policy is aimed at encouraging issuers to put their offer document on a website and offering to make it available on request in paper form.
- the facilitation of access to the online posting of offer documents during the exposure period. Currently, this means reliance of an ASIC on-line database that will contain key information about the status of an offer document and details of how someone can obtain a copy of the disclosure document (including reference to any relevant web page from which the offer document can be downloaded). ASIC is working towards approving one or more electronic formats for the on-line lodgement of offer documents with ASIC. In the meantime, ASIC will continue to rely on providing access to offer documents lodged with by providing access to docimaged copies of the offer document.

### **Internet Discussion Sites (IPS 162)**

Interim Policy Statement 162, released as an exposure draft in August 2000, covers ASIC's approach to the regulation of Internet discussion sites (IDS). The policy provides guidelines for the operation of an IDS without a licence. The guidelines attempt to strike a balance between the need to foster investors' access to an inexpensive method of self-education using the Internet, and the need to ensure consumer protection and market integrity.

Other papers include:

### **Electronic applications for life insurance and superannuation products**

In October 2000 ASIC released for public discussion a paper on electronic applications for life insurance and superannuation products. A signature on a life insurance or superannuation product validates the application but also goes to the nature and cost of the product. This paper envisages the acceptance of electronic applications by life companies and superannuation trustees provided certain measures are met which replace the functions of a paper-based signature and ensure appropriate disclosures are made. This proposal is in line with the approach already taken with electronic applications for securities such as shares and debentures.

### **Survey of Online Trading Websites**

In August, 2000 ASIC released a survey of online trading websites. While the survey did not detect any major industry-wide problems that required immediate action by ASIC, it did identify complaint handling and disclosure related issues that industry need to address. ASIC has encouraged online trading site operators to assess their sites against the Good Disclosure template, included in the report, and to make necessary modifications to their sites.

### **Multimedia prospectuses and other offer documents**

In December 1999, ASIC released an issues paper on multimedia prospectuses and other offer documents for public comment. The paper examines the possibility of including multimedia material in prospectuses and other offer documents. The paper was written in collaboration with Professor Elizabeth Boros of Monash University (at that time, Dr Boros, of the Centre for Corporate Law and Securities Regulation, The University of Melbourne).

### **Online corporations**

In December 1999 Professor Elizabeth Boros of Monash University (at that time, Dr Boros, of the Centre for Corporate Law and Securities Regulation, The University of Melbourne) prepared a discussion paper that considers the online corporation. Specifically it considered the electronic delivery of documents, electronic voting and company meetings and the electronic lodgment of documents with ASIC.

### **Electronic Funds Transfer (EFT) Code – revised draft code of practice**

ASIC's new consumer protection role in financial services gives ASIC responsibility for the Electronic Funds Transfer Code of Conduct (EFT Code). At the Government's request, ASIC convened a working group in April 1999 to look at expanding the EFT Code to cover all forms of electronic funds transfers.

At present the Code only covers ATM and EFTPOS transactions. A discussion paper released by the group in July 1999 proposed expanding the Code to cover telephone, Internet banking and stored value products such as smartcards and digital-cash. In January 2000, the group released a **second draft expanded EFT Code** for comment. The Code would cover issues such as:

- liability for unauthorised transactions
- privacy
- disclosure
- complaints handling.

### **Policy Statement 107, Electronic prospectuses**

Focuses on electronic prospectuses issued on the Internet or other computer networks, CD-ROM and floppy disk. In essence, the ASIC considers that electronic prospectuses can be allowed in cases where the policy underlying the prospectus provisions in the Corporations Law can be satisfied.

<http://www.asic.gov.au/page-321.html>

### **Policy Statement 118, Investment advisory services: media, computer software and Internet advice**

Sets out guidelines in relation to a person providing investment advice on the Internet.

### **Policy Statement 100, Stock Markets**

Includes regulatory requirements for the conduct of electronic bulletin boards.

### **Information Package On Electronic Commerce**

The Australian Securities Commission (ASIC's predecessor) released a package of materials in May 1996 for industry consultation comprising:

- a background Information Paper on electronic commerce in the financial services industry;
- a Concept Paper containing a draft statement of principles on electronic communications under the Corporations Law; and
- some Frequently Asked Questions on the application of the Law to the provision of investment information on the Internet.

**ASIC response to the Parliamentary Joint Committee on Corporations and Securities - Inquiry into global electronic capital raising and share trading (September 1997)**

The paper discusses a wide range of issues including security and authenticity, equity and access issues, investment advice, trading and settlement systems, jurisdictional problems with disclosure, and foreign acquisitions and takeovers.

ASIC Information Sheets:

- [INFO 230] Investing on the Internet
- [INFO 245] Good advice

Contact information for the Australian Securities and Investments Commission, and some of these documents, are available through the Australian Securities and Investments Commission homepage, at:

<http://www.asic.gov.au/>

E-mail: [infoline@asic.gov.au](mailto:infoline@asic.gov.au)

### 3. BRAZIL

CVM created an internal group to analyze the regulatory aspects of the usage of Internet in capital markets. As a general guide, CVM has chosen to wait for a market increase prior to issue any particular regulation.

The only concrete regulatory action taken by CVM until now was to issue a release stating that the installation in Brazil of foreign electronic systems terminals are not allowed at the moment.

However, we are currently considering issuing a new regulation on Internet trading. The draft of this new regulation contains the following key points:

#### **A minimum set of information must be disclosed in the website.**

This includes: detailed instructions on how to transact; information related to transaction and brokerage costs; order execution and security procedures; how the order is received and treated by the broker; best price, bids and offers of the securities; information on which broker will execute the order; and the timeframe that will result in disconnection of the customer, if any.

A section related to investors education must be included, and must contain at least sections related to: how the exchange and the clearing house operates; which securities are available for on-line transaction; market risk (specially derivatives markets); information on block-trading procedures; information on the exchange powers to cancel orders; information on the possibility of the existence of simultaneous offerings in the open-out cry system and the electronic system.

#### **The brokers must perform a semi-annual external auditing in their systems.**

This auditing shall measure the capacity of handling simultaneous connections; the maximum timeframe between the acceptance of the order, its execution and its confirmation. The broker and the exchange shall maintain in its respective site an electronic version of this auditing report.

Brokers shall develop a contingency plan that is adopted if the clients are unavailable to access the Internet site.

#### **Brokers shall assure that the communication between itself and its customers are safe and private.**

Information on transactions shall not be maintained on outsourced computers.

**Brokers shall maintain electronic information, including messages posted in “chat” sections of its home-page.**

**The exchanges shall perform an annual auditing aiming at ensuring compliance to the regulation.**



#### 4. CANADA

Alberta Securities Commission (ASC)  
British Columbia Securities Commission (BCSC)  
Commission des valeurs mobilières du Québec (CVMQ)  
Ontario Securities Commission (OSC)  
Toronto Stock Exchange (TSE)

##### **National Policy 11-201 Delivery of Documents by Electronic Means**

The substance and purpose of NP 11-201 is to state the views of the Canadian Securities Administrators (CSA) on how obligations imposed by securities legislation to deliver documents can be satisfied by electronic means. Under the Policy, the CSA indicate that, as a general principle, the delivery requirements of securities legislation may be satisfied by electronic means, and that there are four components to electronic delivery that should be satisfied in order to show good delivery : notice of delivery to the recipient, access of the recipient to the document, evidence of delivery and non-corruption or alteration of the document in the delivery process. The first three components can be satisfied through the use of a consent to electronic delivery delivered by a person or company to a proposed recipient of documents by electronic means.

[http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Policies/11-201\\_19991215.html](http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Policies/11-201_19991215.html)

Ontario Securities Commission Bulletin (1999) 22 OSCB 8156  
(French Version)

Instruction canadienne n° 11-201 La transmission de documents par voie électronique

[http://www.cvmq.com/fr/regl/normes\\_ins.asp](http://www.cvmq.com/fr/regl/normes_ins.asp)

B.C.V.M.Q. vol. 30 n°50

##### **National Policy 47-201 - Trading in Securities using the Internet and Other Electronic Means**

NP 47-201 provides the CSA's views on certain issues relating to the use of electronic media in the distribution of securities. It discusses the jurisdictional issues that arise when a document is posted on the Internet, and sets out that an offering document accessible by residents of Canada will constitute a trade and/or offering in Canada unless the offering document identifies the jurisdictions for which the document is intended and reasonable steps are taken not to transact with Canadian residents where the offering is not intended to be sold. NP 47-201 also provides guidance on jurisdictional issues relating to

trading activities through the use of electronic media. It further sets out CSA's recommendations regarding procedures for the posting of roadshows on the Internet.

[http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Policies/47-201\\_19991217.html](http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Policies/47-201_19991217.html)

Ontario Securities Commission Bulletin (1999) 22 OSCB 8170  
(French Version)

Instruction canadienne n° 47-201 Les opérations sur titres à l'aide d'Internet et d'autres moyens électroniques

[http://www.cvmq.com/fr/regl/normes\\_ins.asp](http://www.cvmq.com/fr/regl/normes_ins.asp)

B.C.V.M.Q. vol. 30 n°50

### **Day Trading: The Position of the Commission des valeurs mobilières du Québec**

Dated February 1, 2000, this press release states the CVMQ's requirements for the offering of day trading services. These requirements include financial and information disclosure aspects, in addition to additional supervision aspects by the Commission.

[http://www.cvmq.com/fr/regl/normes\\_ins.asp](http://www.cvmq.com/fr/regl/normes_ins.asp)

B.C.V.M.Q. vol. 31 n°5

### **Investing and the Internet: How to Avoid Cyber-Fraud**

This is a brochure intended for the retail investors and advising them to be prudent when using the Internet for investing.

<http://www.cvmq.com/en/publi/brochures.asp>

(French Version)

Le placement et Internet : Comment déjouer les cyber-fraudeurs

<http://www.cvmq.com/fr/publi/brochures.asp>

### **Trading Securities and Providing Advice Respecting Securities on the Internet**

Notice reminding securities market participants that B. C. Securities Act registration and disclosure requirements apply to persons using Internet as any other medium of communication.

BCSC Weekly Summary Edition Number 97:10 pp. 1-4.

### **Electronic Communications Disclosure Guidelines**

This Toronto Stock Exchange document reviews a number of issues that a company must consider when it goes on-line. The Policy states that information disclosed electronically should be viewed as an extension of its formal corporate disclosure record. Guidelines cover

IOSCO Internet Task Force Report II  
Annex I – Internet-Related Regulations, Policy and Guidance  
Canada (continued)

subjects like designing a website, establishing an internal e-mail policy,  
and disseminating information over the Internet by listed companies.  
[http://tse.com/mregs/pdf/final\\_electronic.pdf](http://tse.com/mregs/pdf/final_electronic.pdf)

## 5. EUROPEAN UNION

The EU enacted an Electronic Signature Directive, and has proposed two other directives: a proposal for a Distance-Selling Directive on Financial Services, and a proposal for an E-Commerce Directive.

- The Directive on electronic signatures addresses the application of electronic signatures and aims at a EU-wide harmonization of electronic authentication. It stipulates that equal value of evidence be accorded hand written and electronic signatures provided that the latter are based on a qualified certificate issued by a certificate-service-provider. Implementation of the Directive shall be finished July 2001.
- The proposal for a Directive concerning the distance marketing of consumer financial services deals principally with the issues of information and transparency, as well as the right of withdrawal and protection against unsolicited services. The proposal provides that the supplier must provide certain information about its identity, the main characteristics of its product, the contractual terms and the jurisdiction. The investor has a right to withdraw from transactions not being made on an exchange. The proposal has been adopted by the European Parliament.
- The Directive on Electronic Commerce outlines similar stipulations on transparency, information about the provider and its products as well as the provider's liability. Nevertheless there are still some inconsistencies. In order to avoid conflicts, the Directive's declaration of the jurisdiction of the provider's country of origin as applicable should not lead to different standards for issuers and financial intermediaries.

## 6. FRANCE

### A. THE COMMISSION DES OPERATIONS DE BOURSE (COB)

The COB is an independent administrative authority that watches over the protection of savings invested in financial instruments and all other investments offered to the public, the investor disclosure and the proper functioning of financial markets. Also, the COB has exclusive competence for the regulation of assets management. The COB was instituted by the Ordinance (Executive Order) of September 28, 1967.

#### *REGULATIONS*

Since the adoption of the Internet Task Force report, the COB has adopted three guidelines regarding the following:

- Use of Internet by listed companies when they disseminate financial information.
- Promotion or selling of CIS or mandated management services through Internet
- Publication of financial information in discussion forums and Internet sites devoted to financial information or advice

**Use of Internet by listed companies when they disseminate financial information**, COB Recommendation N° 98-05 of March 1999

This text comprises 9 specific recommendations

**Recommendation 1** reminds companies of their general responsibility for the content and states that the information must be “accurate, precise and sincere”. Concerning the use of disclaimers, recommendation 1 reminds companies that disclaimers on the accuracy of information do not exempt them from their obligations to comply with relevant laws and regulations in this area. It also invites companies posting a specific disclaimer in order to comply with the regulation of one country to identify this specific country.

**Recommendation 2** invites companies that communicate in more than one language to ensure the equivalence of communication in the different languages. Otherwise any difference should be mentioned.

**Recommendations 3, 4, 6, 7 and 8** deal with the quality of the information. These recommendations provide for:

- The updating of information (date of latest update should be indicated, if possible on very page of the site; if updated

information is not provided, indication of where such information might be readily accessed should be given)

- Erratum (should be posted as quickly as possible)
- The completeness of information (when full-text documents are not provided, indication should be given on how to access them)
- The indication of the sources of information (public source?, audited information? Author's name of analysis or comment communicated...)
- The information on the stock price of the company (indicate date, time and source of information)

**Recommendations 5 and 9** remind companies of their legal obligations regarding the disclosure of material information (information likely to have a significant impact on the share price must be made public through the press before being communicated on a website) and regarding the protection of personal data when using information regarding users of the site collected via email.

### **Promotion or selling of CIS or mandated management services through Internet, COB Recommendation 99-02**

While its recommendations regarding the quality of information are almost equivalent to those concerning issuers, this guideline also states other key principles that are greatly influenced by the 1998 report of the IOSCO Internet Task Force.

These principles are:

- The identification of the targeted public (indicate the geographical scope of the offering)
- The obligation to ensure an effective prior consultation of compulsory documents in the case of systems permitting on-line subscription (and respect of the duty to advise)
- The general compliance with the rules of conduct related to asset management services

### **Publication of financial information in discussion forums and Internet sites devoted to financial information or advice COB Recommendation N°2002-02**

#### **Recommendation No. 1: Sites Offering Financial Information and Advice**

All parties are free to give investment and financial advice, as long as the advice is given in compliance with the applicable laws and regulations.

In this context, any person who performs this activity by means of an Internet site is required to comply with the laws and regulations regarding the publication of financial information, and in particular the regulations regarding the accuracy of the information, the publication or utilization of confidential information and the sale of financial products. The Commission also reiterates that under certain conditions, any incitement by service providers to disclose insider information on their Internet sites may constitute a criminal offense punishable by law.

When a service provider operating via the Internet offers to provide share prices, the Commission recommends, to guarantee equality of information and treatment of investors, that it indicates the existence of any delay between the share prices displayed on its site and the current quoted prices, and that it also points out the length of this delay. The COB also recommends that the service provider indicates the origin of the share prices displayed.

The COB also recommends that the service provider identifies the origin of the information displayed, and that it gives reference by name, if necessary, whether the information originated from the sites or was disclosed by issuers, analysts or specialized publications. The COB also reiterates that hypertext links in particular must specify the name of the company to which they point, and that, under certain conditions, clicking on these links may be interpreted as a financial securities transaction, a practice which represents a criminal violation under the terms of the Act of March 28, 1885, or the Act of January 3, 1972.

The COB also reiterates that the Act of August 1, 2000, relative to the freedom of communications requires all site owners and managers to identify themselves accurately.

### **Recommendation No. 2: Internet Discussion Forums**

The COB feels it necessary to point out that the information available in the form of exchanges, dialogues and comments on Internet forums does not have any official standing, and that there is no guarantee of the reality of the identity, title or qualifications claimed by the persons providing said information. Therefore the Commission recommends maximum caution on the part of investors in their evaluation of this information which, in certain cases, may be published with the aim of

manipulating the price of a share, or even causing injury to the company in question.

The Commission emphasizes that the regulations relative to the publication of false or misleading information and to the disclosure or utilization of privileged information apply to all the participants in forums without distinction, whatever their qualifications or legal status.

### **Recommendation No. 3: Issuers**

All of the regulations relative to the publication of financial information also apply to communications and comments posted on Internet sites or discussion forums by the issuing companies.

In this context, the information posted must be accurate, authentic and honest.

To preserve equal treatment of investors, the disclosure of information that may have a significant influence on a share price must be complete and comprehensive, and must be published simultaneously via the conventional media. In this regard, the COB reiterates that the disclosure of information via the Internet does not release an issuer from its general obligation of public disclosure under the terms set forth in the applicable regulations.

Given the specificity of discussion forums, the COB recommends that issuers not reply to individual questions from participants in these forums. To the extent that circumstances may nevertheless make such responses appropriate, the issuers must provide only information that has already been made public to avoid any risk of unequal treatment of investors. If issuers find it necessary to disclose information that has not yet been made public, they must simultaneously publish the information via the conventional media.

Two recommendations dealing with the Minitel electronic network provide a framework which applies already to various issues raised by the Internet. The Minitel network operated by the French national public telephone company presents some similarities with Internet though the network only covers France. Minitel has an average of twenty million users. The COB recommendations adopted on the Minitel in 1987 and in 1993 stressed the application of the already existing COB requirements of accurate and properly updated financial information to this new medium.

**Recommendations N0 87 - 01 and N0 93-01**, summary of key provisions:



**Accountability** of the site promoter for disclosed information.  
Obligation to state name of publisher.

**Update of information:** Clear mention must be given of the last update of the displayed information. Automatic update procedure must be in place to avoid errors or neglect. Time of origin of quotes and other market data must be specified (date and exact time).

**Origin of information:** Obligation to state the exact origin of third party releases. Clear distinction must be made between financial analyses and original data.

Issuers must indicate reference to filings made with the COB (when applicable) for every financial operation mentioned on their site. In that case, indication must be given on the means to obtain this document at no cost.

**No Minitel-only disclosure for issuers:** No market-sensitive information shall be displayed on Minitel before disclosure by public release. Conversely all market sensitive information disclosed by public release must be mentioned on the Minitel site of the issuer. If the release is displayed in a summarized version, reference of the complete version must be given.

**No anonymous chat room** on a Minitel site of an issuer for fear it could be used abusively by issuer to provide transaction advice on its securities.

**Record keeping:** electronic or paper records of information must be kept up to 6 month after display on Minitel site

Also, based on Rule N096-03 Section III Art. 24, the COB has authority over Collective Investment Schemes to control their information documents before they release it to them, to their customers or to the general public. This applies to electronic transmissions as well as to printed material.

### *IMPORTANT COB PRESS RELEASES*

The COB has issued two press releases on February 21, 2000.

The first press release warned investors and the general public of the risk of fraud on the Internet and of the necessity to check the statute of any intermediary before engaging in a transaction on the Internet. The release provided addresses of websites of regulators where lists of

duly licensed intermediaries and investment services providers can be consulted.

The second press release reminded all types of companies of the risks that could arise from an unchecked internal and external use of the Internet. The release covered both the case of fraudulent abuse of company email and the case of fraudulent access to the company's own website.

## **B. THE CONSEIL DES MARCHES FINANCIERS (CMF)**

The CMF is a professional authority that supervises the compliance of investment services providers doing business in France, markets operators and clearing houses with the rules of conduct applicable to them by virtue of the laws and regulations in force. The CMF was instituted by the Financial Activity Modernization Act of July 2, 1996.

### *THE WORK OF THE CMF*

#### **The Instruction 99-07**

The French Conseil des marchés financiers issued, in September 1999, an instruction concerning *requirements and recommendations for investment service providers offering order reception-transmission or execution services involving reception of orders via Internet*.

This instruction is based on the first key principle of the 1998 Report: "*The fundamental principle of securities regulation do not change based on the medium*". So, the instruction explains how French general rules of conduct must be applied in the particular case of the Internet.

The most important points are as follows :

- The provider must be clearly identified : what are his status and the investment services it is authorised to provide ; is it the account-keeper and if not which provider is the account-keeper?
- The provider which establishes a business relationship with a new client only via the Internet must send the client a registered letter with return receipt in order to verify the place of his residence. No transaction can be initiated until the return receipt has been received by the provider.

- In order to be in compliance with the rules of conduct set out by the General Rules of the Conseil des marchés financiers, the provider must inform the client before the aforementioned client is able to place his first Internet order. The provided information must be that needed by a client having neither professional competence nor special experience in the field of financial instruments. When an Internet order of a client differs from the orders the client generally transmits, the provider must supply the client with the appropriate information.
- The provider must verify that funds and margin in the cash account are sufficient and that orders are compatible with market conditions.
- The account-keeper can offer the client the choice of receiving confirmations and portfolio statements by mail or via the Internet. If it does not offer this choice, it must inform the client in the account-opening and service agreement that these documents are only transmitted by the Internet.
- Following recommendation number 9 of the 1998 Report, the instruction requires that providers ensure that their computer networks have sufficient operational integrity and that they have adequate personnel to handle Internet communications.

### **The Instruction 2000-01**

Also, in order to promote the application of rules of conduct by intermediaries participating in IPOs, the CMF has taken the Instruction 2000-01.

IPOs have been traditionally conducted in France through two ways : most of each IPO through the book building process for institutional investors, and the rest through an offer for sale managed by the Stock Exchange for retail investors. A new way is now offered by Internet providers which provide retail customers with access to the book building process. Following Art. 7 of the instruction, the lead manager shall endeavour to avoid an obvious imbalance to the detriment of individual investors, between the allotment for such investors and the allotment for institutional investors. When a placement procedure for institutional investors coexists with one or more procedures for individual investors, the lead manager shall endeavour to provide for a transfer mechanism to avoid such imbalance.

This decision provides guidance to the intermediaries in order to maintain an equitable treatment of all categories of investors. The

issue of the fair treatment of retail investors (prevention of disparities in the treatment of orders of retail and professional investors) is dealt with more specifically in the Art. 7. This article sets a minimum threshold of 10% of the total amount of the securities offered to be allocated through a centralised procedure ensuring that all orders will be served with the same ratio.

### **C. OTHER LEGAL DEVELOPMENTS**

France has transposed in a law (*LOI n° 2000-230* of March 13, 2000) the European Directive on electronic signature (1999/93/EC). The law gives to the electronic signature the same legal value as the hand-written signature. It modifies the French Civil Code and states that a “litteral evidence” or “written evidence” may result from “a row of letters, characters, digits or any other signs or symbols carrying an intelligible meaning, whatever their ways of recording”.

## 7. GERMANY

In Germany, the system of securities supervision follows the functional approach. The Bundesaufsichtsamt für den Wertpapierhandel (Federal Securities Supervisory Office - BAWe) is responsible for market surveillance and supervision of the rules of conduct, whereas the Bundesaufsichtsamt für das Kreditwesen (Federal Banking Supervisory Office -(BAKred) is responsible for the licensing and solvency control of financial institutions, including the licensing of collective investment schemes. Therefore, the statements of both authorities are set out below:

### A. BAWe

The BAWe has issued the following general statements as a guideline for the use of the Internet in the financial sector:

**Day trading, draft guideline on day trading**, March 1, 2001, (available on the Internet homepage of the BAWe: <http://www.bawe.de> “Laws & Regulation”, as a download version in German and in English)

The BAWe has presented a draft guideline relating to the day trading business of investment services enterprises which sets out the obligations to be complied with by day trading providers. The paper has been presented to the relevant industry and consumer associations for consultation.

Pursuant to the draft guideline, day trading providers shall in particular advise their customers of the high risk, and it is recommended that investment services enterprises set financial limits and inform the customers about the costs and the losses that have been incurred.

**Organisational requirements for online banks, letter to several online banking providers and discount brokers**, February 24, 2000, (available on the Internet homepage of the BAWe: <http://www.bawe.de> “Press Releases & Publications”, as a download version in German and in English)

The BAWe sent a letter to several online banking providers and discount brokers to ascertain whether they are prepared to cope with investors' soaring demand for securities. They were reminded of their obligation to maintain and use effectively the resources and procedures required for the proper conduct of the investment service they offer. The letter included a questionnaire the answers to which

should provide an indication as to the arrangements made by the companies with regard to system capacities, availability, personnel numbers and the dealing with complaints.

**Announcement: Internet offers require a prospectus**, September 21, 1999, (available on the Internet homepage of the BAWe: <http://www.bawe.de> "Laws & Regulation", as a download version in German and in English)

The announcement regulates, inter alia, the handling of offers of securities on the Internet. A public offer is assumed to be made if the offer addresses investors in Germany. It is of no relevance where the offeror has his registered office or where the server is placed from which the data can be downloaded. Depository and publication requirements are not obligatory when it is made clear that investors in Germany are excluded from subscription. This can be realised by using a disclaimer.

**Annual Verifications of Credit Institutions, p. 10 of the Annual Report for 1997** (available on Internet homepage of the BAWe: <http://www.bawe.de> "Jahresberichte", "Jahresbericht 1997", as a download version in German)

The BAWe stated that within the context of conducting the annual audit of firms supervised by the BAWe, it examines the institutions' use of the Internet with respect to their compliance with the rules of conduct. It is of particular interest whether orders can be placed over the Internet, whether the rules of conduct are complied with in this connection, and what safety measures are being taken.

**Public Offerings over the Internet, p. 14 et seq. of the Annual Report for 1997** (available on the Internet homepage of the BAWe: <http://www.bawe.de> "Jahresberichte", "Jahresbericht 1997", as a download version in German)

In 1997, the first public placement of securities over the Internet took place which directly addressed German private investors. The BAWe states that in respect of a public offering of securities in Germany over the Internet, the ordinary prospectus requirements (e.g. with regard to depositing the prospectus with the BAWe and publication thereof) apply for the issuer/ offeror in the same way as for public offerings in Germany made in any other (electronic or print) medium.

An offer is regarded as a public offer if it is directed via the media at the general public or an unlimited number of investors. An offer is not regarded as a public offer in Germany if it is addressed only to a

limited number of specific German (private or institutional) investors, all of which are known to the issuer/ offeror in person. In the view of the BAWe, an offer over the Internet is deemed a public offer in Germany if either German investors are expressly targeted by the offer, or if German investors are not expressly excluded from the offer.

**Rules and Principles for Investor Protection, p. 10 of the Annual Report for 1996** (available on the Internet homepage of the BAWe: <http://www.bawe.de> "Jahresberichte", "Jahresbericht 1996", as a download version in German)

The BAWe stated that the general rules and principles for investor protection apply also with regard to offers of investment services on the Internet, and that the protection of investors must be ensured irrespective of the medium used. In particular, the ordinary legal requirements with regard to the rules of conduct and organisation/ compliance apply irrespective of the kind of (electronic or print) medium used.

**Public Offers on the Internet, p. 12 et seq. of the Annual Report for 1996** (available on the Internet homepage of the BAWe: <http://www.bawe.de> "Jahresberichte", "Jahresbericht 1996", as a download version in German)

The BAWe stated that with regard to public offerings, irrespective of the medium used (newspaper advertisements, mailings, structured sales [*Strukturvertrieb*], telephone or Internet) the usual prospectus requirements (e.g. with regard to depositing the prospectus with the BAWe and publication thereof) apply. In its view the fact that some of these offerings are labelled as "Private Placements" does not change this view, if in fact these offers are addressed to the general public and therefore constitute public offers under German law.

## **B. BAKred**

The BAKred has issued the following general statements with regard to the use of the Internet in the financial sector:

**Day trading centre: subject to licensing, press release November 16, 1999**, (available on the Internet homepage of the BAKred: <http://www.bakred.de> "Pressemitteilung" as a download version in German)

The BAKred points out that as a rule, a license is required for the operation of day trading centres.

**Guideline: "Marketing of Foreign Collective Investment Schemes on the Internet" of 2 June 1998** (available on the Internet homepage of the BAKred: <http://www.bakred.de> "Aktuelles", as a download version in German and English)

The pronouncement deals with the question as to when marketing of foreign funds over the Internet constitutes an illegal offer in Germany. The provisions of the Foreign Investment Act (Auslandinvestment-Gesetz) prohibit a foreign collective investment scheme from marketing its shares in Germany without prior notification of the Bundesaufsichtsamt für das Kreditwesen (BAKred). Even though the BAKred does present its approach on the marketing of foreign funds over the Internet, it points out that it states only its current practice which still needs to be tested in practice and may be adjusted for the actual case.

The BAKred will not consider Internet sites in a foreign language that are clearly not directed towards German investors (e.g. no German addresses or special information, disclaimers) to be a public offering or an advertisement in Germany, whereas Internet sites in the German language will generally be considered a public offering in Germany. Exceptions might, however, be possible for sites which are clearly directed only towards investors in other German speaking nations. Unsolicited e-mails to a bulk of recipients in Germany will be considered by the BAKred a public offering in Germany, even if the e-mails, because of their language and content, appear not to be aimed at German investors. If an e-mail is sent to a bulletin board/ newsgroup, the BAKred states that it will need to look at the content of the mail and the target group of the board/ newsgroup.

For advertisements the general rules of the Foreign Investment Act are applicable. If shares can be ordered online, the rules of the Foreign Investment Act have to be followed, e.g. the investor must be offered the prospectus and the last reports before completing the sale. The BAKred considers it to be sufficient if the investor has the possibility to download the prospectus and the reports, unless the investor explicitly requests to receive a printed copy of the documents.

**Customer Identification Rules: No. 10 respectively no. 12 of the Guidelines of the BAKred concerning measures to be taken by credit institutions or financial services institutions to combat and prevent money laundering of 30 March 1998 and 30 December 1997** (available on the Internet homepage of the BAKred: <http://www.bakred.de> as a download version in German)



In view of the growing use of new technologies in banking business (home banking, telebanking as well as Internet banking), the BAKred has drawn up special regulations concerning customer identification when establishing business relationships in direct banking. For this purpose the guidelines concerning "measures to be taken by credit institutions to combat and prevent money laundering" were revised with effect from 1 January 1997 (see Annex 7). The former method of verifying the customer's identity by sending account opening documentation by registered mail with personal acknowledgement of receipt has been replaced by a specific postal identification procedure developed by Deutsche Post AG in co-operation with the BAKred, in which the identity of customers is established on behalf of the relevant credit institution and in accordance with the requirements applying to banks by counter service on the premises of Deutsche Post AG or in the course of mail delivery ("PostIdent Service"). In addition to the employees of Deutsche Post AG, notaries public and other banks are authorised a.o. to establish identity on behalf of the institution obliged to identify the customer. An identical regulation was included in the Guidelines of the BAKred concerning measures to be taken by financial services institutions to combat and prevent money laundering of 30 December 1997.

## 8. HONG KONG

The Securities and Futures Commission (SFC) is responsible for administering the laws relating to the trading of securities, futures and leveraged foreign exchange contracts in Hong Kong. It is also charged with facilitating and encouraging the development of Hong Kong's markets.

The SFC has issued the following statements (available at SFC's website at <http://www.hksfc.org.hk>) with regard to the use of the Internet in the securities, futures and leveraged foreign exchange sectors:

### **Guidance Note on Internet Regulation**

In March 1999, the SFC published a Guidance Note on Internet Regulation. It was issued with a view to:

- clarifying the SFC's regulatory approach with respect to Internet activities;
- drawing to the attention of registered persons and financial services providers specific areas which may trigger regulatory concern; and
- addressing issues which are frequently raised with the SFC with respect to securities dealing, commodity futures trading and leveraged foreign exchange trading activities conducted over the Internet.

This Guidance Note covers, amongst others:

- Regulatory Principles;
- Regulatory Approach;
- Securities Dealing, Commodity Futures Trading, Leveraged Foreign Exchange Trading and Related Businesses;
- The Issuing of Advertisements or Other Documents relating to Securities, Investment Arrangements and Investment Advisory Services;
- The Making of Offers of Securities and Investment Arrangements by way of an Electronic Prospectus;
- Risk Disclosure; and
- Enforcement.

### **Circular on Provision of Financial Information on the Internet - Licensing Requirements**

In June 2000, the SFC issued a Circular on Provision of Financial Information on the Internet - Licensing Requirements. This Circular describes the licensing requirements for persons who provide financial information or advice through Internet websites. It outlines the SFC's general view on specific issues pertaining to the licensing of these advisers. The issues include:

- i. General Regulatory Approach;
- ii. Remuneration (in respect of advisory activities);
- iii. Periodical Publication Exemption;
- iv. Investment or Commodity Trading Advising;
- v. Hyperlinks to Other Financial Websites;
- vi. Provision of Analytical Tools;
- vii. Provision of Electronic Trading or Advisory Platforms; and
- viii. Advisory Services Provided by Overseas Websites.

### **Guidelines for Registered Persons Using the Internet to Collect Applications for Securities in an Initial Public Offering**

In July 2000, the Guidelines for Registered Persons Using the Internet to Collect Applications for Securities in an Initial Public Offering was issued. The Guidelines provide guidance to registered persons who use the Internet to collect applications from their clients or the public for securities in an initial public offering (IPO). The issues raised included:

- Electronic Prospectus;
- Application Procedures and Contents of Website;
- Website Design and Operation; and
- System Integrity.

### **Circular to All Registered and Licensed Firms on Internet Trading and Advising**

In July 2000, a circular was issued advising all registered and licensed firms to notify the SFC prior to commencing business activities through the Internet. The circular requested the firms to:

- inform the SFC's Licensing Department in writing of their intended Internet activities and provide relevant information which should include the revised business plan, a description of the computer system, a description of account opening

- procedures and information on experience and qualification of responsible staff in charge of the Internet services;
- conduct a demonstration to the SFC of the business operations via the Internet; and
  - notify the SFC in writing the effective date of launching Internet services and the address of the website.

### **User Guide for Electronic Submission of Financial Resources Rules Returns**

In August 2000, the SFC issued a User Guide for its eFRRR System, which enabled registered persons to submit Financial Resources Rules (FRR) returns by electronic means. The Guide contains:

- an introduction of the eFRRR System;
- a step-by-step procedural guide for submission with digital signatures as well as without digital signatures;
- and a recommendation of the required system configuration.

### **Guidance Note on the Application of the Electronic Transactions Ordinance to Contract Notes**

The Electronic Transactions Ordinance was enacted by the Hong Kong SAR Government on 7 January 2000 (available at <http://www.info.gov.hk/justice>). This Ordinance provided legal recognition to electronic records and digital signatures in electronic transactions and enabled valid contract notes to be issued by intermediaries in electronic form for transactions in securities, futures and leveraged foreign exchange trading.

In August 2000, the SFC published the **Guidance Note on the Application of the Electronic Transactions Ordinance to Contract Notes**. It clarifies the instances in which contract notes may be issued in electronic form. The key points of the Guidance Note are:

- contract notes are acceptable in electronic form for most transactions in securities, futures and leveraged foreign exchange trading;
- dealers must obtain the client's consent to the contract note being in electronic form; and
- when delivering or retaining original and copies, dealers must ensure that the provisions of the Electronic Transactions Ordinance and other relevant ordinances are complied with.

Provisions have also been made in the Securities and Futures Bill, published in April 2000 and which proposes to consolidate and amend the law relating to financial products and regulation of the securities and futures market, to ensure that electronic contract notes and other forms of electronic communication will be valid. These include empowering the SFC to make rules providing for the form and manner in which information may be provided to the SFC and rules providing for the preparation by intermediaries of contract notes, receipts and statements of account for clients.

### **Guidance Note for Persons Advertising or Offering Collective Investment Schemes (“CIS”) on the Internet**

With a view to clarifying the regulatory requirements concerning CIS activities on the Internet, the SFC published after public consultation a Guidance Note for Persons Advertising or Offering Collective Investment Schemes on the Internet in May 2001. This Note provides guidance to fund management companies and other financial intermediaries who advertise or offer for subscriptions (including providing dealing facilities for) CIS through the Internet to the public in Hong Kong. The areas covered in the Note included:

- General Regulatory Approach;
- Advertisements on the Internet;
- Offering of Collective Investment Schemes on the Internet;
- Provision of Analytical Tools;
- Communication with Collective Investment Schemes Investors via Electronic Means; and
- Regulatory Development.

### **The On-Line Trading Working Group**

In response to the regulatory challenges presented by the rapid emergence of on-line trading, the SFC established an "On-line Trading Working Group" in May 2000. The Working Group is composed of a number of industry professionals and staff from other financial service bodies who have been drawn upon to contribute their expertise and experience in this area. The remit of the Working Group was:

- To understand the operations and the technological aspects of on-line trading and investing and to remain abreast of the growth and trends to ensure that Hong Kong remains positioned as an international financial centre.

- To identify the regulatory and operational risks associated with on-line trading and ensure that the identified risks have been carefully considered and properly addressed.
- To ensure the proper setting up or enhancement of on-line trading facilities and the financial technology architecture (both in trading and back office systems) to facilitate the on-line trading of transactions across the financial markets (including the stock, futures, and options markets) as well as other financial products.

The Working Group has met a number of times. Several issues were identified and studied, including the areas of how on-line trading will develop, the trends, the issues overseas and in Asia, and selective areas such as security, contingency planning, capacity, disclosure, suitability requirement, and chat rooms. As a result of this study, the Working Group has made a number of recommendations concerning the manner in which the issues might be managed. A consultation paper on the Regulation of Online Trading of Securities and Futures inviting comments on the recommendations was published by the SFC in December 2000. This consultation paper is available at SFC's website at <http://www.hksfc.org.hk>.

The recommendations upon which comments were sought include the following areas:

- Guidance Note Definitions
- Client Identification
- Client Agreements
- Suitability
- Privacy
- Client Priority
- Disclosure to Clients
- Record Keeping
- Investor Education
- System Integrity
- Security
- Reliability
- Capacity
- Contingency Plans
- Qualified Personnel
- eIPO Guidelines

## **Consultation Paper on Draft Guidelines for the Regulation of Automated Trading Services**

The SFC published a Consultation Paper on Draft Guidelines for the Regulation of Automated Trading Services in March 2001 which set out the proposed principles, procedures and standards in relation to the regulation of ATS. The guidelines would only become effective after enactment of the Securities and Futures Bill (the Bill). In drawing up the Consultation Paper, the Commission was assisted by a Working Group comprising of market and practitioners.

The Consultation Paper discusses seven core standards that a person providing ATS will be generally expected to meet, in relation to financial resources and risk management; operational integrity; fitness; record keeping; transparency; surveillance; and reporting. It also covers the application process for obtaining license (or an exemption) under the Bill and the procedures the SFC will follow with respect to authorising persons who wish to offer ATS or authorising a stock or future exchange outside of Hong Kong to provide ATS. It clarifies the implications of operating a stock market, future market or a clearing house in Hong Kong and provides examples of hypothetical ATS operations and the likely application of the ATS Guidelines to them.

Once the consultation period is completed, the Commission will take into account the consultation comments and issue final guidelines for the regulation of ATS.

### *OTHER RELEVANT GUIDELINES*

#### **Management of Security Risks in Electronic Banking Services**

In July 2000, the Hong Kong Monetary, which is responsible for supervising banks and deposit taking companies in Hong Kong, issued a guidance note on Management of Security Risks in Electronic Banking Services. The note was intended to provide guidance to the senior management of banks and deposit taking companies on the key principles and recommended sound practices in managing the security risks in their transactional electronic banking services.

A copy of this guidance note is available at HKMA's website at <http://www.info.gov.hk/hkma>.

## 9. ITALY

Consob implemented the recommendations of the Internet Task Force Report with various Communications (available on the CONSOB website).

### **Distance Promotion And Marketing Via The Internet**

Consob issued two Communications DI/99052838 of 7 July 1999 and DI/99091709 of 15 December 1999 of general application.

Consob clarified that a website is potentially a means of distance communication, both because it may contain mechanisms permitting interaction with customers, even if only in standardized form, and because it may contain documents and messages having a promotional or contractual content.

As regards the question of whether a site can be classified as a means of distance communication even though it cannot be used to contact customers, insofar as it is customers who go to a site at their own initiative, Consob stated that the presence on a site of interactive mechanisms or promotional or contractual messages can be considered equivalent to a permanent offer aimed at the general public.

Furthermore, Consob addressed the problem of establishing when the use of websites and e-mails amounts to the distance promotion and marketing of products in Italy.

In case of e-mails what counts is whether the e-mail messages are sent to investors resident in Italy.

In case of website Consob does not consider a financial site to be aimed at investors resident in Italy if it excludes such persons from acting on promotions or offers present on the site. Such a situation can arise in the three following circumstances:

- the site contains explicit and sufficiently visible indications that the content of the site is targeted exclusively at residents of states other than Italy (the indication may state that the site is not targeted at investors resident in Italy or list the countries, other than Italy, at which the content of the site is targeted) because it does not comply with the law in force in Italy (the indication may state explicitly that the content of the site does not comply with the law in force in Italy or specify that the content of the site does not comply with the law in force in countries other than those at which it is expressly targeted);



- the site operator adopts procedures that permit it to reject all acceptances and applications coming from investors resident in Italy (i.e. procedures that permit the site operator to determine unequivocally whether persons contacting the site are resident in Italy);
- the site operator effectively rejects all acceptances and applications coming from investors resident in Italy.

Financial sites that do not meet the foregoing criteria are to be considered as targeted at Italian investors only if their content or related circumstances make it presumable that the promotion and marketing activities are aimed, exclusively or otherwise, at persons resident in Italy. As far as content is concerned, the following is a non-exhaustive list of what can result in a site being deemed to be aimed at persons resident in Italy:

- the presence on the site of facts or circumstances regarding Italy (e.g. economic or financial indicators, information on taxation, the yields of financial products and investment services, company affairs and sectoral developments, market trends, and studies and analyses, etc.);
- the use of the Italian language;
- the indication of prices and amounts in Italian lire.
- As for related circumstances, the following is a non-exhaustive list of those that suggest a site is aimed at persons resident in Italy:
- the fact that intermediaries (or other persons who have not been authorized) are operating in Italy through which it is possible to follow up promotions or take up offers;
- the diffusion of information in Italy, inter alia by propaganda and advertising campaigns, aimed at individuals or the general public, that is analogous to that on the site in question using any of the various means of communication available, regardless of whether they can be considered means of distance communication;
- the possibility of gaining access to the site by way of search engines that are Italian or specialized in Italian affairs or that allow selective searches to be made on sites of interest to persons resident in Italy.

Regardless of whether a financial site can be considered as aimed at persons resident in Italy on the basis of the criteria set out above (exclusion of persons resident in Italy, content and related circumstances), Consob may deem that promotion and marketing activity has been carried on in Italy via a website on the basis of a specific assessment (taking account, for example, of the number of persons resident in Italy who have followed up a promotion or taken up an offer).

Consob also retains the right to take supervisory action against any activities carried on via the Internet in violation of the rules and regulations governing the financial sector in Italy.

### **Promotion And Marketing Of Mutual Funds Via The Internet**

Consob issued a specific communication (DI/99065403 of 3 September 1999) on this subject.

- The obligation to give investors the prospectus for units or shares of collective investment undertakings may be delivered using means of distance communication, provided the latter's characteristics are compatible with the transmission of the documents and permit the addressee to store them on a permanent medium. In view of the fact that the Internet is fully compatible with the requirement to provide investors with information and since this can be printed, there is no legal impediment to the delivery of the prospectus over the Internet.
- The acceptance of the public offering by returning the subscription form investors have downloaded from the asset management company's website by conventional mail is in conformity with applicable regulation.
- Subscriptions made after the first (and transfers between funds covered by the same prospectus) are deemed to be parts of a single operation that began with the initial transaction, so that the related instructions do not necessarily have to be sent to the asset management company using the subscription form. The use of e-mail to receive instructions (including those concerning disinvestments) subsequent to the initial subscription, which the asset management company would receive by post, is certainly permissible in view of the broad discretion granted to intermediaries in deciding how to carry on their business. It is nonetheless necessary that the methods used should guarantee the confidentiality of messages.

### **Rules Of Conduct For On-Line Trading**

In view of the increasingly widespread recourse being made to on-line trading (consisting in use of the Internet as a channel of communication for the provision of the services of dealing for customer account and receiving and transmitting orders) and in the light of an analysis of the conduct of the intermediaries operating in this sector, Consob issued a Communication (DI/30396 of 21 April 2000) inviting intermediaries to comply with the rules of conduct laid down in the legislation governing investment services. Consob stressed that use of the Internet as a means of communication with customers does not

exempt intermediaries the obligation to apply the existing rules, although it may require special methods of compliance owing to the nature of the technique used to establish contact. It follows that intermediaries that use the Internet must install systems and procedures permitting full compliance with the rules.

*Establishing relationships with investors*

Concluding contracts: contracts involving the provision of investment services must normally be concluded in writing and may be concluded over the Internet only where it is possible to use digital signatures.

Identifying customers for anti-money-laundering purposes: at the moment relationships are first established, intermediaries must identify customers in accordance with applicable anti-money-laundering provisions <sup>1</sup>.

Information to be given to customers: as regards preventative information, intermediaries may use the Internet to deliver the document on the general risks associated with investing in financial instruments, that they have to give customers before starting to provide investment and related services. They must nonetheless put systems and procedures in place allowing them to record delivery of the document. Before starting to provide services intermediaries must also warn investors that the manner of doing business over the Internet may induce them to multiply their transactions and engage in day trading, and draw attention to the risks of such a strategy, not least as regards the incidence of commissions.

Information to be obtained from customers: intermediaries are requested by law to acquire the necessary information from customers and ask investors for information about their experience in investing in financial instruments, financial situation, investment objectives and propensity to incur risks. The rules currently in force do not specify the ways in which this information is to be obtained, so that it is up to intermediaries to decide how to comply. In particular, the Commission recommended that intermediaries should not do anything to encourage

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<sup>1</sup> As regards compliance with anti-money laundering law, the guidelines of the Italian Foreign Exchange Office (UIC), require investors to be identified directly by at least one intermediary. In particular, according to the UIC, either a person appointed by the intermediary concerned must identify a new customer directly at the start of the relationship or, where this is not possible, the intermediary must acquire a suitable declaration from an intermediary that has already identified the customer for its own purposes. More recently, the UIC stated that identification at distance may be achieved even through a wire-transfer (for the payment of the service) originating from an account opened at the client's bank.

investors to refuse to provide the information requested. This general principle is especially important in the case of on-line trading in view of the aggressive day-trading strategies it may involve.

*Providing on-line services of dealing for customer account and receiving and transmitting orders*

System efficiency: intermediaries must equip themselves with IT systems that will enable them to carry out orders given by investors promptly. In this respect it may be advisable for them to enter into agreements with Internet providers and other companies involved in the process so as to ensure the operational efficiency of the service supplied. In order to cope with any outages, temporary or otherwise, that may occur, intermediaries must put efficient alternative solutions in place for the reception of orders so as to allow investors to trade.

Information on the nature and risks of transactions and large losses: the obligation to provide investors with adequate information on the nature, risks and implications of transactions and services for the purpose of making informed investment decisions is of a continuing nature and is not fully satisfied on the occasion of the first transaction. This information may nonetheless be posted in standard form on a website. By contrast any large potential losses on investments in derivatives or warrants must be notified in writing.

Suitability: the obligation intermediaries are under to assess the suitability of transactions in the light of investors' profiles continues to exist for services supplied on line, even where investors have refused to supply information on their financial situation, investment objectives and propensity to incur risks. In such cases the assessment is to be made — in compliance with the general principles of correctness, diligence and transparency — on the basis of all the information in intermediaries' possession (e.g. customers' age, job and presumable propensity to incur risk in the light of past trading, and market conditions).

Where an intermediary receives an order to carry out a transaction it deems unsuitable, the obligation to inform the investor and explain why the transaction is unsuitable applies even when the trading service is provided on-line. Intermediaries may nonetheless fulfil their suitability obligations over the Internet, provided they give customers the information required by the rules in a sufficiently clear and evident manner. They may also use the Internet to receive instructions to proceed with transactions just the same, as long as they use a procedure requiring customers to give explicit and knowing confirmation of their intention to proceed and obliging investors to

acknowledge receipt of the warning about the unsuitability of the transactions they have ordered. The procedure should not have confirmation of unsuitable orders as the default setting. Naturally, intermediaries must arrange for appropriate records to be kept in unalterable form of customers' knowing confirmation of unsuitable orders and for customers to have access to them.

Conflicts of interest: information on the existence of conflicts of interest may also be distributed over the Internet, provided it is given in a sufficiently clear and evident manner and investors can download and save it in a permanent form.

Customers may use the same medium to authorize the execution of transactions (despite the existence of a conflict of interest), as long as the intermediary's procedure requires explicit and knowing confirmation of their intention to proceed.

Confirmation of orders and transactions and periodic reports: where orders are received over the Internet, intermediaries may use the same medium to fulfil their obligation to send customers paper-based order confirmations and transaction confirmation notices and periodic reports, provided their systems and procedures allow recipients to download and save the documentation in a permanent form and the content of each document complies with the applicable rules.

Procedures: the manner of providing services and the fact that many transactions with customers are carried out on line make it especially important to ensure compliance the provision, which requires intermediaries to "establish procedures serving to reconstruct the times and types of action taken in supplying services".

Relationships with supervisory authorities: intermediaries must adopt procedures for storing documentation delivered or received over the Internet that ensure it is unalterable and promptly retrievable for examination by the supervisory authorities.

### **Internet As A Means To Provide Investment Service**

Consob, in its Communication DI/99076449 of 19.10.1999, clarified that the creation by a service company of a System using an Internet site to route orders to buy and sell financial instruments to intermediaries of which the investor was already a customer did not constitute the provision of investment or non-core services. In the case in question the System was made of a hardware, software and telecommunications platform having the characteristics described below:

- a) the System allows participating intermediaries (which have concluded a contract with the service company) to receive buy and sell orders from investors who already use their investment services;
- b) the System is placed on an Internet site managed by the service company and, by visiting the site, investors can send orders to the intermediaries of which they are customers;
- c) access to the System is subject to investors having concluded an investment services contract with one of the participating intermediaries and an administration and custody contract with the intermediary and to the latter having issued them with a user ID and password;
- d) the Internet site is used to promote the System as an alternative means of sending orders to intermediaries but not to promote or sell their services; furthermore, it is not possible to establish a new contractual relationship with a participating intermediary via the System;
- e) orders are routed to intermediaries on leased digital telephone lines;
- f) participating intermediaries execute the orders they receive and carry out all the related procedures using their own structures, which remain completely separate from the System;
- g) the System sends customers the order confirmation notices, while order execution notices are sent subsequently by the participating intermediaries;
- h) the service company charges participating intermediaries a fixed fee, while the service is free to investors.

### **Internet Promotion And Marketing And The Use Of Financial Salesmen**

Consob provided interpretations concerning the Internet promotion and marketing of financial products and investment services, with special reference to the use of financial salesmen in distance selling over the Internet.

Consob clarified that the obligations concerning the communication of information between intermediaries and customers and inappropriate transactions could be fulfilled in Internet promotion and selling without the intervention of financial salesmen.

In general, Consob noted that, while the rules on distance selling were undoubtedly a part of the regulation of door-to-door selling, they were distinguished, among other things, by the fact that they required the use of financial salesmen only where the technique used permitted individualized communication and immediate interaction with investors. Furthermore, the above-mentioned information requirements are not

specific to the regulation of door-to-door or distance selling (of which the obligation to use financial salesmen is a part) but are part of the broader regulation of investment services. In fact, they are continuing obligations that are not restricted to the actual placement of the financial instrument, product or service but apply to all the transactions arising over time in the relationships between investors and intermediaries. In the case of sales of financial instruments arising from orders given by investors over the telephone as part of a dealing service, for example, the obligations in question must always be fulfilled by the intermediary and not necessarily by means of financial salesmen.

Consob expressed a positive opinion on the possibility of fulfilling the obligations in question by means of automated procedures running on Internet sites.

In fact, the obligations concern:

- objective information concerning the nature, risks and implications of a given transaction or the management service as a whole;
- assessments of the appropriateness of the transaction in relation to the profile of the investor that, in view of their complexity, must be carried out by the intermediary using predetermined standard procedures.

### **Disclosure Of Information Over The Internet**

In its communication 1000796 of 4 January 2001 Consob called on issuers of listed financial instruments that disclose information on their websites to observe a series of indications aimed at ensuring investors are properly informed.

These recommendations were needed owing to issuers' increasing use of the Internet as a means of providing shareholders with information that is often of a financial nature. While recognizing that use of the Internet undoubtedly made for a more homogeneous distribution of information among the public, Consob drew attention to the fact that the circulation of out-of-date, incomplete or inaccurate data risked misleading investors and thus impairing the regular operation of the market.

Among the guidelines laid down by Consob, it is worth noting that issuers are required:

- to consider the purpose of disclosure as informational and not promotional, to specify the date and time each page is posted or updated;
- to quote the source of information prepared by third parties; and to permit unrestricted access to their websites.

Consob noted that before posting information on their websites issuers must first comply with all the notification requirements laid down by law and called on issuers to use their websites to publish their annual reports and their half-yearly and quarterly reports. It also recommended that all the documentation made available to the public in this way should be in the original version or at least that a summary faithfully reflecting the information content of the original document should be prepared.

On June 14, 1998, the CONSOB issued a Communication (DIS/RM/96006769), stating that advertising messages on the Internet of collective investment schemes should include in each page a warning to the reader on the necessity of reading the prospectus. As far as the distribution of collective investment schemes prospectuses on the Internet is concerned, the CONSOB held the view (Communication DAL/RM/96008280 of September 9, 1996) that the content of prospectuses should be the same as the one filed with the CONSOB and on the condition that no advertising activity is carried out.

Furthermore, article 32 of Legislative Decree 58 of February 24, 1998, deals with telemarketing techniques. These shall mean techniques of contacting customers, other than advertising, which do not involve the simultaneous physical presence of the customer and the offeror or a person appointed by the offeror.

The CONSOB issued a regulation on the telemarketing of financial instruments and investment services (resolution 11522 of July 1, 1998.) This regulation applies both to cases in which authorized intermediaries and clients can interact immediately and cases in which the documentation given to clients is aimed to enter into a contract. The above-mentioned regulation provides, *inter alia*, that telemarketing techniques should be immediately interrupted by authorized intermediaries when investors object to their use. Information and clarification due to investors shall be addressed to them in a clear and understandable way and in conformity with the technique adopted. Authorized intermediaries may transmit by telemarketing techniques, documents which must be provided to investors in hard form, provided that these techniques allow investors to acquire the documents in hard form. Authorized intermediaries should use financial salesmen



promoting and placing by investors when issuing techniques that allow immediate interaction and individual communication. The presence of financial salesmen is not compulsory when the initiative has been taken by the investor, provided that this initiative has not been prompted by messages addressed only to this investor.

Communication No. DI/98063298 - Authorized intermediaries may receive orders from clients through the Internet, within the framework under the negotiation service provision. This is consistent with article 60, para. 1, of CONSOB Regulation No. 11522 of 1998, according to which authorized intermediaries, when orders are received, must give investors a paper-based confirmation. When orders are received through the Internet, however, the confirmation may be sent throughout the Internet, provided investors are able to acquire the document in paper form.

## 10. JAPAN

### A. FSA

In recognition of the regulatory challenges posed by the Internet, the Financial Services Agency (FSA) has proposed and implemented the following regulative reforms, policy statements and guidelines relating to the securities activities on the Internet.

#### **New Filing System of Disclosure Documents (EDINET System)**

The amendment of the Securities and Exchange Law (Law No. 96 of 2000) has become effective on 1 June 2001, which enable the issuers of the securities to file the annual, semi-annual and interim reports through the Internet to the FSA. The filed reports are available for the public at the Local Finance Bureaux, the Exchanges, JSDA offices and through the Internet (EDINET System). The same system will be available for filing the registration statements by June 2002.

#### **Distribution of Prospectuses through the Internet**

The amendment of the Securities and Exchange Law (Law No. 96 of 2000) became effective on 1 April 2001, which enable the securities issuers to distribute their prospectuses to the potential investors through the Internet on the condition that they have the confirmation from the investors.

#### **Securities Companies Inspection Manuals**

The FSA has published the draft of the Securities Companies Inspection Manuals on 25 April 2001 for the public consultation. This draft contains manuals and checklists for inspectors to review the securities companies' compliance and risk management systems. The draft includes two checklists regarding compliance and risk management system on on-line securities trading. The final version will be published soon after the consultation process and applied to the inspection conducted after October 2001.

#### **The Guideline on Cross-Border Securities Transaction via Internet by Foreign Securities Firms based on Article 3 of the Law on Foreign Securities Firms**

(Available on the Internet homepage of the FSA  
<http://www.fsa.go.jp/newse/e20001211-1.html> in English)

This guideline, published in December 2000, is to clarify the circumstances under which the FSA will exercise regulatory authority over Internet securities transaction.

The FSA will exercise its regulatory authority over the activity on the Internet when it is assumed to include the “solicitation” to Japanese residents. When it is the case, the entity that conducts such activity must register the main branch in Japan with the FSA (Article 3, the Law on Foreign Securities Firms (Law No. 5 of 1971)). The FSA will not consider advertisement on the websites of foreign securities companies to constitute “solicitation”, only if the foreign broker-dealer takes appropriate and rational measures designed to exclude the possibility of securities transactions with Japanese residents. (Details are available at the website above.)

### **Reform and Guideline on Proprietary Trading System**

(available on Internet homepage

<http://www.fsa.go.jp/news/newsj/syouken/f-20001116-1.html> in Japanese)

The FSA amended the Ordinance of the Prime Minister's Office on Foreign Securities Firms to allow the Proprietary Trading System (PTS) to adapt new pricing systems. This amendment was enacted on 16 November 2000 and became effective on 1 December 2000. To establish the PTS, it is required to be registered as a securities company and earn the permission to open the PTS by the FSA. The pricing systems of PTS used to be limited to two ways, using the indicated price in the established securities exchange or the price agreed by the mutual negotiation. The FSA allowed the PTS to adopt the two new pricing systems as bellow:

- by matching two opposite limit orders from retail investors
- by letting the securities companies commit to quote two-way prices

At the same time, the FSA published the guideline related to the permission for the securities company to operate the PTS. In the guideline, the FSA requires the PTS operators to

- announce the price information
- adopt the quantitative criteria based on the share of the trade volume

### **“Electronic Sales of Financial Services and Supervisory Policy”**

(Available on the Internet homepage of the FSA

[http://www.fsa.go.jp/p\\_fsa/news/news-j.html](http://www.fsa.go.jp/p_fsa/news/news-j.html) in English)

A study group consisting of experts on financial law and electronic commerce was created under the auspices of the Planning and Legal Affairs Division of the FSA to conduct a study on the supervisory

issues arising from electronic sales of financial services. The Study Group issued a report on 18 April 2000 entitled “Electronic Sales of Financial Services and supervisory Policy”.

## **B. SESC**

The Securities and Exchange Surveillance Commission (SESC) has also implemented the following initiatives with a view to beefing up its surveillance activity upon the Internet.

### **Internet Patrol System**

The SESC launched the Internet Patrol System in May 2000. This computer-based System automatically patrols pre-registered websites, and then accumulates renewed information for surveillance and enforcement purposes.

A further improved system which can automatically detect fishy websites themselves is currently under development.

### **Internet Surveyor**

A team of Internet Surveyors, which specialises in internet surveillance at the Market Surveillance Office of the SESC, will embark on duty from July 2001.

## **C. SRO STATEMENTS, RULES AND GUIDELINES**

Japan Securities Dealers Association (JSDA) published the guideline regarding the securities trading on the Internet in September 1999. The guideline was updated in April 2001 to include issues regarding system capacity, information dissemination through the Internet and hyperlink. The PDF file version of the guideline is available at its website only in Japanese.

(<http://www.jsda.or.jp/html/oshirase/internetwg/index.html>)

## **D. PRIVACY PROTECTION LAW**

The draft of the Privacy Protection Law was submitted to the diet on 21 March 2001. The purpose of this law is to protect the privacy while permitting to utilise the individuals’ information. Under the law, a business entity that utilise the individuals’ information has to obey the stipulated rules such as to specify the purpose of the use, not to utilise individuals’ information beyond the scope of the specified purpose

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Japan (continued)

without their consent and not to provide the individuals' information to the third party without their consent.

## 11. MALAYSIA

### SECURITIES COMMISSION MALAYSIA (SC)

The SC had in August and December 1999 issued 2 press releases in respect of securities offered through the Internet.

#### **Primary Offers Of Securities Via The Internet**

*(available at the SC's homepage at  
[http://www.sc.com.my/html/publications/press/pr\\_990818.html](http://www.sc.com.my/html/publications/press/pr_990818.html) )*

This policy statement which was released in August 1999 as a press statement basically deals with the position of securities that are offered by offerors based overseas via the Internet. The SC is of the view that an offering over the Internet that is accessible by persons in Malaysia will be caught under section 32 of the Securities Commission Act 1993 which deals with proposals/offers that will require the prior approval of the SC.

However, there are certain aspects that the SC will take into consideration in assessing whether approval is required under section 32. The SC will take into account the following factors in determining if approval is required:

- The intention of the person making the offer i.e. whether offer is targeted to a person in Malaysia
- The penetration of the offering of securities in Malaysia i.e. whether any person in Malaysia accepts the offer
- The involvement of a person from Malaysia in making the offer

The SC has also in the press release recommended practical steps/measures, which are not exhaustive in themselves, that may be taken so that such offer will not be caught under the said section. Some of these practical steps include:

- Not publishing the offer or invitation in websites that are frequently visited by or draws the attention of a person in Malaysia. For example offering in websites that have “.my” in its address or that the offering content is relevant to a person in Malaysia;
- Ensuring that the offering does not contain information specifically relevant to a person in Malaysia. For example, tax rates or prices which are presented in Malaysian currency;
- Designing or taking steps to automatically exclude and/or reject any subscriptions made by a person from Malaysia and to have a monitoring system on applications made by such person. For example, an offeror may programme their subscription system in

- such a manner to automatically reject any applications for subscription from a person in Malaysia where the telephone, address and postal addresses indicate that they are from Malaysia;
- Restricting the access of information of the offering so that a person in Malaysia is unable to view documents that are related to the offering; and
  - Incorporating a clear jurisdictional disclaimer into the on-line prospectus / offer document stating that the offer is not intended to be available in Malaysia or to any person in Malaysia or which clearly states at which jurisdictions that the offer is targeted in a list that excludes Malaysia;

### **Capitalshare Fund Not Approved By The SC**

*(available at the SC's homepage at*

*[http://www.sc.com.my/html/publications/press/pr\\_991221.html](http://www.sc.com.my/html/publications/press/pr_991221.html) )*

The policy statement on “Primary Offers of Securities via the Internet” was put to the test when the SC became aware of an unapproved fund, i.e. the Capitalshare Fund (Fund), soliciting investments from persons in Malaysia. The Fund is an offshore open-ended mutual fund consisting of 6 mutual funds which are traded online offered by an investment management company registered in the Cayman Islands.

In deciding whether the Fund required the approval of the SC under the Malaysian securities law, consideration was taken with respect to the determining factors and practical steps highlighted in the SC’s earlier press release on “Primary Offers Of Securities Via The Internet” (please refer to press release above). It was decided that the Fund required the approval of the SC since it was accessible to persons in Malaysia.

Despite concluding that the Fund fell within the regulatory jurisdiction of the SC, the cross-border nature of the offer hampered any attempts at enforcement by the SC. The SC therefore decided that educating potential investors would be the best course of action in the circumstances. A press warning was therefore issued where public investors were warned of the danger in investing in such unapproved schemes and that they should be wary of such schemes that may be disseminated through the Internet, fax, brochures and other form of medium.

**Consultation Paper On The Implementation Of Electronic Commerce In The Capital Market**

*(available at the SC's homepage at*

*[http://www.sc.com.my/html/publications/inhouse/ecommerce/fr\\_cover.html](http://www.sc.com.my/html/publications/inhouse/ecommerce/fr_cover.html) )*

Further to the press releases issued last year, the SC had also issued a Consultation Paper entitled “Implementation of Electronic Commerce in the Capital Market” for public comment and feedback. The Consultation paper generally identified impediments to the effective implementation of EC in the capital market and outlined recommendations to overcome these impediments. Pursuant to this, a Working Group (WG) on Electronic Commerce, which consists of 9 sub-Working Groups (SWG), was established to look into specific areas, issues and recommendations duly identified in the Consultation Paper. The WG comprises representatives from the market institutions such as the exchanges and clearing houses as well as market intermediaries via industry associations. The SC acts as the Secretariat to the WG and the SWGs. The WG is a collaborative effort between the public and private sector to better implement EC in the capital market.



## 12. NETHERLANDS

Securities trade in the Netherlands is subject to the supervision of the Securities Board of the Netherlands (Stichting Toezicht Effectenverkeer, STE). The STE's mandate, established in the Act on the Supervision of Securities Trade 1995 (Wte 1995), is to ensure proper functioning of the securities markets, to protect the position of investors and to increase the transparency of the securities markets. For investment funds the supervisor is the Dutch Central Bank (De Nederlandsche Bank, DNB) pursuant to the Act on the Supervision of Investment Institutions.

### *SUPERVISION OF INVESTMENT SERVICES ON THE INTERNET*

#### **Policy rules**

In June 1999 the STE has published policy rules for offering investment services through the Internet ("policy document 99-0003 concerning the Internet in relation to the supervision of securities trade in The Netherlands", see: [http://www.ste.nl/static/downloads/99-3/Internet\\_UK.pdf](http://www.ste.nl/static/downloads/99-3/Internet_UK.pdf)). The rules seek to make clear to those offering investment services through the Internet whether or not they come within the scope of the Act on the Supervision of Securities Trade 1995. Pursuant to the Decree on the Supervision of Securities Trade (Bte) and the Further Regulation on the Supervision of Securities Trade 1999 (Nadere Regeling 1999) the policy document also focus on general standards (technical, security) for websites of investment firms offering online-investing for the retail market.

#### **Information Risk Management**

Concerning information risk management the internet policy document stipulates:

1. In an Internet environment, the customers of a securities institution must be guaranteed the same protection and security as those which they enjoy in a conventional environment;
2. the implementation of online trading is regarded as a change to the administrative organization, internal control procedures, registration and systems, referred to in section 17 of the Decree on the Supervision of Securities Trade, and therefore must be submitted to the STE for prior approval;
3. the STE considers an independent IT audit of the structure and operation of the systems and administrative organization to be necessary before approving such a system.

In February 2001 the STE decided to elaborate the general information risk management standards, stipulated in section 27 of annex 4 of the Further Regulation on the Supervision of Securities Trade 1999. In a revised section 4.27 there will be a reference made to general accepted standards.

These standards are compiled and authorized by the NOREA, the Dutch Organization for Professional IT Auditors. The NOREA standards are based upon general accepted standards like the Code of Practice and CobiT (Control Objectives for Information Technology of the ISACA, Information System Audit and Control Association). The audit may only be performed by professional IT auditors, who are committed to their quality rules, laid down in de Rules of Professional Conduct and Practice of Registered IT Auditors.

The auditor reports on the audit to provide trust and security about the *relevant* processes. When a part of the relevant processes is contracted out, the service provider is within the scope of the audit too.

In short the Standard contains the following chapters:

- e-Security policy
- Applicable laws, rules and regulations
- Conditions Contract
- Internal influences, for instance outsourcing, service providing
- Transactions (on-line, messaging, back-office)
- Architecture & infrastructure
- Management of ICT: ITIL-processes
- Management of non ICT: logistics, financials

As the developments in e-business are very fast, a 6-monthly audit / risk-analysis is compulsory.

The standard is developed by the NOREA to have a professional, state-of-the-art- method for auditing different e-business-processes.

### **Other**

On 21 November 2000 the STE has issued a press release relating to the day trading business, pointing out that, pursuant to section 1(b) of the Wte 1995, for day trading centers a license as a broker is needed. (The press release is available in the Dutch language on the website of the STE).

At national level there is general consultation concerning financial services on the Internet (policy rules, monitoring activities etc) with two other supervisors of the financial sector: the above mentioned Dutch

Central Bank (website: [www.dnb.nl](http://www.dnb.nl)) and the Insurance and Pension Industry Supervisory Board (De Pensioen- en Verzekeringskamer, PVK, website: [www.pvk.nl](http://www.pvk.nl)). In 2000 the three financial regulators participated in a project which was set up to elaborate the possibilities for the investigation and prosecution concerning illegal (financial) activities on the Internet (see also: annex 1).

## 13. PORTUGAL

### CMVM - Comissão do Mercado de Valores Mobiliários

**Recommendations regarding the exercise of postal vote in the public companies, approved by the CMVM's Executive Board on the 15<sup>th</sup> February 2001** (Available on Internet homepage of the CMVM: <http://www.cmvm.pt>, “Recomendações e Orientações”, “Recomendações” – version in Portuguese)

The objective of these recommendations is the fostering of the exercise of postal vote in public companies' general meetings. The CMVM supplies a set of practice recommendations, which also include the use of electronic means in the preparation stage of the general meetings including the notice convening the meetings, as well the exercise of postal vote through electronic means.

**Regulation N° 21/2000, approved by the CMVM's Executive Board on the 7<sup>th</sup> June, 2000.** (Available on Internet homepage of the CMVM: <http://www.cmvm.pt>, “Legislação e Publicações”, “Legislação”, “Regulamentos da CMVM”, version in Portuguese)

The CMVM establishes specific rules regarding the reception of subscription or transaction orders through the Internet.

**Interpretations and Recommendations on the use of the Internet, Approved by the CMVM's Executive Board on January, 2000.** (Available on Internet homepage of the CMVM: <http://www.cmvm.pt> “Recomendações e Orientações”, “Recomendações”, version in Portuguese)

*Summary of key provisions of this document:*

**Neutrality:** It fully explains the principle of neutrality seeking to ensure quite clearly that the use of Internet as a means of communication and securities transaction does not imply any alteration to the principles regarding the exercise of the intermediation activity, the securities public offers, information duties as well the exercise of regulation and supervision.

**Equivalent levels:** The electronic use of documents must ensure equivalent levels of intelligibility, durability, authenticity and integrity regarding those which are required for paper-based documents.

**Information contents:** The information displayed must be up-dated. When information is given by a third party, its exact origin must be mentioned and the language used must be Portuguese, unless it is exempted by a CMVM authorisation.

**Other:** Other requirements are also demanded i.e. the financial intermediaries must comply with all the legal procedures as well as the general rules of conduct.

This guidance document deals also with issues of cross-border access and use of Internet and clarifies the matter of the existence of a relevant connection with the Portuguese legal system on the Internet use.

In this document, the CMVM discloses several recommendations to offerors, financial intermediaries and investors, i.e. regarding the disclosure of the email address on the financial site; informative disclaimers mentioned on the site; improvement of forms of protection regarding confidentiality of clients' data transmitted electronically, as well as the adoption of procedures regarding the confirmation as to the reception of the information by the client; verification by the investors of administrative authorisations (by the CMVM) for the performance of the financial intermediation activity in question.

**Regulation N° 24/1999, approved by the CMVM's Executive Board on the 28<sup>th</sup> December, 1999** (Available on Internet homepage of the CMVM: <http://www.cmvm.pt>, "Legislação e Publicações", "Legislação", "Regulamentos da CMVM", version in Portuguese).

This regulation regarding the trading of mutual funds also has specific demands (Art. 7º) for the marketing of funds through open electronic networks as is the case of the Internet.

## 14. SINGAPORE

### A. MAS

As an integrated financial regulator, the Monetary Authority of Singapore (MAS) has the mandate to supervise the banking, insurance, securities and futures industries in Singapore. In recognition of the regulatory challenges posed by the Internet, the MAS has undertaken a broad review of the regulatory framework for the entire financial sector.

The MAS has issued the following policy statement and guidelines relating to the conduct of financial activities on the Internet.

#### **Licensing Principles for Securities Activities Conducted through the Internet - September 2000**

The MAS has outlined its general policy approach for securities licensing in the electronic realm in a speech by MAS Chairman on 6 Sep 2000. The full text of the speech is available at:  
[http://www.mas.gov.sg/newsarchive/sp\\_20000906-c.html](http://www.mas.gov.sg/newsarchive/sp_20000906-c.html)

To summarise, MAS will adopt the following general principles for licensing securities activities conducted through the Internet:

*Context and Circumstance* - the context and circumstance under which activities are conducted will be used in determining whether licensing is required.

*Fact versus Opinion* - The general policy stance is that the provision of factual information is not investment advice. Under this principle, the presence of interpretation, selectivity or subjectivity will require licensing. This test is, supplemented, where appropriate, by the context and circumstance principle.

*Referrals for Opening of Trading Accounts* - portals which refer investors to open trading accounts with stockbrokers would not need to be licensed, subject to the proviso that the stockbrokers themselves are licensed by MAS. This is so even if the websites offer incentives for account opening, in so far as the trade orders will be handled by licensed dealers supervised by MAS.

*Passive Distribution Conduits for Advice and Dealing* - websites acting as passive conduits, whether for investment advice or for dealing in securities, do not require licensing. However, portals or websites providing facilities for accepting or relaying orders to dealers are

subject to licensing requirements. This is on the basis that such facilities carry the risk of failure to transmit trade orders in a timely and accurate fashion, potentially to the detriment of investors.

*Overseas Websites Specifically Targeting Singapore Residents* - the same licensing principles apply to overseas websites that specifically target Singapore residents, as it does to local websites.

### **Guidelines on Offers of Securities made through the Internet - February 2000**

The Guidelines apply to offers of securities (i.e. shares, debentures and unit trusts) to the public in Singapore through the Internet, covering both initial as well as secondary offers of securities. Essentially, the Guidelines cover the following key features:

- a printed copy of a prospectus must be lodged with the Registrar of Companies before an offer is made through the Internet;
- the offer through the Internet must be made with an electronic prospectus;
- the electronic prospectus must contain the same information in substantially the same sequence as the printed copy;
- prospective investors must be given access to the electronic prospectus before the application form;
- the electronic prospectus must be clearly demarcated on the website to distinguish it from other materials, with an advisory statement that that only information which forms part of the prospectus should be relied on;
- hyperlinks into the prospectus must bring prospective investors directly to the front page of the prospectus.
- only hyperlinks within the electronic prospectus, hyperlinks from other websites to the electronic prospectus and hyperlinks from the electronic prospectus to the application form and documents required by the Listing Manual and/or Companies Act for public inspection, are permitted.

The full text of the Guideline is available on MAS' website:  
<http://www.mas.gov.sg/regulations/securitiesguidelines-c.html>

### **Posting of Financial Product Information on Third Party Internet Websites - January 2000**

The Circular requires all financial institutions in Singapore utilizing third party websites to exercise the same level of care in their dealings with customers as in the case with other distribution channels, including proprietary Internet websites. In this regard, financial institutions are responsible for ensuring that:

- a) Third party websites that they participate in have adequate security features;
- b) They have authorised the website providers to post their product information over these websites, and that the information posted is accurate and up-to-date; and
- c) They put in place appropriate measures to identify customers who are reached over these websites in line with the "know-your-customer" principle.

The full text of the MAS Circular is available on MAS' website:  
[http://www.mas.gov.sg/regulations/announce\\_000120-c.html](http://www.mas.gov.sg/regulations/announce_000120-c.html)

### **Internet Banking Technology Risk Management Guidelines**

MAS has, in consultation with the financial sector and technology providers (including e-security vendors), developed best practice guidelines on internet banking technology risk management and security practices.

Essentially, the guidelines require banks to:

- a) Establish a sound and robust technology risk management process;
- b) Enhance the availability, security and recovery capability of their systems; and
- c) Deploy strong cryptography to protect the integrity of customers' data and transactions.

Banks offering or delivering products and services via the internet or telecommunication networks, both wired or wireless, are required to implement the necessary processes and systems to comply with the guidelines by 29 June 2001. MAS will monitor and require



internal/external audit verification of banks' compliance with the guidelines.

The full text of the Guideline is available on MAS' website:  
[http://www.mas.gov.sg/regulations/regulations\\_Bank\\_IBTRMG-c.html](http://www.mas.gov.sg/regulations/regulations_Bank_IBTRMG-c.html)

## **B. SRO**

In September 2000, the Singapore Exchange (SGX) issued two sets of Guidelines pertaining to the conduct of businesses by brokers on the Internet. These are:

- (i) The **Sound Practices Guidelines on Internet Trading**, to assist member companies in building robust Internet trading systems that would enhance public confidence in on-line trading. The Guidelines set out sound practices that members are expected to observe, mainly to:
  - a) implement the sound practices to the extent appropriate to their particular circumstances;
  - b) carry out regular assessments of their Internet trading systems for adherence with the recommended best practices; and
  - c) commission independent expert assessment, wherever possible, to provide greater assurance of the quality of the assessment.

With immediate effect, a member company which is proposing to introduce an Internet trading system is required to conduct a review of its Internet trading system for adherence with the Guidelines. Member companies with existing Internet trading systems were required, by 30 Mar 2001, to have carried out the requisite reviews of their systems and notified the SGX of the conclusion of such reviews.

- (ii) The **Guidelines on Account Opening Procedures**, which lay down alternative means of reasonably establishing the bona fide identity of clients. The overriding consideration is to bring more convenience for local and overseas investors, while maintaining adequate prudential checks.

The Guidelines were issued on 26 September 2000, and can be downloaded at:

<http://info.sgx.com/webnewscentre.nsf/VwPressRelease>

## **C. GENERAL INTERNET-RELATED LAWS AND REGULATIONS**

### **Electronic Transactions Act**

Singapore enacted an Electronic Transactions Act (ETA) in July 1998, which follows closely the UNCITRAL<sup>2</sup> Model Law on Electronic Commerce. The purpose of the Act is to remove legal impediments and instill confidence in businesses and individuals to engage in e-commerce. The ETA establishes a general legal framework to facilitate e-commerce by:

- a) Prescribing a Commercial Code to support e-commerce transactions. The ETA defines the rights and obligations of transacting parties under an electronic contract. In particular, electronic records and signatures are given legal effect under sections 6 and 8 of the ETA, respectively.
- b) Developing a Public Key Infrastructure. A Certification Authority (CA) is required to meet minimum requirements prescribed under the Electronic Transactions (Certification Authority) Regulations 1999. A Controller of CAs has been appointed to license, certify, monitor and oversee the activities of CAs.
- c) Enabling electronic applications and licences for the public sector. This would allow government departments and statutory boards to accept electronic filing and/or issue electronic permits/licenses without having to amend their respective legislation.
- d) Clarifying network service providers' liability for third party content. Where a network service provider merely provides access, it is not subject to criminal or civil liability for third party materials. However, the ETA does not affect the obligations of a network service provider under any licensing or regulatory regime, founded on a contract; or imposed under any written law or by a court.

The full text of the ETA is available at:  
<http://www.cca.gov.sg/>

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<sup>2</sup> UN Commission on International Trade Law

### **Establishment of National Trust Council**

Internet fraud is one of the major obstacles to the adoption of e-commerce by businesses and consumers. In order to create an environment conducive for the growth of e-commerce, trust and confidence must be instilled among users. To this end, a National Trust Council was established in March 2001 to promote trust and reduce fraudulent e-commerce practices.

The council has identified several key roles for action:

- a) To take the lead in building a secure environment for e-commerce transactions;
- b) To promote the best e-commerce practices for businesses;
- c) To engage the government positively as a means to promote the interests of the e-commerce community in Singapore; and
- d) To act as a watchdog for the e-commerce community.

## 15. SPAIN

### **CIFRADO/CNMV – Transferring electronically-signed and encrypted information**

**C.N.M.V. Board Resolution of 11 March 1998** (available on the C.N.M.V.'s Internet website [www.cnmv.es](http://www.cnmv.es), “¿Qué es la C.N.M.V.?” – “Servicios” – “Soporte técnico informático a las relaciones con la C.N.M.V.” – “Servicio de recepción e intercambio de información por vía telemática: CIFRADO”, in Spanish version)

The CNMV's Information Systems Division developed the CIFRADO/CNMV system, a telematic information exchange system which enables the supervised firms to send documents to the CNMV by electronic means, using an encryption and electronic signature system that ensures the authenticity, integrity and confidentiality of the information sent. Its introduction (by resolution of the Board of the CNMV dated 11 March 1998) marked a milestone in that it was the first such system implemented in Spain's Public Administration. The system is voluntary: it may be used at each supervised entity's choice.

The CIFRADO/CNMV system is currently open to securities firms, portfolio management companies, management companies of collective investment schemes and certain collective investment schemes, as well as securities issuers, in relation to the periodic information, public or confidential, they must submit to the C.N.M.V. by virtue of the 'reporting requirements' established by law. CIFRADO is also used for the addition of assets to Securitization Funds. Ultimately, the aim is for all entities under supervision to be able to send their periodic information to the CNMV through CIFRADO/CNMV. In addition, it is intended that, in the medium term, all the C.N.M.V.'s external relations (with supervised entities, investors and any other person or body that eventually enters into a relationship with the C.N.M.V.) may be channeled through electronic means. This will mean considerable savings in the time spent receiving and entering the information, in addition to enabling the process to be automated using only electronic communications.

### **Public Offerings – Scope of the definition**

**Art. 3, Royal Decree of the Spanish Government 291/1992, of 27 March, on Securities Issues and Public Offerings, as amended by Royal Decree 2590/1998, of 7 December.**

(available on the C.N.M.V.'s Internet website [www.cnmv.es](http://www.cnmv.es), “Legislación” – “Legislación” – “III. Mercado primario de valores”, in Spanish version)

Under Spanish law, issues and offers of securities promoted through advertising in Spain by the issuer, the offeror or whoever acts on any of them behalf are considered as public offerings of securities and therefore subject to the disclosure requirements legally established. To this purpose, ‘advertising’ means whatever communication with potential investors aimed at promoting, either directly or through third parties that act on the issuer or the offeror behalf, the subscription or purchase of transferable securities. In any case, solicitation through phone calls from the issuer or offeror, door-to-door selling, customized letters, E-Mails or any other telematic channel, within the framework of an advertising, marketing or promotional campaign, will be considered as advertising to this purpose.

The campaign will be deemed to be carried out in Spain as long as it is targeted on Spanish residents. In case of E-Mails or any other telematic channel, it will be assumed that the offer is targeted on Spanish residents when the issuer or offeror, or third parties acting on the latter behalf, promotes the purchase of the securities or provides the Spanish residents with the information necessary to make a reasoned decision on the issue or offer and to accept it.

### **Edition and availability of the public offering prospectus**

**Art. Royal Decree of the Spanish Government 291/1992, of 27 March, on Securities Issues and Public Offerings, as amended by Royal Decree 2590/1998, of 7 December.**

(available on the C.N.M.V.’s Internet website [www.cnmv.es](http://www.cnmv.es) ,  
“Legislación” – “Legislación” – “III. Mercado primario de valores”, in Spanish version)

If the issuer or offeror provides information on the allocation procedure through ‘free access’ telematic means, it will be obliged to disclose through the same channels the information contained in the prospectus and ‘key features’ document (‘legal triptych’ in Spanish terms)

### **Disclosure requirements as regards Collective Investment Funds**

**Rule nº 2 “Form of submission of information to the C.N.M.V.”. Release [Circular] 1/99, of 14 January, of the C.N.M.V., on Collective Investment Funds’ prospectuses and quarterly reports.**

(available on the C.N.M.V.’s Internet website [www.cnmv.es](http://www.cnmv.es)  
“Legislación” – “Legislación” – “IX. Instituciones de Inversión Colectiva”, in Spanish version)

The CNMV is empowered to require the submission of the prospectuses and the quarterly reports, both full and abridged ones, in electronic format or through telematic or electronic channels, pursuant to the technical requirements to be established. This power has not been exercised so far.

### **Regulatory tools at the C.N.M.V.'s disposal**

There is a system designed to display in almost real time the price sensitive information reported by listed companies, irrespective of the means (fax, CIFRADO, letter, etc) used by the issuer to provide such information. This information is immediately digitised and made available through the CNMV website, almost without human intervention.

A special system to detect suspicious sites: A software robot (Web-seeker), which triggers more than 40 search-engines simultaneously and filters the results pursuant to the “search terms” sought and disregarding those websites that were known to the C.N.M.V. (which were contained in its database).

**16. SWEDEN**

## **17. SWITZERLAND**

### **SWISS FEDERAL BANKING COMMISSION (SFBC)**

#### **SFBC-Circular 99/2, Outsourcing of Business Areas, 26 August 1999**

The circular describes the conditions under which outsourcing solutions shall comply with the requirements for an appropriate administrative organization, for compliance with banking secrecy and data protection and thus are permitted without the separate consent of the SFBC.

<http://www.ebk.admin.ch/d/publik/rundsch/99-2.pdf>, German version (Adobe Acrobat Reader is required to view this document)  
<http://www.kpmg.ch/e/fs/>, 99/2 Outsourcing of Business Area (unofficial English translation of KPMG Switzerland).

#### **Minimal standards for Internet-only Banks and Securities-Dealers for the Account-Opening through Correspondence**

This temporary regulation amends the existing rules for the verification of the contracting partner's identify in order to take into account the possibilities and risks of the Internet.

<http://www.ebk.admin.ch/d/aktuell/neu5-01.pdf> (German version)



## 18. **TURKEY**

### **CAPITAL MARKETS BOARD (CMB)**

The amended Capital Market Law was passed by the Parliament and became effective on 18th of December 1999. The new law endows the CMB with the power to regulate and oversee all kinds of capital market activities and the issuing of securities on all kinds of electronic platforms including the Internet.

Article 22 of the Capital Market Law defines the duties and the powers of the Capital Markets Board of Turkey. The sub-paragraph (u) of the article is as follows: “To regulate and supervise the issuances, public offerings and capital market activities and transactions carried out through all kinds of electronic communication devices and environment and other similar devices, including the internet; to regulate and supervise, in the context of the general provisions, the use of electronic signature for transactions within the scope of the Capital Market Law”

In this regard, the CMB put forward regulations concerning the use of Internet, other kinds of electronic communication devices or devices similar to those in the renewed communiqué (dated 07.09.2000) “The Communiqué on Principles Regarding the Intermediation and Intermediary Institutions”.

According to the third paragraph of Article 37 of the communiqué; they must take permission from the CMB if they conduct capital market activities (intermediation, portfolio management, investment advisory etc.) that targets residents in Turkey using Internet, other kinds of electronic communication devices or devices similar to these. According to the fourth paragraph of the same article, the criteria that will be used to determine whether the activities are targeted to the Turkish residents will be determined by the CMB. Works on this issue are on progress and a draft has been prepared.

According to the Article 49 of the same communiqué; intermediary institutions can accept buy and sell orders from their customers on electronic platforms if the investors open an account and sign a contract with the intermediary. Intermediaries should inform the CMB before they begin to accept electronic orders.

The intermediaries that will accept orders in electronic form should;

- Follow the same priority rules for the electronic orders with the written and verbal orders and prevent inequalities that may

arise from on the type of order whether written, verbal or electronic,

- Apply the same record keeping requirements for the orders received in electronic form,
- Ensure the security of the computer system, provide enough system capacity, back-up measures and alternative means of communication,
- To employ the necessary staff to handle the electronic orders.

The institutions which will administer these types of orders should have in their Internet page:

- The procedures concerning the routing the orders to the stock exchange, execution of trades and the settlement procedures,
- The procedures regarding how the customer can follow the status of the electronic orders and the principles regarding the electronic notices to be given to the customers,
- Information on the securities, the stock exchange and the market,
- Information on the security and possible risks of the computer network and the the enclosing system,
- Information on the contents of “contingency plans” against unexpected risks,
- Information on the alternative means of communication in case of possible problems with the computer network,
- An explanation that gives the meaning “the contents of the information given in the pages are general in nature and there may not be enough information in the pages for the investors to be fully informed for their investment decisions”.

The orders taken on electronic environment are considered to be verbal orders with regard to general provisions in the regulations.

The requirements for intermediaries that will operate by receiving orders only in an electronic environment will be evaluated separately by the CMB.

Website: <http://www.spk.gov.tr>

## 19. UNITED KINGDOM

### LEGISLATION

#### **Financial Services Authority Act 1986**

The primary legislation under which financial services are regulated is the *Financial Services Act 1986*. This Act confers regulatory powers on the Financial Services Authority (FSA), and provides for the recognition of self-regulatory organisations (SROs) exercising subsidiary powers under the Act, including the issue of guidance. The SROs are:

- Securities and Futures Authority Limited (SFA)
- Investment Management Regulatory Organisation (IMRO)
- Personal Investment Authority (PIA).

#### **Financial Services and Markets Act 2000**

The *Financial Services and Markets Act 2000* will replace the 1986 Act and institute the FSA as the single integrated regulator of financial services, including banking and insurance, and exercising powers formerly exercisable by the SROs. The Act is scheduled for commencement during 2001.

The Act has been designed with a progressive move towards home-state or state of origin regulation of electronic financial promotions in mind. The Act is available on-line at:

<http://www.hmso.gov.uk/acts/acts2000/20000008.htm>

#### **Electronic Communications Act 2000**

This Act implements the Electronic Signatures Directive<sup>3</sup> and provides for:

- approval of electronic cryptography service providers;
- giving proof of electronic signatures; and
- amendment of legislation by Ministerial order to allow for electronic communications or electronic storage of information.

The Act is available on-line at:

<http://www.hmso.gov.uk/acts/acts2000/20000023.htm>

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<sup>3</sup> Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures

## **Data Protection Act 1998**

This Act implements the Data Protection Directive<sup>4</sup> and provides, with exceptions and qualifications, that a data controller with the appropriate territorial nexus to the UK must comply with specified data protection principles in relation to all personal data with respect to which he is the data controller. The Act provides for notifications by data controllers, for enforcement of the Act by way of enforcement notices, and other matters. The Act is available on-line at: <http://www.legislation.hms.gov.uk/acts/acts1998/19980029.htm>

### *RULES*

The FSA, SFA, IMRO and PIA have all made rules under the *Financial Services Act 1986*, including rules as to conduct of business, which have relevance to the internet. In the case of the SFA, IMRO and PIA, those rules bind only members of those SROs.

### *GUIDANCE*

Under the *Financial Services Act 1986* the FSA, SFA, IMRO and PIA have issued various items of guidance as to the duties of persons regulated under the Act, in particular, the rules made under the Act referred to in the previous section.

**NB:** it should be noted that the guidance listed below will be replaced by the Handbook of Rules and Guidance issued by the FSA under the *Financial Services and Markets Act 2000* upon the Act's commencement (at the time of writing expected during 2001).

## **Guidance issued by FSA**

FSA Guidance Release 2/98 (May 1998)

The FSA issued a Guidance Release in May 1998 entitled "The Treatment of Material on Overseas World Wide Websites Accessible in the UK but Not Intended for Investors in the UK".

The Guidance states that material that fits the definition of an "investment advertisement" in the *Financial Services Act 1986* which can be pulled up on a screen in the UK is likely to be in breach of the advertising provisions of the Act if it has not been approved by a

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<sup>4</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

person who is "authorised" under the Financial Services Act 1986. Such a breach is a criminal offence. The Guidance details factors that the FSA will take into account, in such cases, when deciding whether to take enforcement action.

The factors include:

- the extent to which the underlying investment or investment service was available to UK investors who may respond to the advertisement;
- whether steps had been taken to deny UK investors access to the investment service;
- the extent to which the advertisement was directed at persons in the UK (including, the presence of disclaimers; whether they reflected what was done in practice; whether the content was such that it was geared towards a UK audience; and whether the site was promoted in the UK);
- the extent to which positive steps had been taken to limit access to the Website.

The full text of the Guidance Release is available at <http://www.fsa.gov.uk/pubs>.

### **Guidance issued by SFA**

*SFA Board Notice 561 (16 October 2000)*

This Notice deals with the general waiver given by the SFA to electronic brokers from Rule 4.114 on despatch of statements, on certain conditions. The conditions are:

- their clients have to have access at all time to details of their custody holdings and cash position on the firm's website, and
- the additional information to be included in the statements in accordance with Rule 4-113(1) has also to be available from the client agreement and/or the firm's own website.

*SFA Board Notice 560 (16 October 2000)*

This guidance provides clarification in respect of electronic communication of customers' agreement and consent. The SFA will accept electronic communication of customers' acknowledgement, agreement or consent to terms of business or any consent or authority to act required by the SFA rules provided that the firms take into account Principle 9, SFA Rule 5-54, and Appendix 18.

In addition, the guidance requires customer consents presented in electronic form on the screen to be clear as to their effect of creating a contractual relationship or other legal consequences.

SFA Board Notice 543 (07 April 2000)

This Notice corroborates SFA's guidance on the Internet given in Board Notice 416 and gives further guidance in respect of the following:

- application of Principle 9 to the organisation and control of firms' internet website and to investment business conducted via such sites;
- waiver of requirement of "sending" set out in Rule 5-34(1) for electronic contract notes and confirmation notes, in certain circumstances;
- use of regulatory disclaimers and risk warnings in investment advertisements issued over the internet and other electronic media;
- use of risk warnings in electronic distribution of research;
- application of record keeping requirements to relevant material displayed by a firm on its website and to a firm's electronic communications relating to its conduct of investment business; and
- rules that are applicable to orders received by firms from investors outside of the relevant market's opening hours.

*SFA Board Notice 416 (25 April 1997)*

The Guidance deals with the applicability of existing conduct of business rules (CBRs) in the following areas:

- Advertising Rules (Rule 5-9(1)-(7) + availability of exclusions in respect of the ability to control access to material/services. Also need for and placement of warnings/disclaimers);
- Record Keeping (Rule 5-54 and Appendix 18 + electronic records permissible, subject to it being possible to produce a hard copy promptly);
- E-mail (can be used to send customer agreements, contact notes and periodic valuations need to verify delivery);
- Identifying the regulator (placement and applicable material).

### **Guidance issued by IMRO**

*IMRO Rules Notice 50 (30 April 1999)*

This Notice publishes the amendments to the IMRO Rules that govern accepting customers for investment business to allow for customer agreements with private customers to be provided over the Internet. The guidance to these rules was also amended to indicate that it will not be necessary to obtain a private customer's hard copy signature to a customer agreement where it is concluded electronically.

*IMRO - Reporter n. 23 (February 1999)*

This Reporter provides clarification in respect of the use of clauses in a firm's website excluding or limiting the firm's liability in relation to its Regulated Business placed on the Internet.

*IMRO - Notice (7 May 1997)*

The Notice deals with the applicability of existing conduct of business rules (CBRs) in the following areas:

- unregulated Collective Investment Schemes;
- advertising Code;
- identifying the regulator;
- direct Offer advertisements;
- packaged products: Key Features;
- exclusions of Liability;
- contents of Customer Agreements;
- customer Signatures;
- use of E-mail;
- record Keeping.

**Guidance issued by PIA**

*PIA Regulatory Update 76 (June 2000)*

This Regulatory Update amends guidance given in Regulatory Update 71. All firms issuing direct offer advertisements on the Internet are required to provide easily accessible and clearly signposted Key Features Documents for the products being advertised (and not to the full text of KFD as previously required).

This Regulatory Update also confirms that firms subject to the Adopted Lautro Rules which have obtained a waiver of Rule L 6.18 do not need to reapply for a waiver if they wish to amend the structure of their sites in the light of the new guidance.

*PIA Regulatory Update 71 (December 1999)*

This Regulatory Update describes how firms should present Key Features Documents in direct offer advertisements on the Internet. All firms seeking to conduct direct offer business over the Internet are required to design their Internet site in a way that the investor has first to visit the screen where the full text of the key features is displayed. Firms subject to the Adopted Lautro Rules should discuss with the PIA proposals to publish direct offer advertisements on the Internet beforehand, and seek and obtain a waiver from Adopted Lautro Rule L 6.18.

*PIA - Guidance (22 August 1997)*

The Guidance deals with the applicability of existing conduct of business rules (CBRs) in the following areas:

- Identifying the Regulator (placement and applicable material);
- Advertising design content and format (appropriate of warning/disclaimers and sequence of pages);
- Direct Offer (Adopted LAUTRO Rule L6.18 applies - provides that direct offer or off page advertising must be contained in a printed document + Rule being reviewed);
- Key Features (need for potential investors to view Key Features document before access to any application form);
- Advertisement Appraisal (need for compliance approval and retention of advertisement layout etc);
- Use of E-mail (need for compliance with status disclosure and advertising rules);
- Advice (as with other media, need for "fact find" when provided electronically);
- Record keeping (Rule 5.1.3 applies + this includes need for material to be produced on their premises in paper form).

The full text of FSA, SFA, IMRO and PIA Guidance is variously available on the Internet, through commercial services or direct from those organisations, all at the below address:

25 The North Colonnade  
Canary Wharf  
London, E14 5HS  
Tel: 44 (0) 20 7676 1000  
Fax: 44 (0) 20 7676 1099  
[www.fsa.gov.uk](http://www.fsa.gov.uk)  
email: [webmaster@fsa.gov.uk](mailto:webmaster@fsa.gov.uk)



IOSCO Internet Task Force Report II  
Annex I – Internet-Related Regulations, Policy and Guidance  
United Kingdom (continued)

The FSA has details on its Central Register of authorised firms. This list of authorised firms and the permitted activities which they are allowed to undertake may be accessed by phone or on-line at:  
Telephone number: 44-20-7676 1000  
Website: <http://www.thecentralregister.co.uk> (on-line registration is necessary).

## 20. UNITED STATES

The following are new regulations and/or guidance that the Securities and Exchange Commission (“SEC”), Commodity Futures Trading Commission (“CFTC”), self-regulatory organizations (“SROs”) and other legislative authorities in the US have issued or are currently discussing regarding the Internet:

### A. SEC

#### *REGULATIONS AND GUIDANCE*

**Electronic Recordkeeping by Public Utility Holding Companies**, Public Utility Holding Company Act Release No. 27404 (May 24, 2001). [www.sec.gov/rules/final/35-27404.htm](http://www.sec.gov/rules/final/35-27404.htm)

**Electronic Recordkeeping by Investment Companies and Investment Advisers**, Investment Company Act Release No. 24991, Investment Advisers Act Release No. 1945 (May 24, 2001). [www.sec.gov/rules/final/ic-24991.htm](http://www.sec.gov/rules/final/ic-24991.htm)

**Electronic Signatures Act and Broker-Dealer Recordkeeping Requirements**, Exchange Act Release No. 44238 (May 1, 2001); 55 Fed. Reg. 22916 (May 7, 2001).

In 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act (the “Electronic Signatures Act” or “E-SIGN”) (see Section D below). The Electronic Signatures Act, among other things, allows regulated entities to meet record retention regulations by storing required records using electronic media, provided the records are accurate, accessible and capable of accurate reproduction for later reference. The Act preserves the ability of agencies to interpret their own recordkeeping rules with respect to the Act. On May 1, 2001, the Commission interpreted the electronic storage provisions in its existing rules governing broker-dealer recordkeeping to be consistent with the Electronic Signatures Act.

**Report of Examinations of Broker-Dealers Offering Online Trading**, Summary of Findings and Recommendations (January 25, 2001), [www.sec.gov/news/studies/online.htm](http://www.sec.gov/news/studies/online.htm)

This report, issued on January 25, 2001, discusses Internet usage by broker-dealers offering online trading. In light of the great increase in “online trading” in recent years, the SEC’s Office of Compliance

Inspections and Examinations conducted a series of examinations of registered broker-dealers providing customers with the ability to place trades through the Internet. In these examinations, the Staff reviewed: the information that firms provide to customers about trading and making investment decisions; advertising; the execution of customers' transactions; capacity for handling customer trading volumes; security measures; and supervision of employees' use of the Internet. The examinations revealed examples of sound practices as well as areas in which some broker-dealers could enhance their practices. Based on the examinations, the SEC's Office of Compliance Inspections and Examinations recommended that broker-dealers offering online trading consider a number of issues, including: the information provided to customers online about how orders are executed, how margin works, and the possibility of systems' delays; the objectivity of their advertising; procedures for ensuring that customers receive best execution; procedures for ensuring adequate operational capability to handle customer trading volume; security measures to protect customer privacy and funds; and procedures to supervise employee's use of Internet communications.

**Exemption from Section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act for Registered Investment Companies**, Securities Act Release No. 33-7877, Investment Company Act Release No. IC-24582 (July, 27, 2000).  
[www.sec.gov/rules/final/33-7877.htm](http://www.sec.gov/rules/final/33-7877.htm)

The SEC adopted, as an interim final rule, rule 160 under the Securities Act of 1933 to exempt from the consumer consent requirements of the Electronic Signatures in Global and National Commerce Act ("Electronic Signatures Act") prospectuses of registered investment companies that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors. Consistent with SEC interpretations of existing law, the rule permits a registered investment company to provide its prospectus and supplemental sales literature on its web site or by other electronic means without first obtaining investor consent to the electronic format of the prospectus. The SEC also clarified its interpretation on the responsibility of registered investment companies for hyperlinks to third-party web sites from their advertisements or sales literature.

**Use of Electronic Media Release**, ("Use of Electronic Media"; Interpretation; Solicitation of Comments); Securities Act Release No. 7856, Exchange Act Release No. 42728, Investment Company Act Release No. 24426; 65 Fed. Reg. 25843 (April 28, 2000)  
[www.sec.gov/rules/concindx.htm#int](http://www.sec.gov/rules/concindx.htm#int).

The 2000 “Use of Electronic Media Release” addresses the application of US regulatory requirements to securities activities on the Internet. In the Use of Electronic Media Release, the SEC updated guidance relating to the use of electronic media to deliver documents, issuer liability for website content, including hyperlinks, and legal issues related to online offerings. The SEC also sought comments on issues such as consent to electronic delivery, document format for electronically delivered documents, “access equals delivery” models, the use of implied consent, electronic only offerings and Internet discussion forums.

**Report of Examinations of Day-trading Broker-Dealers**, (February 25, 2000), [www.sec.gov/news/studies/daytrep.htm](http://www.sec.gov/news/studies/daytrep.htm)

This report, issued on February 25, 2000, discusses Internet usage by day-trading broker-dealers. The SEC’s Office of Compliance Inspections and Examinations conducted an examination sweep of 47 registered broker-dealers providing day-trading facilities to the general public (“day-trading firms”) during the period October 1, 1998 through September 30, 1999. While the examinations did not reveal widespread fraud, examiners found indications of potentially serious securities law violations warranting referrals to the SEC’s Enforcement staff at several firms. These violations related to net capital, margin and lending disclosure. At most firms, however, the examinations revealed less serious concerns, but indicated that many firms need to take steps to improve their compliance with net capital, short selling, and supervision rules. Firms at which examiners found deficiencies generally were issued deficiency letters, and corrective action was required. While the deficiencies found are not unique to day-trading firms, the SEC staff believes that the nature of day trading itself -- frequent, fast and risky trading -- makes compliance with securities laws difficult to achieve without an automated compliance infrastructure. In addition, while disclosure of the risks of day-trading is not explicitly required by current SEC or SRO rules, the examinations revealed that, as of the time of the examinations, many firms did not provide their customers with information concerning the such risks. Recent reviews of day-trading firms’ advertising and disclosure indicate improved practices -- many firms are using more balanced advertising and providing potential customers with better information concerning the risks of day trading.

**Interpretation; Statement of the Commission Regarding Use of Internet Websites to Offer Securities, Solicit Securities Transactions, or Advertise Investment Services Offshore**, March 23, 1998. Release No. 33-7516. 17 CFR Parts 231, 241, 271, 276

(Release Nos. 33-7516, 34-39779, IA-1710, IC-23071) International Series Release No. 1125, [www.sec.gov/rules/concept/33-7516.htm](http://www.sec.gov/rules/concept/33-7516.htm)

**Rulemaking for the EDGAR System**, Securities Act Release No. 7427, Exchange Act Release No. 38798, Trust Indenture Act Release No. 2355, Investment Company Act Release No. 22730; 62 Fed. Reg. 36450 (July 8, 1997), <http://www.sec.gov/rules/final/33-7427.txt>

**Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934**, Exchange Act Release No. 38245; 62 Fed. Reg. 6469 (Feb. 12, 1997 )  
<http://www.sec.gov/rules/final/34-38245.txt>

**Use of Electronic Media for Delivery Purposes**, Securities Act Release No. 7289, Exchange Act Release No. 37183; Investment Company Act Release No. 21946; 61 Fed. Reg. 24652 (May 15, 1996)  
<http://www.sec.gov/rules/final/33-7289.txt>

**Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information**, Interpretation; Solicitation of Comments; Additional Examples Under the Securities Act of 1933, Exchange Act Release No. 37182, Investment Company Act Release No. 21945; 62 Fed. Reg. 24644 (May 15, 1996)  
<http://www.sec.gov/rules/concept/33-7288.txt>

**Use of Electronic Media for Delivery Purposes; Interpretation; Solicitation of Comments**, Securities Act Release No. 7233, Exchange Act Release No. 36345; Investment Company Act Release No. 21399; 60 Fed. Reg. 53458 (Oct. 13, 1995)  
<http://www.sec.gov/rules/concept/33-7233.txt>

**Use of Magnetic Tape, Disk, or Other Computer Storage Medium**, Investment Company Act Release No. 15410; 51 Fed. Reg. 42207 (Nov. 24, 1986)

**Amendment to Investment Adviser Record keeping Rule**, Investment Advisers Act Release No. 952; 50 Fed. Reg. 2542 (Jan. 17, 1985)

*SELECTED STAFF INTERPRETIVE LETTERS REGARDING  
INTERNET TECHNOLOGY*

**Prescient Markets, Inc.** (publicly available April 2, 2001).  
The staff agreed not to recommend enforcement action against an unregistered entity that sought to help operate an Internet-based

electronic execution facility for an affiliated broker-dealer. The staff's letter emphasized several factors that helped establish that the registered broker-dealer would be responsible for the portal leading to the trading facility and the portions of the trading platform that involve securities. The staff noted, among many other factors, that: the unregistered entity would not receive compensation based directly or indirectly on the size or value of transactions in securities, or dependent upon the occurrence of transactions in securities (including per-order fees); the broker-dealer would take full responsibility for the portal leading to the platform and those portions of the platform involving securities (including exercising full discretion and authority with respect to content and substantive operations, and being the contracting party for all agreements related to the substantive portion of the facility); and the unregistered entity would not exercise any discretion or authority over the portal and those portions of the platform involving securities.

**Wit Capital Corporation** (July 14, 1999). In connection with its review of registration statements, SEC staff has been issuing comments to obtain information on the procedures the electronic-brokers are using to assure compliance with the Securities Act of 1933. In addition, SEC staff has been actively contacting electronic-brokers to review their procedures outside the context of a particular offering to avoid timing problems. In July 1999, SEC staff issued a no-action letter regarding permissible procedures for the use of the Internet in initial public offerings ("IPOs") of securities. The letter sets forth the following principles to be observed in establishing procedures for conducting an online offering:

- Before effectiveness of the registration statement for the offering, communications on an electronic-broker's (as well as on the issuer's) Internet website that make an offer to sell or solicit an offer to buy may only be made by means of a prospectus complying with the Securities Act of 1933 or by communications that come within the protection of a Securities Act exemptive rule. Communications that are merely instructional (for example, general information on how to use the website, how the brokerage service operates and how to open an account) and are not designed to generate interest in a particular offering typically are permitted.
- Before effectiveness of the registration statement for the offering, electronic-brokers may not require any part of the purchase price for the securities being offered to be paid. A broker may require new customers to make a small deposit in order to open an account, but this amount cannot be tied in any way to the purchase price of the securities. Funds in the

account must remain in the control of the customer at least until his or her offer to buy is accepted after effectiveness and pricing. Also, funds in any account cannot be earmarked for the purchase of securities in any particular offering before effectiveness.

Further to facilitate compliance with the Securities Act of 1933 in connection with online offerings, the SEC has encouraged broker-dealers to develop appropriate procedures for online offerings. To date, SEC staff has reviewed numerous procedures in connection with online distributions of IPOs. SEC staff has found that the procedures followed by individual electronic-brokers vary from firm to firm. Wit Capital describes only one set of acceptable procedures. These are not the only procedures that may be acceptable and electronic-brokers do not need to follow Wit Capital in order to comply with the Securities Act of 1933.

**Charles Schwab & Co., Inc.** (July 17, 1998). Schwab was granted relief to provide its customers, through Schwab's Website, with industry consensus recommendations, consensus earnings estimates and historical earnings data compiled by Standard & Poor's and First Call Individual Investor Services (Providers) without requiring the Providers to register as brokers or dealers.

**Lamp Technologies, Inc.** (May 29, 1998). The staff stated that it would not recommend enforcement action to the Commission if certain information about unregistered investment companies were available on Lamp's website, operated as described in a previous no-action letter, Lamp Technologies, Inc. (May 29, 1997), with some modifications. Lamp proposed to eliminate the requirements that investors had to pay a set subscription fee and have an investment portfolio of at least \$2 million. The staff agreed that these modifications would not alter the position taken in the earlier letter. The staff also clarified that its prior position would not be affected if the private funds were structured as entities other than limited partnerships.

**StockPower, Inc.** (Mar. 26, 1998) The staff stated that it would not recommend enforcement action against StockPower, Inc. for failing to register as a broker-dealer if StockPower, Inc. makes available "payment software" and related services that would allow new investors or existing shareholders of particular issuers to purchase through the Internet the issuers' shares directly through a dividend reinvestment and stock purchase plan. The payment software enables individuals to interact electronically with participating bank transfer agents, rather than using regular mail or the telephone.

**Net Roadshow, Inc.** (Jan. 30, 1998). The staff stated that it would not recommend enforcement action to the Commission if Net Roadshow transmits road shows over its Internet Website solely to "qualified institutional buyers" (QIBS) on behalf of a QIB (or person acting on its behalf) that purchases securities from an issuer for resale to other QIBS under Rule 144A ("Seller").

**Internet Capital Corporation (ICC)** (Jan. 13, 1998). The staff agreed not to recommend enforcement action to the Commission if a company, without registering as an investment adviser, established and operated a passive bulletin board on a website to facilitate the trading of securities of unaffiliated companies. The staff relied on representations that neither the company nor any affiliate would give advice regarding the merits or shortcomings of any particular trade.

**Internet Capital Corporation (ICC)** (Dec. 24, 1997). The staff stated that it would not recommend enforcement action under Exchange Act Section 15(a) if ICC establishes and operates the described Internet website without registering as a broker-dealer under Exchange Act Section 15(b).

**The Securities Transfer Association, Inc.** (Oct. 24, 1997). The staff stated that it would not recommend enforcement action to the Commission if, in reliance on an opinion of counsel that registration under the Securities Act is not required, a bank or issuer uses its Internet Website in connection with an open-market stock purchase plan (Plan) as described in the request and without compliance with the Securities Act's registration provisions.

**Net Roadshow, Inc.** (July 30, 1997). The staff stated that, subject to certain conditions, it would not recommend enforcement action to the Commission if Net Roadshow, Inc. transmitted delayed roadshow presentations over the Internet.

**Charles Schwab & Co., Inc.** (July 7, 1997). The staff agreed that customer purchase or sale orders placed directly with Schwab or its sub-designee may be deemed to have been received by the relevant fund for purposes of Rule 22c-1 under the Investment Company Act at the time that Schwab or its sub-designee accepts the order.

**Private Financial Network** (Mar. 12, 1997). The staff stated that it would not recommend enforcement action to the Commission if Private Financial Network (PFN), a subsidiary of a joint venture between NBC and Microsoft, transmitted live or delayed roadshow presentations by satellite, telephone and cable to PFN subscribers' computer or television monitors.



**Baltimore Gas and Electric Company** (Jan. 6, 1997). The staff confirmed that identification of Baltimore Gas and Electric's (BG&E) website in a prospectus and a statement that BG&E filings are available on its website will not, by itself, incorporate by reference information from the website into the registration statement that is not otherwise incorporated.

**ITT Corporation** (Dec. 6, 1996). The staff confirmed that identification of ITT's website in a prospectus and a statement that ITT's filings are available on its website will not, by itself, incorporate by reference information from the website into the registration statement that is not otherwise incorporated.

**Charles Schwab & Co., Inc.** (Nov. 27, 1996). The staff stated that it would not recommend enforcement action to the Commission if Charles Schwab & Co., Inc., a registered broker-dealer, paid certain Internet on-line service providers a nominal, flat fee for routing orders sent by the broker-dealer's customers, without those on-line services registering as broker-dealers.

**The Flamemaster Corporation** (Oct. 29, 1996). The staff stated that it would not recommend enforcement action to the Commission if Flamemaster, without registering as a broker-dealer, an exchange or an investment adviser, operated an Internet bulletin board on which interested buyers and sellers could post indications of interest in Flamemaster's securities.

**Angel Capital Electronic Network** (Oct. 25, 1996). The staff stated that it would not recommend enforcement action to the Commission if several universities and non-profit entities operated a service on a website (the "Network"), without registering as broker-dealers, without the Network registering as a broker-dealer or exchange, and without the Network and the Network operators registering as investment advisers. The service would allow accredited investors to access a password-controlled listing of small corporate offerings and to download offering materials.

**PerfectData Corporation** (Aug. 5, 1996). The staff stated that it would not recommend enforcement action to the Commission if PerfectData operated an Internet bulletin board on which interested buyers and sellers could post indications of interest in PerfectData's securities, without PerfectData registering as a broker-dealer, an exchange or an investment adviser.

**IPONet** (July 26, 1996). The staff indicated that the use of an Internet-based system to pre-qualify accredited and sophisticated investors to whom Regulation D offering materials for offerings posted after the pre-qualification would later be made accessible would not constitute general solicitation or general advertising. The staff also stated that indications of interest to be accepted by an electronic coupon meet the requirements applicable to paper cards or coupons.

**Real Goods Trading Corporation** (June 24, 1996). The staff stated that it would not recommend enforcement action to the Commission if Real Goods, without registering as a broker-dealer, an exchange or an investment adviser, operated an Internet bulletin board on which interested buyers and sellers could post indications of interest in Real Goods' securities. The staff required, among other things, that Real Goods have no involvement in any transactions other than the posting of interested buyers, sellers and quotes.

**Munder Capital Management** (May 17, 1996). The staff stated that it would not recommend enforcement action to the Commission with respect to a registered investment adviser that made portfolio information about its mutual funds available on the Internet.

**Spring Street Brewing Company** (Mar. 22, 1996). The staff suggested certain modifications to an electronic bulletin board on the Internet to enable the bulletin board to comply with the federal securities laws and reduce the possibility of market manipulation.

**Oppenheimer Management Corporation** (Aug. 28, 1995). The staff stated that it would not recommend enforcement action to the Commission if the Oppenheimer investment advisers and investment companies were to maintain and preserve required records on optical disk or comparable imaging technology that may be developed in the future.

## **B. CFTC**

### *DOMESTIC INTERNET-BASED ELECTRONIC SYSTEMS*

#### **OnExchange Board of Trade.**

The CFTC announced on Friday, December 22, 2000, that it approved the application of onExchange Board of Trade, Inc. (ONXBOT) for designation as an Internet based, automated contract market. The Commission also approved the application of onExchange Clearing Corporation, Inc. (ONXCC) for registration as a derivatives clearing

organization; ONXCC will provide all clearing and settlement services to ONXBOT. ONXBOT and ONXCC are subsidiaries of onExchange, Inc. of Waltham, Massachusetts and will operate as for-profit entities. ONXBOT plans initially to trade Five Year U.S. Treasury Note futures contracts.

The National Futures Association (NFA) will perform self-regulatory functions on behalf of ONXBOT, including financial surveillance and investigating and prosecuting trade practice violations. NFA also will assist ONXBOT in conducting market surveillance. ONXBOT is the first contract market, and ONXCC is the first derivatives clearing organization, to be approved by the Commission under the Commodity Exchange Act, as it was amended by the Commodity Futures Modernization Act of 2000 (CFMA). The CFMA was signed into law on December 21, 2000.

ONXBOT trading will be conducted only by Subscribers, who must qualify as Eligible Swap Participants under Part 35 of the Commission's Regulations, or their Authorized Traders. All ONXBOT Subscribers will automatically become ONXCC members and will clear their own trades. ONXBOT's trading system, onTrade, will anonymously match orders based on a price and time priority trade-matching algorithm similar to those employed by other electronic trading systems at various existing futures exchanges.

### **Excluded Principal-to-Principal Electronic Trading Facilities**

Section 104 of the Commodity Futures Modernization Act (signed into law in December 2000) -- adds a new section 2(e) to the Commodity Exchange Act (CEA) to provide that the CEA does not apply to an electronic trading facility that limits transactions to (1) transactions in excluded commodities (which includes equities) if the transaction is entered into on a principal-to-principal basis between eligible contract participants; (2) swap transactions, unless on an agricultural commodity; or (3) transactions in exempt commodities if the transaction is entered into on a principal-to-principal basis between eligible commercial entities. Such transactions, however, are subject to antifraud provisions of general applicability.

Prior to this legislation the Commission staff had issued a series of "no-action" letters that permitted the operation in the United States of principal-to-principal electronic trading platforms that permitted access by the Internet or dedicated communication lines. The systems were available only to approved participants and authorized brokers entering orders on their behalf. See, e.g., <http://www.cftc.gov/tm/letters/00letters/00-108.htm>

(December 4, 2000); <http://www.cftc.gov/tm/letters/00letters/00-80.htm>  
(June 30, 2000); <http://www.cftc.gov/tm/letters/00letters/00-64.htm>  
(May 8, 2000).

### **FutureCom. – First CFTC-designated Internet-based exchange**

The Commodity Futures Trading Commission issued orders on Monday, March 13, 2000, approving FutureCom, LTD., ("FutureCom") as a contract market in cash-settled live cattle futures and option contracts. FutureCom is a new commodity futures exchange and is the first Internet-based exchange approved by the Commission. FutureCom is owned by the group of partnerships that own Texas Beef Group in Amarillo, Texas and is organized as a for-profit limited partnership.

Every member of FutureCom will also be its own clearing member and initial margin to support any position must be on deposit with the exchange before an order will be accepted by the trading system for execution. Each member's margin level and position limits will be tied to its net worth and income-based membership level and overall creditworthiness. Trading and clearing will be automated and electronically integrated. Although FutureCom members may authorize other members to place orders in the system on their behalf, each member will handle its own funds and no financial intermediaries will be involved in connection with trading on FutureCom. FutureCom has established its own clearinghouse with FutureCom's clearing bank to perform the clearing operations. The Commission also approved the operation of the FutureCom clearing house.

Although the public could access the general FutureCom website, no person could access the FutureCom trading system other than a member or person authorized by the member and approved by FutureCom to enter orders on the member's behalf. The system would accept limit, market, stop, and market-if-touched orders. There would be no separate market for spread orders. Rather, the legs of spread orders would be matched separately and simultaneously against straight buy and sell orders for the appropriate contracts. Once an order is entered, the system would re-display the details of the order to the party who entered the order and request that the originator affirmatively confirm that all of the order information was correct and should be made final. Final orders would be entered into the system and would be eligible for matching on a strict price and time priority basis. Members would be bound by the order once executed.

All communications between FutureCom and its members, including confirmations of all executed transactions for the member's account,

margin calls and all other information regarding the member's account, would be transmitted by electronic mail.

The Commission has specified certain conditions FutureCom must fulfill before trading begins. They include additional independent third-party testing of the trading system. FutureCom will also be subject to certain ongoing conditions after operations begin. These include the maintenance of a segregated credit facility to support the clearing system financially, and ongoing refinement and development of its trade practice surveillance program. The National Futures Association will perform financial and record keeping surveillance over those FutureCom members that are Commission registrants.

See <http://www.cftc.gov/tm/futurecomtm.htm>

## REGULATION

### **Electronic Signatures.**

In August, 1999, the CFTC proposed rules to permit futures commission merchants (FCMs), introducing brokers (IBs), commodity pool operators (CPOs) and commodity trading advisors (CTAs) to accept electronic signatures in lieu of handwritten signatures where the rules currently require these registrants to obtain a document signed by a customer, client or pool participant. 64 Fed. Reg. 47151 (August 30, 1999). See <http://www.cftc.gov/foia/fedreg99/990830a.htm>.

In March 2000, the CFTC adopted new Rule 1.4 to permit the use of electronic signatures *in lieu* of handwritten signatures in those instances in which CFTC regulations require the signature of a customer of an FCM or IB, a participant in a commodity pool or a client of a CTA. Accompanying Rule 1.3(tt) adds to the CFTC's regulations a definition of "electronic signature" that parallels the definition in the Uniform Electronic Transactions Act recently approved and recommended for adoption in all the States by the National Conference of Commissioners of Uniform State Laws. Under the new rules, registrants may accept electronic signatures for such purposes as acknowledgment of receipt of required disclosures and authorization to effect transactions without specific advance notice, among other things. Registrants are required to employ reasonable safeguards and to comply with applicable Federal law and CFTC regulations. Registrants remain obligated diligently to supervise the handling of commodity interest accounts.

See <http://www.cftc.gov/opa/press00/4372-00.htm>

### **Record keeping.**

The CFTC is adopting amendments to the record keeping obligations established in Regulation 1.31. Specifically, the amendments will allow record keepers to store most categories of required records on either micrographic or electronic storage media for the full five-year maintenance period, thereby harmonizing procedures for those firms regulated by both the Commission and the Securities and Exchange Commission. Record keepers will have the flexibility necessary to maximize the cost reduction and time savings available from improved storage technology while continuing to provide Commission auditors and investigators with timely access to a reliable system of records. <http://www.cftc.gov/opa/press99/4266-99-attch.htm>

### **CFTC Technology Advisory Committee.**

The CFTC's Technology Advisory Committee (TAC) held its first meeting on Tuesday, April 25, 2000. The TAC was created by the Commission for the purpose of obtaining input on emerging technologies, the impact of technology on financial services and commodity markets, and the appropriate legislative or regulatory response to increasing use of technology in the markets. The membership of the TAC consists of 28 individuals representing electronic markets, electronic communication systems, U.S. futures exchanges, a self-regulatory organization, financial intermediaries, market users and traders. The agenda for the April 25, 2000, meeting included a discussion of the following topics:

Oversight of electronic order routing and execution systems;  
Common Trading Platforms and Common Clearing;  
Cutting-edge trends in the financial services industry.

See <http://www.cftc.gov/opa/press00/4396-00.htm>. Commissioner Thomas J. Erickson was appointed the next Chairman of the TAC in February 2001. Former CFTC Chairman William Rainer and Acting Chairman James E. Newsome previously served as the TAC's Chairman and Vice-Chairman.

### **Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors for Delivery of Disclosure Documents and Other Materials**

62 Fed. Reg. 39104 (July 22, 1997) (final interpretation; final rules)  
<http://www.cftc.gov/foia/fedreg97/970722A.HTM>

The Commission published its views on issues relating to: (1) the electronic delivery of Disclosure Documents and modifications of Disclosure Documents by commodity pool operators (CPOs) and

commodity trading advisors (CTAs); (2) the distribution of monthly or quarterly statements by CPOs; and (3) the delivery of "term sheets" by CPOs (solely to "accredited investors"). The Commission also discussed record keeping requirements in the context of electronic media and adopted technical amendments to its rules governing the form of documents distributed by CPOs and CTAs and the requirement that CPOs and CTAs obtain signed acknowledgments when Disclosure Documents are delivered.

**CFTC Letter No. 97-63 (July 15, 1997) (interpretative letter)**

Commission staff determined that a news wire service that wished to provide a listing of daily estimated rates of return and information on the net asset values of publicly offered commodity pools would be excluded from the definition of "commodity trading advisor" (CTA) in Section 1a(5) of the Commodity Exchange Act and therefore would not be subject to Commission registration requirements applicable to CTAs. The listing would be accessible free of charge on the Internet to members of the public. The news service represented that it would offer the listing in a manner that was solely incidental to its general financial reporting services. The information contained in the listing would be calculated by the pools' commodity pool operators (CPOs), any calculations would be done in a manner consistent with Commission rules, and only data from pools operated by registered CPOs would be used. The news service would not charge listed CPOs a fee for such listing. The news service also affirmed that it would print certain disclaimers in connection with the listing, including statements that the information contained therein may be estimated and was not independently verified. Commission staff emphasized that the CPOs remained subject to all applicable regulations and could be subject to enforcement action if they submitted false or misleading information to the news service.

**Alternative Method of Compliance with Requirements for Delivery and Retention of Monthly, Confirmation and Purchase-and-Sale Statements**

62 Fed. Reg. 31507 (June 10, 1997) (advisory)

The Commission issued guidance concerning the delivery and retention of certain statements by futures commission merchants.

<http://www.cftc.gov/foia/fedreg97/970610A.HTM>

62 Fed. Reg. 34165 (June 17, 1997) (correction)

<http://www.cftc.gov/foia/fedreg97/970617A.HTM>

62 Fed. Reg. 34165 (June 25, 1997) (correction)

<http://www.cftc.gov/foia/fedreg97/970625A.HTM>

**Electronic Filing of Disclosure Documents with the Commission  
62 Fed. Reg. 18265 (April 15, 1997) (final rule)**

The Commission adopted an optional permanent program for the electronic filing of commodity pool operator and commodity trading advisor Disclosure Documents with the Commission. The Commission also adopted certain technical amendments to codify the permanent electronic filing program.

<http://www.cftc.gov/foia/fedreg97/970415A.HTM>

**Financial Reports of Futures Commission Merchants, Introducing Brokers and Leverage Transaction Merchants  
62 Fed. Reg. 10441 (March 7, 1997) (final rules)**

<http://www.cftc.gov/foia/fedreg97/970307C.HTM>

**Selected Financial Data for Futures Commission Merchants**

The Commission permitted the electronic filing of certain financial reports by futures commission merchants (FCMs), introducing brokers and leverage transaction merchants, using a personal identification number to make the requisite oath or affirmation attesting that, to the best knowledge and belief of the individual making such oath or affirmation, the information contained in the financial report is true and correct. The Commission has instituted a pilot program to allow FCMs to file these reports electronically, using software initially developed by two futures exchanges. The Commission publishes selected data from the reports in April and October of each year, using data from the most recent financial report received just before publication. This summary is available on the Commission's Internet Website in both html and excel spreadsheet formats for viewing or downloading.

<http://www.cftc.gov/tm/fcm-9703.htm>

**CFTC Letter No. 97-10 (February 27, 1997) (exemptive letter)**

Commission staff stated that it would exempt the commodity pool operators (CPOs) of certain publicly offered commodity pools from the requirement that they deliver a copy of the pool's most recent Annual Report at the same time as the Disclosure Document is delivered to a prospective participant. In lieu of delivering the Annual Report with the Disclosure Document, the CPOs would make the Annual Report available upon request prior to sale and such information would be readily accessible as an exhibit to the Form 10-K posted on the Internet Website of the Securities and Exchange Commission through its EDGAR system. The relief was conditioned upon: (1) inclusion in the monthly Account Statement delivered within the Disclosure Document of any material information required to be contained in the



Annual Report; (2) disclosed availability of net asset value per unit as of the close of the previous business day from the CPO or broker; (3) availability of a paper copy of the most recent Annual Report upon request; (4) delivery of the most recent Annual Report within 21 days of a participant's purchase of units; and (5) right to redeem at least as frequently as monthly.

**CFTC Letter No. 93-66 (June 18, 1993) (no-action letter)**

Commission staff issued a no-action position in connection with the operation of a non-profit electronic market by university faculty for academic research and experimental purposes. The market was composed of three submarkets, known as the "Political Market," the "Earnings Market" and the "Economic Indicator Market," which each permitted trading in various contracts primarily by students, faculty and staff at participating universities who either had local access from personal computers or terminals on university networks or remote access via the Internet and telephone dial-up lines. Commission staff stated that it would not recommend that the Commission take any enforcement action in connection with the operation of the Political Market or the Economic Indicator Market based solely upon their operators not seeking designation as contract markets, not registering under the Commodity Exchange Act (Act) or otherwise complying with the Act or Commission regulations. This relief was subject to, among other things, the operators independently confirming whether or not participation by persons or institutions was permitted by state law. As it appeared that the Earnings Market contracts could be viewed as in the nature of options on securities, which could be subject to the jurisdiction of the Securities and Exchange Commission (SEC), staff forwarded information regarding the market to the SEC.

Information is available upon request from the CFTC's Reading Room, located in Room 4072 at the Commission's principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. The telephone number is (202) 418-5025. Copies may be made at 15 cents per page.

**C. SRO STATEMENTS, RULES AND GUIDANCE**

*National Association of Securities Dealers, Inc. (NASD),  
[www.nasd.com](http://www.nasd.com).*

The National Association of Securities Dealers ("NASD") is a self-regulatory organization for broker-dealers in the United States.

**NASDR Online Suitability Policy Statement.** NASDR recently issued a policy statement on online suitability. See Notice to Members 01-23 (2001), Securities Exchange Act Release No. 44178 (April 12, 2001), 66 Fed. Reg. 20697 (April 24, 2001).

The policy statement provides guidelines to assist NASD members in determining whether a particular communication could be viewed as a “recommendation,” and therefore trigger the application of NASD’s Rule 2310 (the “Suitability Rule”). The Suitability Rule requires members recommending that a customer purchase, sell or exchange a security to have reasonable ground for believing that the recommendation is suitable for the customer on the basis of the facts, if any, disclosed by the customer as to her other security holdings and her financial situation and needs.

The policy statement provides that the Suitability Rule applies to all recommendations made by members to customers, including those made by electronic means, but it acknowledges that the question of whether a recommendation has occurred depends on the relevant facts and circumstances. The Notice to Members also provides examples of communications the NASDR believes are recommendations, and are not recommendations. Certain order-taking actions, provision of search tools, provision of research libraries, and provision of e-mail alert services subscribed to by the customer are identified as generally not being recommendations. On the other hand, sending targeted emails or pop-up screens recommending purchase of a particular security would likely be a recommendation. In addition, sending an email recommending a sector and stocks within that section would likely be a recommendation, as would providing a research tool that accepted information from the customer and based on that information provided a list of securities. Finally, the NASDR indicated that the use of data-mining technology, whether known by the customer or not, could result in a recommendation.

### **Use of Hyperlinks by Broker-Dealers**

In an interpretive letter to the Investment Company Institute, the NASD provided guidance on the application of NASD rules to third-party material that is hyperlinked from a member’s Web site. See Letter re: *Investment Company Institute* (Nov. 11, 1997).

The letter stated that if a member’s Web site contains an ongoing hyperlink to an independent third party’s Web site, the NASD would not hold the member responsible for the content or filing of information on the third party’s site. The member may not, however, establish a hyperlink to a site that the member knows or has reason to know

contains false or misleading information about the member's products or services. The letter also stated that if a member's Web site contains a hyperlink to information on a Web site that is intended for use by the public for general reference and education purposes, and the information does not refer to the member, the member should not be responsible for the content of the linked site. Finally, the letter stated that if a member's Web site contains a hyperlink to the home page of a third party's Web site and does not fall into one of the above two categories, then the NASD would hold the member responsible for the content of the linked site.

The Commission has not yet provided guidance on this issue, except to remind broker-dealers that suitability issues could be raised to the extent that a broker-dealer provides investors with research and analysis amounting to recommendations of individual securities through its computer brokerage system or accompanying databases. See Letter re: *Charles Schwab & Co., Inc.*, n.4 (July 17, 1997).

**Policy Statement regarding Online Suitability.** Notice to Members 01-23 (available online through the "books on screen" service at [www.nasdr.com](http://www.nasdr.com)).

In April 2001, NASD Regulation, Inc. (NASDR) issued a policy statement to provide members with guidance concerning their obligations under the NASD general suitability rule concerning electronic communications (Rule 2310). Specifically, the statement provides guidelines regarding whether a particular communications could be viewed as a "recommendation," thereby triggering application of the suitability rule.

**Rules Regarding Electronic Advertisements,** NASD Notice to Members 99-79, [www.nasd.com](http://www.nasd.com).

In September 1999, the NASD solicited comment on a number of proposed amendments designed to modernize, simplify, and clarify its rules governing communications with the public. One of the most significant amendments would exempt group e-mail communications to existing retail customers and fewer than 25 prospective retail customers from the pre-use approval and filing requirements of NASD requirements. (See NASD Rule 2210(b)). The term "existing retail customer" would be defined as any person, other than an institutional investor, who has opened an account with a member, and the term "prospective retail customer" would be defined as any person, other than an institutional investor, who has not opened an account with a member. These group e-mails would, however, still be subject to

NASD's supervisory, content and record keeping requirements. (See NASD Rules 3010(d), 2210).

**Report of NASDR, *Public Policy Sessions Concerning the Advertisement of Online Brokerage*** (Sept. 21, 1999), [www.nasdr.com/3810\\_sessions.htm](http://www.nasdr.com/3810_sessions.htm).

NASD Regulation (NASDR) also released a report describing the topics discussed in a series of public policy sessions on advertisement of online brokerage, held at the request of Former SEC Chairman Arthur Levitt. In the report, the NASD stated that it intends to oversee and investigate possible violations of its advertising rules more aggressively, launch an educational campaign to inform investors about the risks and rewards of online investing, and maintain a dialogue with its members on the public policy implications of advertisements for online brokerage.

**Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No.1 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Supervision and Record Retention Rules;** Exchange Act Release No. 39510; 62 Fed. Reg. 24147 (December 31, 1997), [http://www.nasdr.com/pdf-text/approval\\_9724.txt](http://www.nasdr.com/pdf-text/approval_9724.txt).

The SEC approved amendments to the NASD's rules to broaden the definitions of advertisement and sales literature to address the increasing use of electronic media. The NASD rules also encourage issuers to consider technological methods to communicate interim earnings reports in a timely and less costly manner to both registered and beneficial shareholders.

**NASD Internet Guide for Registered Representatives**  
<http://www.nasdr.com/4040.htm>

**NASD Notice to Members 96-50** (July 1996)  
<http://www.nasdr.com/2611/26119650.htm>

**NASD Notice of Members 96-82** (Dec. 1996)  
<http://www.nasdr.com/pdf-text/9682.ntm.txt>  
or

<http://www.nasdr.com/pdf-text/9682.ntm.pdf>  
(Adobe Acrobat is required to read this document.)

**NASD Notice to Members 95-74, and NASD Notice to Members 95-80;** Exchange Act Release No. 36076 (Aug. 9, 1995), 60 Fed. Reg.

4220 (Aug. 15, 1995). [Notices published prior to 1996 are not currently available electronically, but may be in print version by calling the NASD's MediaSource at (301) 590-6142]

**NASD Rule 2210 (Communications with the Public)**

[http://www.nasdr.com/conrule\\_2210.htm](http://www.nasdr.com/conrule_2210.htm)

**NASD Rule 2310 (Recommendations to Customers [Suitability])**

[http://www.nasdr.com/conrule\\_2310.htm](http://www.nasdr.com/conrule_2310.htm)

**NASD Rule 3010 (Supervision)**

[http://www.nasdr.com/conrule\\_3010.htm](http://www.nasdr.com/conrule_3010.htm)

**NASD Rule 3110 (Books and Records)**

[http://www.nasdr.com/conrule\\_3110.htm](http://www.nasdr.com/conrule_3110.htm)

The NASD's rules were amended to require a registered principal to approve all advertising and sales literature items prior to use or filing with the NASD.

*New York Stock Exchange (NYSE)*

<http://www.nyse.com>

**NYSE Information Memo 98-03, New Rules - Supervision and Review of Communications with the Public (Jan. 14, 1998).**

**NYSE Rule 342 (Offices - Approval, Supervision and Control)**

**NYSE Rule 440 (Books and Records)**

**NYSE Rule 472 (Communications with the Public)**

**D. OTHER LEGISLATIVE DEVELOPMENTS REGARDING  
INTERNET TECHNOLOGY**

**Electronic Signatures.**

On June 16, 2000, Congress adopted the Electronic Signatures in Global And National Commerce Act (the "Electronic Signatures Act" or "E-SIGN") (S.761, effective date October 1, 2000). The law makes electronic signatures legally binding and effectively preempts state laws that do not recognize the digital marks or marks that require the maintenance of written records. Text available at <ftp://ftp.loc.gov/pub/thomas/cp106/hr661.txt>

**REPORT ON  
SECURITIES ACTIVITY ON THE INTERNET II**

**ANNEX II**

**NEW DEVELOPMENTS**

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## **1. ARGENTINA**

### **A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report**

The use of the Internet, although increasing over time, is in an early stage in Argentina. Out of a population of 37 million, 2 million, or approximately 5.41%, have access to Internet facilities.

The Asociación Argentina de Bancos (Argentine Banking Association or “ABA”) has not published data on the percentage of people having bank accounts who make use of e-banking services. It is important to note that only 10% of the population in Argentina has current accounts, signifying that the depth of the banking system is still low.

### **DERIVATIVES**

There are two futures exchanges in Argentina: Mercado a Término de Buenos Aires S.A. (MAT) and Mercado a Término de Rosario S.A. (ROFEX). Both trade futures and options on futures on agricultural products. MAT trades wheat, corn, sunflower and soybean futures and options. (Unit contract for each contract is 100 tons.). ROFEX trades wheat, corn, sunflower, Rosafe Soybean Index and Meat Index futures and options. (Unit contract for Sunflower and Rosafe Soybean Index is 25 tons. Unit Contract for Wheat and Corn is 50 tons. Unit contract for Meat Index is 5 tons.) Both have electronic trading systems in place. In ROFEX, 99% of the total volume is traded through “e-ROFEX” (the electronic trading system). At least, 35% of these transactions are traded through the Internet. ROFEX provides brokers and customers with “e-ROFEX” software. Currently there are three ways for accessing “e-ROFEX”, through: (1) private local network; (2) direct line; or (3) the Internet. In all cases, brokers (and customers) must have in place the adequate software provided by ROFEX. In MAT, electronic trading transactions represent only 1% of the total trading volume.

Only ROFEX provides brokers remote direct access via its electronic trading system that may be connected through the Internet. Both MAT and ROFEX have institutional web sites. Among other information, both exchanges disseminate the following information through their Internet Web Sites:

- Institutional information (e.g., general exchange data, rules and regulations, bylaws and internal regulations);



- Contract Specifications (e.g., terms and conditions of futures and options on futures contracts);
- Broker information (e.g., a list of registered brokers, general broker data, brokers' web sites and email address);
- Online trading data (e.g., real time price quotes); and
- A list of related website links.

During the last years, there has been a pronounced increase in the percentage of Internet services offered by traditional intermediaries. There are 30 registered brokers at MAT and ROFEX that have Internet websites.

Recent years has also seen the emergence of special Internet websites which act exclusively on the Internet offering, among other things, trading information regarding MAT and ROFEX. They also offer chat rooms.

## **B. New developments with regard to the use of Internet by regulators**

All the authorized stock and commodities markets have their own Web pages as well as most listed companies where relevant data can be found (including financial statements).

The Secretary of Finance of the Ministry of Economy last year established the web site (<http://www.ahorr.ar>) where all information about public debt issues can be found. Also, at this website investors are able to make inquiries, obtain rates of return of the different bonds either by maturity or currency of issuance.

The Comision Nacional de Valores (CNV) has its own home page (<http://www.cnv.gov.ar>) where various types of information can be found both in Spanish and English, as well as relevant statistical data. Information is provided about the following:

- The CNV's regulatory framework;
- Filings of public companies (e.g., financial statements and other relevant data and information);
- Ratings of various types of securities issued by Ratings Agencies authorized by the CNV (stocks, debt securities, mutual funds, CEDEARs (Argentine ADRs));
- A guide to investors (FAQ, important concepts before investing in the capital markets, etc).;
- A guide to investors who make use of the Internet; and
- Complaint filing (*i.e.*, requests for investigations can be made).

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Annex II – New Developments  
Argentina (continued)

The contents can be downloaded.

Moreover, at the end of 1999 the CNV approved a Regulation on Short Term Debt Securities which, among other requirements, states that the required prospectus to be sent to the CNV will be post on the CNV home page, (General Resolution # 344, as amended by General Resolution # 366 on March 6, 2001).

Further uses of the facilities that the Internet provides are under development, (i.e. holdings by major shareholders, mutual fund assets compositions, CEDEAR prospectuses).

## 2. AUSTRALIA

### A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report

The use of the Internet by the Australian securities industry has strengthened significantly since the 1998 IOSCO Technical Committee Internet Task Force Report. Australian users are Internet savvy and are increasingly demanding of online financial products. In response, the local industry has rapidly moved into the online space to continue to capture this growing market.

In February 2001, the Australian Bureau of Statistics<sup>1</sup> released figures indicating that over half (56%) of all Australians had a home computer and that over a third (37%) were web-enabled. The Cap-Gemini Ernst & Young<sup>2</sup> report on the use of e-commerce within the global financial services industry (released October 2000) indicates that approximately 3% of financial transactions in 1999 were processed over the Internet, with a projected increase to 10% by 2001 and 20% by 2003. Growth in the online trading of securities has been dramatic. In January 1999 only 1.5% of all trades on the Australian Stock Exchange (ASX) were online; by June this figure had grown to 7%. In March 2000 it was estimated that 12% of the average daily trading volume conducted on the ASX was conducted online; with this being estimated at 20% in August 2000.<sup>3</sup>

The use of the Internet by the Australian securities industry is well developed. ASIC's survey of online trading websites (released in August 2000), noted that there were 29 websites offering trading services. While most of these sites are execution only, online providers now offer tools to service investors' research, analysis and advice needs as well as providing charts, alerts, profiling, personal portals, multi-currency portfolio tools and voice-recognition facilities. Indeed, since 1998, the market itself is now more sophisticated with the adoption of increased transaction capability, order routing services and straight-through-processing.

Major global online brokerages, such as Charles Schwab, E\*Trade and TD Waterhouse have a local presence in the Australian online broking market. From this vantage point these providers are paying increasing attention to the Asian region. Typically, their strategy appears to be to form partnerships with major domestic players, using these as

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<sup>1</sup> ABS survey, *Use of the Internet by Householders, Australia, November 2000* (Cat. No. 8147.0), released February 2001.

<sup>2</sup> Cap Gemini Ernst & Young, *Electronic Commerce – A Need to Change Perspective: 2000 Special Report on the Financial Services Industry*, October 2000

<sup>3</sup> ASIC Survey of online trading websites, August 2000; [www.asic.gov.au](http://www.asic.gov.au)

springboards to expand into other markets in the region. Australia is a beneficiary of this model, for example, Charles Schwab has teamed up with Australian Internet services company eCorp, taking a 50 percent stake in eCorp's online brokerage arm ShareTrade.

Other online services available in the online marketplace include, simulated trading, chatroom analysis, real-time prices, charts and financial news. The globalisation of markets, through cross-border activity, is allowing investors to trade when and where they want and the advent of m-commerce (mobile commerce) allows for the further penetration of time convenient online trading.

Many listed companies are also now using the Internet for enhanced investor information and disclosure. Webcasting of company results and annual meetings are on the uptake. Electronic product offerings and applications are now in common use.

## **B. New developments with regard to the use of the Internet by regulators**

As the Australian regulator of securities, futures markets and financial services, ASIC wants to ensure consumer confidence, commercial certainty, and market integrity irrespective of the trading medium companies and people use. As such, ASIC aims to keep abreast of new developments and directions and will continue to enhance its role as a provider, facilitator and regulator of e-commerce. ASIC wants business and consumers to benefit from the efficiencies, cost savings and choices that e-commerce offers while ensuring appropriate protections are in place.

### ASIC eBusiness Services

ASIC's commitment to develop online services continues to evolve. The ASIC Online Action Plan, detailing our online service delivery strategy, is available on our website (<http://www.asic.gov.au/>).

Users can search the ASIC public database for basic company details using the National Names Index service. Searches can include:  
professional registers, including liquidators, auditors, brokers and advisors  
authorised representatives of securities and futures dealers  
banned securities representatives and banned futures representatives  
ASIC disqualified directors.

In line with the new “public exposure” rules for fundraising disclosure documents (an opportunity to study and comment on offer documents

before applications for subscriptions can be accepted) the ASIC OFFER/ist service enables issuers to lodge their details online with ASIC and these details can then be viewed free online by interested parties.

ASIC provides a Company Alert via its website where users can obtain information about any company automatically via email when the company registers a change on the ASIC database.

Lodging agents, such as accountants, use ASIC's EDGE electronic lodgement service to lodge annual returns and make changes to company data. Electronic Company Registration (ECR) provides a facility for conducting all processes involved with registering an Australian company online. ECR uses smartcards and public key infrastructure (PKI) to generate and authenticate digital signatures, and includes access to an electronic payment facility. ASIC's eREGISTERS service allows our clients to view their company details and make changes to them, lodge annual return data, and make electronic payments.

ASIC's online Enforceable Undertakings Register provides a list and a copy of all undertakings given to and accepted by ASIC that are enforceable in a court. Generally we accept them as an alternative to civil or administrative action.

### ASIC eConsumer Protection

ASIC's Millennium Bug Insurance "cyber-scam" educated consumers about what to look out for when investing on the Internet. ASIC set up a simulated investment website to highlight the willingness of people to invest in companies that they know nothing about. More than 1400 people requested further information about the investment scheme and some 233 people pledged \$4 million to the bogus scheme.

ASIC released FIDO (financial information delivered online – <http://www.fido.asic.gov.au/>) a consumer focused website that offers consumers and investors information specially written and designed for Internet use. Its features include:

Consumer Alerts – topics include: risks associated with online share trading, investment offers on the Internet, free share offers, investment advice on the Internet and spam related scams and trading offences, investment advice from bulletin boards, chatrooms and online investment newsletters

Internet Safety Checks – highlighting basic checks consumers can make before investing in Internet-based schemes

Gull Awards – featuring precautionary tales of money and deceit that alert consumers to investment scams and how to avoid them

Electronic Bulletin – the e-bulletin updates readers to ASIC's alerts on investing, superannuation, and insurance as well as providing information on how to avoid the latest financial scams

ASIC's Financial Information Directory is an online facility that provides information about more than 300 Australian websites, pamphlets, brochures, kits and other resources about financial products and services. These resources are designed to help consumers make better financial decisions.

### **ASIC eEnforcement**

ASIC's specialised Electronic Enforcement Unit (EEU) has developed the WebHound system; this tool automatically searches the Internet for web pages that appear to be an investment or fundraising scam.

The EEU have also developed a series of internal guidelines for dealing with ISPs, evidence handling, and standard operating procedures for dealing with electronic enforcement matters.

ASIC was also involved in the IOSCO International Internet Sweep Day. ASIC joined an international team of over 20 securities regulators from 18 countries in a globally co-ordinated Internet surf day to identify securities and futures fraud on the Internet. 220 participants visited nearly 10,000 sites, totalling 1,000 hours of global participation. More than 1,000 sites were identified for review, including over 250 sites involving cross-border activity.

### 3. BRAZIL

#### A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report

##### **Increase of stock market transactions in Brazil through the Internet – The Home Broker Experience**

The *Home Broker* service was launched in 1999 by the São Paulo Stock Exchange (Bovespa). This service consists of a straight and direct connection between the electronic trading floor system (named Megabolsa) and receiving orders through the Internet system.

For the first time in the history of the Brazilian capital markets, investors could send direct orders from their homes, through their personal computers, orders to the stock exchange trading floor without the direct participation of an individual (stockbroker). The only pre-requirement to transact in this system is to have an account at one of the online brokerage houses.

Parallel to the launching of *Home Broker*, CVM started an intensive study of online brokers. Our main goal was to guarantee that this new kind of transaction conforms to all the regulations in force, and to ensure a better understanding of technical and regulatory consequences. Our analysts visited most of brokers that already worked receiving orders through the Internet and all information gathered was registered in a first report launched on March 1999. After that, a database was exclusively developed for online brokers, containing statistical and technical data obtained through direct mail.

CVM made a new survey in late 2000, and the comparison of both studies presents a picture of the evolution of the system. The first observation is that on the second survey, the amount of brokers connected to *Home Broker* doubled.

The second survey encompassed seventeen questionnaires answered, and enabled the CVM to better understand the scope of Internet transactions in Brazil.

##### **Researched Brokers**

The direct connection to Megabolsa through *Home Broker* made possible the increase in the number of brokers. Before *Home Broker* was installed, in March 1999, only four brokers traded through the

Internet. During 1999, since *Home Broker* inauguration, eleven brokers started to receive orders from their clients through the Internet. In 2000, at least two other brokers also started to work online.

### **The broker's Home Broker system development**

Most of the brokers outsourced the development of their *Home Broker's* system. Only two of them reported having developed internally this system. All others hired the services of software development companies. It is important to stress that fifteen out of seventeen brokers choose eight specific software development companies.

### **Security system aspects**

Eight out of seventeen brokers keep their Internet systems in their own servers (local). Nine others keep their systems, or part of it, in external servers (usually with the company that developed the system or the Internet access server). This security system aspect should be the object of a deeper concern of CVM as these development companies and Internet access servers might have access to classified data of capital market transactions. Only two brokers admitted not using firewall, which isolates the broker's internal net from external access through Internet and is considered a basic security item of corporate networks

### **Internet transactions aspect**

The main business of electronic brokers is still the intermediation at the stock market; all brokers receive this kind of order except two of them. However, the access to derivatives is still limited. Only two brokers receive orders for stock options trading, and one of these also receives orders for forward trading, although apparently it is the only one who offers this kind of contracts through the Internet. However, regarding mutual funds quota offerings, most of the brokers sell these products on their websites.

The greatest revolution brought by Internet broker is the reduction of the minimum trading order. The direct access to the Brazilian stock market was historically difficult for retail investors and the minimum trading order was high. A drastic change is noticed with the Internet. From all online brokers, only one has set a minimum trading value. This means that our electronic brokers use the same strategies of e-business around the world: fast development of a large client base, even trading below the breakeven point at first, and consolidation of this client base through fidelity initiatives (sales, progressive discounts,



differentiated products, individualized e-mail service, etc). Now an Internet business is a matter of market share, not profit.

On the other hand, the most obvious competition tool, brokerage service price, is the least used. Eight out of seventeen brokers keep their brokerage costs attached to their traditional price list. [We believe that CVM should stimulate the competition between these brokers.] Another sign that the "price war" has not started yet is the fact that six brokers use the same price for Internet clients and traditional clients, even though the cost of an Internet transaction is much cheaper. Only nine brokers internally divide the order flows of Internet clients from other clients, another sign that Internet is still not a specific business strategy.

Although our brokers are still developing e-business strategies and price policies for the Internet, they have the state of art in technology. All but one, offer real time quotations and almost all of them (except two) offer updated custody data without back-office interference.

### **Operational Statistics**

There are approximately five thousand clients regularly trading through the Internet in Brazil. A broker's average number of regular clients is 335, but in actuality most of these clients are concentrated in the six largest brokers. Most of the electronic brokers are still beginning to "win" clients.

In average, a quarter of the electronic broker's clients reside outside the Rio-São Paulo corridor. This is a very interesting data, as regular clients are much more concentrated in this corridor.

The volume of Internet trading does not vary much among brokers. The average number of daily transactions per regular client ranges between 0.3 and 1.2. From this data, we can conclude that a typical Brazilian investor makes one transaction each 72 hours, at most. This statistic can show that there is in Brazil, like in the U.S., a large percentage of potential day traders among online investors. This is economically interesting for brokers, to raise the access volume.

Although the average daily transaction volume is large, the average monetary values per regular client and per transaction are relatively small. On average, at brokers, the amount per client is US\$ 1,030; the amount per transaction is US\$ 1,560. These statistics show the modal characteristics of Internet transactions: high frequency (up to 72 hours between two transactions, average) and low volume (around US\$ 750 to US\$ 1,500).

## **Conclusion**

A year since *Home Broker* was first started, the amount of brokers doubled. The increase of brokers in the capital market, the number of new accounts and transactions confirms initial optimistic predictions for this market.

These figures are just a sign that of what is going to happen in our capital market, three big financial conglomerates are about to start on line brokerage. Their systems have already been approved by CVM and then, in a few months, when they start their business the capital market overview will radically change.

Currently, *Home Broker* transactions are approximately 6% of the transactions (14% of the odd lot market), However, this 6% represent only 0.8% of the financial amount traded at Bovespa, confirming low value transactions at the Internet. This is a sign that on line brokerage in Brazil is viable and it is just beginning. From our point of view the only thing that might be a threat is a general liquidity retraction in Brazil's capital market, but in this case, on line brokers would be the least affected.

The recent inauguration of *SOMAtreader* is also a trace that shows the importance of Internet as a trading vehicle. It is a new electronic transaction system by SOMA, (the Brazilian Access Market, located in Rio de Janeiro and concentrated in medium sized companies) which has elected the Internet as it main information disclosure system, including quotations.

## **B. New developments with regard to the use of Internet by regulators**

This research suggests two immediate action lines to the CVM. First, regarding the security of the *Home Broker* system, is necessary the creation of an internal working group, in order to study the broker's Internet access server companies and to make a safety procedures risk evaluation.

Second, the creation of actions aiming at enhancing on line brokers competition. We take into account that a virtual transaction is much cheaper, not to mention the initial investment on infrastructure. A simple action that CVM could take, for example, is to publish a price list of on line brokers on its web site.

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Brazil (continued)

Finally, even though CVM is certain that Internet transactions follow CVM's rules on client identification, it has been discussed internally the need for CVM to issue a specific set of rules for Internet transaction, as many other countries already did so.

## **4. CANADA**

### **A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report**

#### **Illustration of increased use of the Internet in all relevant areas:**

A 1998 Ernst & Young Banking and Technology Report estimated that the Internet and PC banking transactions will increase by 292 per cent over the next three years in Canada. Also a 1999 Statistics Canada survey found 42 per cent of Canadian households have at least one regular Internet user and of these, 28 per cent use the Internet for on-line banking services, up from 20 per cent in 1997. The Internet banking channel provides a growing list of credit and investment services, such as securities purchases. Currently there are 11 Canadian dealers that identify themselves as online brokerages including the five big Canadian-owned dealers.

#### **1. Internet Trading**

A TSE study conducted in the spring of 2000 found that 62 per cent of investors have Internet access at home or work and 25 per cent of investors spend more than three hours per week reviewing investment material on-line. Also the same study revealed that 27 per cent of those who had traded in the past year said they had used the Internet to do some of their transactions.

There is strong competition among the on-line dealers. Each dealer tries to offer the best possible services to its clients while adding new features to their products. For instance, one dealer became the first to offer fixed-income products and another focused on online research, especially for mutual funds. The following sets out information regarding online trading activity.

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Canada (continued)

Period of Time	Quarterly Change in Online Trading Activity (%)
April - June 1999	27.08
July - September 1999	- 8.8
October - December 1999	86.48
January - March 2000	135.31

Source: Investors Economics

A study in the October 2000 issue of Canadian Facts, shows that 19 per cent of the people with Internet access research investments or track their portfolios on-line. Of Canadians with discount brokerage accounts, 47 per cent use on-line trading as compared to 24 per cent in 1999. Overall, 4 per cent of Canadians were online investors in 2000<sup>4</sup>.

## 2. Direct/online IPOs

According to a study conducted by the Canadian Business Magazine staff<sup>5</sup>, Canada's 11 online brokers are offering online access to public offerings of new shares. One dealer alone made 89 public offerings available online to its customers in the first eight months of 2000. Another offered eight IPOs for the same eight months.

## 3. Alternative Trading Systems

Canadian Regulators have been moving closer to allowing Alternative Trading Systems ("ATs") with the publication of proposed rules (July, 2000) and the selection of a network provider to connect established markets and the ATs together (December 2000). Currently there are a few ATs operating as members of exchanges, and there is limited access to some foreign ATs.

### Relevant new developments

#### 1. Hyperlinks

Every website on the Internet offers hyperlinks connecting the user directly with other websites containing similar information or other

<sup>4</sup> Canadian Facts, October 2000 issue.

<sup>5</sup> Canadian Business Magazine.

sources of information that the user may use. For instance Canadian exchanges' websites offers links to investment related associations, exchanges, information and services investors may use.

## **2. Intermediaries**

Most intermediaries offering on line services also offer some wireless services, for cell phones.

## **3. Day Trading Firms**

There have been a small number of dealers who have identified their business as day trading firms. These firms require limited relief from suitability in some jurisdictions. In addition the Commission des Valeurs Mobilières du Québec ("CVMQ") has provided special guidelines to deal with issues relating to investor protection. These include disclosure of information (brochures, publicity etc. must mention the highly speculative nature of day trading) and technical courses for systems utilisation. The CVMQ also requires that clients be experienced investors, and that there is a minimum amount that must always be in any client account for trading to be permitted. CVMQ also requires that loans between clients are forbidden and margin requirements must be strictly followed. The registrant may not grant a loan representing more than 50% of the account value.

## **4. Bulletin Boards**

There appears to be increased interest in the operation of bulletin boards to post quotes or indications of interest for the purchase and sale of securities. The operation of such bulletin boards has historically been classified as an act in furtherance of a trade which requires registration in most jurisdictions in Canada. Due to the requirement to register not many have been established at this time.

## **5. Portals for Financial Services**

Securities regulatory authorities in Canada have received inquiries about portals which advertise and/or hyperlink to other financial services including access to services relating to securities transactions. Regulatory treatment would depend upon the actual services that are made available through the portals and how they are made available.

## **B. New developments with regard to the use of Internet by regulators**

### **Websites**

Currently in Canada there are 13 securities regulators, some operating their own websites while others provide information under their provincial or territorial government website<sup>6</sup>. While each website has its own informational structure, they share common elements that include:

- regulator's profile (who is the regulator and what it does, news and events, publications available free or by subscription, how to contact the regulator and frequently asked questions),
- investor education (what investing means, what the investors should read in order to keep themselves informed, types of investments available, tools and aids area on various topics)
- rules and regulation governing the trading of securities in the province (for example, rulemaking, notices, orders, accounting issues, compliance issues and the respective provincial Securities Act and Regulations). All these rules and regulations are accessible and can be downloaded from the websites. Moreover, all new rules, regulations, policies that are under consideration and published for comments in many of the jurisdictions and are posted on the respective regulator website for awareness and easy access.
- enforcement issues (scheduled proceedings, notices of hearings, statements of allegations and other current issues)

Some websites also contain application forms, such as Applications to Register as a Dealer, Adviser or Underwriter. For some securities regulators this section contains multiple searchable databases such as insider trading, cease trading orders or issuers in default. There are also securities regulators that have a dedicated area for filing complaints online.

### **System for Electronic Document Analysis And Retrieval ("SEDAR")**

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<sup>6</sup> For a listing of Canadian regulator's websites, see Annex IIV, Part 4.

SEDAR<sup>7</sup> is the system used for electronically filing documents (prospectuses, financial statements, etc.) relating to public companies (reporting issuers) with the Canadian securities regulatory authorities (commissions and exchanges). The requirement to file documents through SEDAR began on January 1, 1997, and is now mandatory for all domestic reporting issuers in Canada. Foreign reporting issuers may either file through SEDAR or in paper format.

The SEDAR system currently consists of two parts – the SEDAR application (through which documents are filed) and the SEDAR website (through which publicly available documents are available to the public the day after they are filed in the SEDAR application). The SEDAR system enables industry to file securities documents and remit filing fees electronically -- saving time and money. The SEDAR system allows users to gain immediate and intelligent access to public company and mutual fund information in the public domain, and provides an important communications link among issuers, filers and the securities regulatory authorities.

### **SEDI Project**

The SEDI project is currently being developed to enable the filing of insider reports in electronic format using the Internet in order to facilitate the filing and public dissemination of these reports through the web. The scheduled launch is late in 2001. (Currently insider reports cannot be filed online and are only available at the jurisdiction level.)

### **National Registration Database (“NRD”) Project**

The NRD will be a web-based registration system which will permit electronic filing of the registration forms by all registrants, and will be accessible to regulators, registrants and, to a limited extent, the public. The NRD system will support the filing, updating, processing, approving and tracking of registrants in Canada.

The NRD system will reduce the amount of effort for the applicant, jurisdictions and SRO's, since common registration information would be captured and processed once and stored in a single location. It will also reduce the cumulative information technology and business processing effort required by the jurisdictions to carry out the registration of applicants. The scheduled launch is 2002.

### **The Investment Dealers Association of Canada (“IDA”) and Mutual Fund Dealers Association of Canada (“MFDA”)**

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<sup>7</sup> See Annex IIV, Part 4 for the website address.



The main sections of the IDA website are:

- information about the IDA, its role on the Canadian markets, its organization and contact directory;
- investor information, including how to register a complaint against a member;
- industry issues and statistics (it offers information about IDA publications and research on different issues and also gives statistical data), requirements for the membership in the IDA (contains information guide, application forms, frequently asked questions); This section has a membership list that offers information about member firms: name, address, phone numbers and website (where applicable); and
- regulatory updates.

The MFDA is a fairly new organization. They have been recognized as an SRO on February 7, 2001 and their website is still under development.

### **Canadian Exchanges**

The TSE is the market for senior securities in Canada, the Montreal Exchange is responsible for all derivatives trading, and CDNX is now the major market for junior securities. Each exchange has a very extensive website offering information about the exchange's role and responsibilities, rules, by-laws and regulations, listed companies, market news and halted companies, There is also graphics showing how the markets perform. Each exchange has its own market data services which offers, by subscription, statistical and current data about the market such as stock and index prices, the volume and the value traded, short positions etc. However, part of this data is available free of charge on an intra-day basis on the respective exchange public website.

## 5. FRANCE

### A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report

Since the adoption of the 1998 Report, the use of Internet in France has continued to grow at rapid pace, thanks in part to development of free access. At the end of the second quarter of 2000, it was estimated that 8,3 million people had access to the Internet and it was further anticipated that the threshold of 10 million would be reached by the end of 2000.<sup>8</sup>

A survey commissioned by Euronext Paris, conducted by the SOFRES institute in June 2000,<sup>9</sup> on the use of Internet for investment purposes showed that the Internet was used primarily for the following:

Consulting stock prices:	78% of users
Retrieving information on listed companies:	64% of users
Checking personal securities account:	59% of users
Searching for advice (i.e. buy or sell) on specific investments	51% of users
Carrying out of trades electronically	36% of users

*(note: users surveyed could make multiple choices)*

These findings are consistent with other European studies and though percentage rates may vary a little, it is interesting to note that the order of priorities is generally the same across Europe (i.e. the retrieval of information comes far ahead of online trading)

#### Online brokerage

Recent and strong development of online brokerages. Though it started later than in most other European countries, partly because of the pre-existing Minitel offer, online brokerage is now significantly taking off in France. Around thirty French intermediaries now offer a dedicated online brokerage service to retail investors.

During most of 1999 and the first part of 2000, the number of opening of new online accounts grew very significantly (415,000 accounts opened on December 2000) and it is now estimated that 20% to 25% of the orders transmitted to the Paris Bourse are routed by an online broker.<sup>10</sup>

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<sup>8</sup> IDC Consultancy, study of the access to the Internet in France, November 6, 2000, available at <http://www.idc.fr>.

<sup>9</sup> Available at <http://www.bourse-de-paris.fr/centredoc/pdf/valmob2000.pdf> (see page 53)

<sup>10</sup> See French Online Brokers Association, <http://www.brokers-on-line.org>.

The success of online brokers can be explained in part by a very aggressive marketing policy (with a price of order averaging a third of those offered by traditional brokers). A second feature that is valued by investors is the access that these sites allow to a variety of financial data, analyses or investor education resources.

Initiative of the industry to establish a representative body  
In order to represent the specific interests of their firms, a group of online brokers established a professional organization “Brokers on line” in January 2000. The organization regroups around 21 members (as of February 2001).

The organization has four main objectives:

- Promotion of the online brokerage activity
- Representation of the industry with the regulators
- Exchange of information among the members
- Benchmarking (regulation, technologies)

### **Collective investment schemes and the Internet**

The offer of Internet sites concerning CIS has developed significantly in France in the last two years. While some sites were originally simply derived from their earlier Minitel version, a majority of financial institutions has preferred to develop new services from scratch.

Though most of the Internet sites are more for promotion than direct online subscription by new members, a significant number of them now propose services to buy or sell shares to existing members (i.e. investors staying in the same fund but changing their portfolio within it).

### **Internet financial fora and chatrooms**

One of recent issues raised by Internet for the regulators is the development of financial fora. In France, over a dozen of major fora deal with finance, either directly through dedicated sites or indirectly through the major web navigators that often have a dedicated finance area on their French portal.

**Internet fora represent an invaluable source of information for retail investors.** Through the variety of sections that they offer, these fora often constitute a very valuable means of information for retail investors. They generally provide a free access to a wide selection of financial sources with a (quasi) real time information on prices on a selection of markets and securities. Some also provide investors with a

possibility to open a fictitious account thus allowing them to better understand the functioning of the markets by following the evolution of their imaginary portfolio. Some fora also provide a wide range of technical and legal information on the financial markets significantly contributing to investor education.

**However, Internet fora can also be used for market abuses**

The COB has had to fight cases of market manipulation and dissemination long before the advent of the Internet fora and does perceive them as a threat to market integrity. It must be recalled that similar fora (“*messengeries*”) had been operated on the Minitel electronic network in France for almost 15 years.

Nevertheless it is true that due to their audience and the relative ease with which individuals may post anonymous messages Internet fora may represent a powerful tool for manipulation and dissemination of false information.

**B. New developments with regard to the use of Internet by regulators**

The COB has made significant efforts in three directions:

**Investor education and public relation through the Internet**

The Internet site of the COB ([www.cob.fr](http://www.cob.fr)) is designed to allow investors and issuers alike to clearly identify the major COB functions and provide access to the specific information they need (database of COB prospectuses since 1997, list of authorized CIS and licenced portfolio management firms, access to all COB regulations, information on how to vote in shareholders meetings, on how to file a complaint with the COB, the role of the COB ombudsman, educational brochures on online trading, CIS, etc).

The site also provides access to statistics and all press releases of the COB.

Other functions now available on the Minitel electronic network only (redemption value of CIS and database of press releases of listed companies) are being progressively transferred on the Internet site. To date around the press releases of 200 listed companies are also accessible on the Internet (this comes in addition of the Minitel service where the releases of all companies are retrievable).

### **Development of electronic filing of mandatory disclosure documents**

#### **Shelf-registration:**

Over ten years ago, the COB developed a shelf registration procedure whereby issuers may file annually with the COB a “document de référence” (roughly equivalent in its principle to the American SEC 10K form). The filing of the document permits the company to obtain a visa on a special operation note that it may file during the following year in only to market days. The electronic database regrouping these “documents de référence” is accessible free of charge on the Internet site of the COB. It is called SOPHIE.

### **Surveillance of the Internet**

The COB has set up an Internet Surveillance Unit (Groupe de Surveillance Internet, GSI) that tracks online securities fraud and dissemination of false information in financial discussion forums. The unit comprises 15 inspectors who are assisted by conventional automated search engines and by another engine specially developed for the COB. It is estimated that every one in six cases investigated by the COB involves the Internet at some point.

## **6. GERMANY**

### **A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report**

The use of the Internet in Germany has increased significantly since the 1998 Report. A survey commissioned by the Federal Banking Association revealed that 31% of the population has access to the Internet. The fact that another 16% are considering to go online in the near future shows that total Internet usage will continue to increase.

When it comes to using the Internet in connection with securities, financial information ranks first with Internet users, with 53% retrieving stock market news from the web. 23% carry out their securities transactions via the Internet. 11% of the Germans use the Internet for online banking, while 7% carry out their entire banking business electronically.<sup>11</sup> The securities industry is advertising the use of new technologies, in particular “WAP broking.”

Issuers increasingly use virtual underwriting banks for their initial public offerings (electronic-only offerings). Some underwriting banks offer the shares exclusively via the Internet. The deals between underwriting banks and their customers are settled through the customers’ key relationship banks.

In addition, more and more securities services enterprises establish alternative trading systems on the Internet, offering their customers electronic off-exchange securities trading. The majority of ATS in Germany are still closed systems, and not generally accessible to the public through the Internet. Typically clients are institutional investors, securities houses, banks, and online brokers.

In the German exchange business, the Deutsche Börse AG has developed a Neuer Markt website offering investors all pertinent information about Neuer Markt issuers which they require for investment decisions and for general purposes. A list of all Neuer Markt issuers, basic information about the companies, and all documents the issuers are obliged to publish for the investors’ information can be retrieved from this site. The Exchange rules require Neuer Markt issuers to transmit their annual and quarterly reports to Deutsche Börse AG in electronic form at the same time as these reports are published. Deutsche Börse AG makes the reports available on the Internet as per their date of publication. This applies also to notifications submitted by the issuer concerning changes in the rights

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<sup>11</sup> The aggregate number of online accounts in Germany was 10 million at the end of 1999 (according to a calculation by the Federal Banking Association).

arising from the shares and to the companies' ad hoc announcements. In addition, the issuer shall prepare and maintain immediately after the admission of the shares to the Neuer Markt and thereafter at the beginning of each financial year a corporate action timetable in German and in English. The issuer receives a code for changing his data on the website, which enables and obliges him to maintain the company data himself. Systems administrators of Deutsche Börse AG's admission board verify the issuers' compliance with their duties to submit and make available the relevant data.

Reports and announcements on the Internet often contain hyperlinks connecting the user directly with subscription forms or with companies offering subscription. Hyperlinks are also increasingly found on the Internet sites of information services. Given the fact that such hyperlinks frequently lead the user directly to the issuer, enabling him to subscribe to the securities via the Internet, there is a certain danger that potential offerors of securities might act like simple information providers.

There has also been a pronounced increase in the percentage of Internet services offered by traditional intermediaries over the last few years. Apart from an ever greater extent of Internet services being offered by established intermediaries, recent years have also seen the emergence of special Internet banks which act exclusively on the Internet and do not operate branches or a call centre.

Significant changes have occurred in day trading and direct brokerage after the 1998 Report was published. Revolutionary developments in the order routing capacities of financial services providers and the exchanges and not least of the Internet led to an environment that made day trading for retail investors attractive. Day trading firms enable their customers not only to get immediate and real-time access to securities and derivatives markets but also to buy and sell financial instruments as often as they want during one trading session.<sup>12</sup> A growing number of online banks have been established over the last few years. Customers of online banks carry out up to 70% of their securities transactions through the Internet. The industry is making efforts to increase this proportion even further.

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<sup>12</sup> In a reaction to this development, the BAWe has drafted a guideline on day trading. The draft was presented to the relevant industry and consumer associations for a written consultation procedure.

## **B. New developments with regard to the use of Internet by regulators**

For the purpose of investor protection, the Internet is today the most promising means of informing investors about the regulations and guidelines dealing with issues of investor protection.

Therefore, the BAWe has established its own home page on the Internet ([www.bawe.de](http://www.bawe.de)), providing investors with information about the functioning of securities supervision and the relevant legal provisions in Germany. All laws and regulations falling within the responsibility of the BAWe are accessible and can be downloaded from the BAWe's home page.

Furthermore, the BAWe has installed pages on its web site providing answers to frequently asked questions, where it warns of typical dangers involved in securities trading in Germany and outside the German jurisdiction. Information is provided upon:

- how to identify dubious offers;
- what to observe before taking an investment decision;
- what the BAWe can do for investors; and
- ways to obtain further information on investor protection.

Information that serves the improvement of transparency is also published on the BAWe's web site, sometimes in aggregate form. For instance, interested investors may access a database containing holdings of voting rights in companies listed in official trading where such holdings exceed or fall below certain thresholds. In addition, the web site contains a link to a list of licensed financial service providers that has been published on the web site of the Federal Banking Supervisory Office (Bundesaufsichtsamt für das Kreditwesen). This link provides a quick and easy way for investors to ascertain whether a securities service provider has been granted the necessary license and is subject to supervision or not.

The BAWe publishes draft legislation, for instance planned guidelines interpreting legal provisions on its Internet website. Interested investors are thus offered the opportunity to comment on such drafts via the Internet. The ability to play an active role in the elaboration of future rules and provisions increase investors' awareness of the provisions set up for their protection.



## 7. HONG KONG

### A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report

Internet access in Hong Kong has continued to grow significantly. According to statistics from the Office of the Telecommunications Authority, Internet usage in August 2000 was 1,442 million minutes. The past few years has also seen an increasing number new Internet Service Providers (“ISPs”), and as at the end of December 1999, there were 159 ISPs operating in Hong Kong.<sup>13</sup> It is further estimated that 34.5% of the households in Hong Kong possess personal computers.<sup>14</sup>

As regards the use of the Internet for online trading, the SFC conducted a Survey on the Use of Online Facilities for Trading Purposes by Dealers as at April 2000. The main findings of the survey are:

- The use of online trading facilities and the provision of online services is increasing rapidly. The number of online brokers, the number of client accounts and online trading transaction volume have all increased two to three fold in the period from September 1999 (the last survey date) to end April 2000.
- Of the 28 existing online brokers as at end April 2000, 22 are providing online trading facilities in Hong Kong listed securities, two in overseas listed securities (predominantly US securities), two in both Hong Kong and overseas securities, and two in futures contracts.
- Online trading is still in its infancy: turnover constituted only 1.3% of the total market volume for Hong Kong securities in April 2000, and online brokers represented less than 4% of the total number of registered dealers in April 2000.
- Of the 844 registered dealers, 242 indicated an intention to launch online trading facilities within the next 12 months. Most of them are participants of the SEHK and the HKFE.
- Clients trading online are generally individuals and residents in Hong Kong.

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<sup>13</sup> Statistics from the Office of the Telecommunications Authority.

<sup>14</sup> Statistics from the Fact Sheets of Information Technology and Telecommunications Bureau.

- More local stockbrokers are forming strategic alliance with each other to provide online services.

Most of the online brokers are using Internet and telephones (voice and short message system) to provide online trading services to clients. In addition, some online brokers provide online trading service via WAP phones and Personal Data Assistant ("PDA"). Development of online trading facilities is expected to be innovative.

In recent years, intermediaries have also established Internet portals to serve specific niche markets. These include portals providing electronic platforms for trading Asian bonds as well as pan-Asian stocks. It is anticipated that these niche automatic trading systems will proliferate in the near future.

In addition, market intermediaries have also utilised the Internet to advertise their services and provide market information. Web-based advertising technology is now able to support the use of audio and visual aids for the presentation of promotional materials. Analytical tools are also often made available from websites of intermediaries.

Apart from publishing electronic prospectuses through the Internet, the market has also used the Internet for an electronic initial public offering ("eIPO") exercise. In October 2000, in the public offering of the shares in the Mass Transit Railway Corporation Limited under a privatization program of the Government, investors were able to use the eIPO facilities provided by brokers and banks to apply for new shares through the Internet. About 12% of the 610,000 applications for the new shares were made through the eIPO channel.

In October 2000, the Stock Exchange of Hong Kong Limited launched a new version of its Automatic Order Matching and Execution System ("AMS/3"). The new trading system provides an open electronic gateway which allows investors to place orders via the Internet or the brokers' proprietary system to the AMS/3 through their brokers. This results in more brokers providing online trading services. In April 2001, 76 Exchange participants provided on-line trading services to their clients, an increase of 46% as compared with the number in January. In terms of market turnover, there is an increase of 100% from 2% of total market turnover in January to 4% in April 2001.

The Hong Kong Exchanges and Clearing Limited introduced Internet access to its Central Clearing and Settlement System for Investor Participants ("IPs") in October 2000. This service is available to both existing and new IPs and is an alternative to access through the

touchtone phone service and counter service offered at the offices of Hong Kong Securities Clearing Company Limited.

In recognition of the potential prospects of the local market, major US Internet broking firms have set up operations in Hong Kong. Banks have also entered the field by setting up online trading subsidiaries or partnering with brokerages to aggressively offer securities and futures dealing as well as other services including banking and fund management. These new entrants are expected to expose the local brokerages to greater competition in terms of capital backing, electronic sophistication and experience.

## **B. New developments with regard to the use of Internet by regulators**

The SFC has long appreciated the use of the Internet to facilitate the regulation of the markets, especially as an expedient medium for disseminating information to investors. The SFC's website (<http://hksfc.org.hk>) contains, amongst others, the following categories of information:

- Registry of licensed and registered intermediaries
- Registry of authorized investment products
- Investor education and complaint against intermediaries
- Codes or regulations published by the SFC
- Licensing requirements
- Consultation papers
- Market statistics
- Enforcement actions
- Regulatory updates for intermediaries

The website serves as a useful resource to both investors and market practitioners, providing an up-to-date, centralised library of SFC information as well as an online channel for public enquiries. In addition, it also provides hyperlinks to other sites of interest.

In June 2000, the SFC established the Electronic Investor Resources Centre ("eIRC"). The eIRC (at <http://www.HKeiRC.org>) is designed to provide round-the-clock access by investors to a one-stop site for education information on investments and regulations. Its establishment is part of the SFC's efforts in investor education to help investors make informed decisions on their investments in securities and derivative markets.

Unlike other financial portals, the eIRC does not give investment advice. It is dedicated to empowering investors to acquire knowledge on the different aspects of investing, as well as becoming a site which facilitates investors in conducting their research on investments.

Targeting at all investors with different investing profiles, the eIRC is designed as a virtual library covering a wide range of topics. It is linked to over 400 websites of regulators, market institutions and Internet content providers, categorised under the following sections:

- Investing Basics
- Investment Products
- Investment Techniques
- Market Simulations
- Research & Data
- Investment Institutions
- Investor Protection
- Other Resources
- Glossary

New links are being added to each section on an ongoing basis in order to keep investors abreast of new developments and references. In addition, the eIRC features a “Special Topics” section, where the SFC makes use of multi-media material to explain areas of special focus or topical interest. The two inaugural topics were “Understanding Tech Stocks and Their Risks” and “Securities Margin Financing”.

## 8. ITALY

### A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report

The use of Internet in the last years has significantly increased, even in financial services. The number of Internet users in Italy doubled during the 2000 (from 10 million to 20 million at the end of the year). All financial sectors were affected by this innovative process. However, securities markets have been involved more extensively than other sectors, since most of the exchanges and trading platforms operate on line.

On-line trading on securities experienced a rapid development, particularly in the year 2000. Italian on-line traders were estimated by professional bodies to be, at the end of year 2000, approximately 250,000 (without considering the users of home banking). According to recent estimates, the growth of on-line clients between 1999 and 2000 exceeded in Italy by 360 % <sup>15</sup>.

On-line traders have access to (and consult) price-sensitive information disclosed by issuers, either directly through the issuers' web-sites, or via their brokers. Dissemination of on-line studies and research – along with advices - are becoming more frequent.

Clients make use of Internet not only to transmit orders to be executed on the markets, but also to adhere to on-line IPOs of securities to be listed on the exchanges, and to subscribe units of collective investment schemes. Furthermore, Internet enables clients to have access to markets during the After-Hours sessions of trading and during the open session which take place on public holidays at the Milan Stock Exchange.

The high rate of diffusion of mobile phones in Italy induced brokers to make alliances with telecom companies, to exploit the new technological systems of order routing, including WAP.

Even if official data do not exist yet, it can be estimated that between 10 % and 13 % of total transactions daily executed on the Italian Stock Exchange originate from on-line traders.

Furthermore, Internet is becoming an ordinary channel for interaction with financial services providers, e.g. to receive periodic information on money accounts, portfolio evaluation, details of transactions.

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<sup>15</sup> JP Morgan, 2000.

**B. New developments with regard to the use of Internet by regulators**

Consob recently changed its website pages, in order to facilitate the access. A new specific section in the warnings to investors has been devoted to investments carried out via the Internet.

Furthermore, access to all public registers held by Consob (Italian investment firms, EU investment firms, non-EU investment firms, regulated markets, auditing companies, listed companies, prospectuses filed with Consob) is given through this website.

The website includes all relevant legislation, communications and policy papers and practice notes (most of them are translated in English). It also includes a special “warnings” section for consumers of financial services. A brief summary of Consob activities is given on a weekly basis (“*Consob Informa*”), including details and contents of all decisions taken by Consob in that period.

The Consob website contains details of scams and warnings as to matters which investors should look out for. It also contains policy proposals and research material, for public consultation. Details are provided on Consob activities. A tool for calculating management fees is also available.

## **9. JAPAN**

### **A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report**

Developments of securities activity on the Internet in Japan are as follows:

#### **Providers**

According to the report titled “Outline of survey result regarding securities activities on the Internet” published by the JSDA on May 11, 2001, there were 67 securities firms engaging in securities transactions on the Internet; the number of accounts operated through the Internet had reached some 1,934 thousands (as of the end of March 2001). Trading volume of securities trade in cash on the Internet during March 2001 was some 1,254 billion yen. On the other hand, sales total of investment trust during said month was some 257 billion yen for domestic investment trust.

#### **Contents**

According to the same report, 61 securities companies were dealing in listed securities, while 58 securities firms were dealing in OTC registered securities. Regarding such services as „reference of order,“ „reference of contract,“ „reference of account balance,“ almost all securities firms were providing such information on their website. With respect to information on investment (market, stock price and company information), many securities companies were providing such information to investors.

#### **Mobile Trading**

According to the same report, 28 securities firms including one foreign securities firm were providing services via cellular phones, such as stock price information, mark information and acceptance of orders, as of the end of March 2001.

#### **Proprietary Trading System**

As of the end of May 2001, 7 permitted proprietary trading systems (PTS) operate in Japan. 3 of them deal with stocks and the other 4 deal with the bonds.

## **B. New developments with regard to the use of Internet by regulators**

### **FSA**

The FSA provides investors and other market participants with useful information on its website (<http://www.fsa.go.jp>) such as the list of the registered securities companies, the list of unregistered but illegally operating entities, guidelines and policy statements.

The FSA also have implemented the document filing system (EDINET) for annual reports in June 2001. The filed securities reports are now available to public through the Internet at [www.fsa.go.jp](http://www.fsa.go.jp). The FSA will utilize EDINET to cover other documents such as the registration statements, registration statements of tender offer (by June 2002) and large shareholding reports (by June 2003).

### **SESC**

The Securities and Exchange Surveillance Commiss (SESC) accepts via its website information concerning its inspection and investigation of criminal offenses.

In order to quickly respond to unfair trading such as spreading of rumors or market manipulation, etc., the SESC introduced the Securities Comprehensive Analyzing – Internet Patrol System (SCAN-IPS) which has improved the SESC's information-collecting activities on the Internet by patrolling specific sites that contain the information of specific stocks. In other words, the SCAN-IPS helps search, select and stock the information of specific stocks automatically, shortens time of research and increases efficiency of work, and is expected to make the surveillance activities more effective. .



## 10. MALAYSIA

### A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report

Malaysia has witnessed an increasing usage of the Internet by the market institutions and intermediaries in disseminating information on financial services and products since the late 1990s. The 1998 Report was used by the SC as a guiding principle in the development and preparation of the SC's Consultation Paper on the Implementation of Electronic Commerce in the Capital Market, which was released in March 2000. The Consultation Paper sets out recommendations for removing physical and regulatory impediments to the use of technology in the capital market. In order to operationalise the recommendations in the Consultation Paper, a Working Group on Electronic Commerce in the Capital Market (WG) was established comprising the SC, market institutions, the Exchanges and market associations. Further to that, the WG was divided into 9 smaller Sub-Working Groups (SWG) to better implement the specific recommendations identified in the Consultation Paper.

The use of the Internet for providing financial services, presents the greatest challenge to the SC. We are seeing industry trends reflect the emerging transition by stockbroking companies from intranet to Internet-based order-routing linkages with their clients. As of November 2000, the Kuala Lumpur Stock Exchange (KLSE) has approved 14 stockbroking companies to provide Electronic Client-Ordering Systems (ECOS) via the Internet to their clients, a 100% increase over 1999. These 14 companies have approximately 8,000 ECOS-Internet clients registered with them. In addition, 2 stockbroking companies have been granted regulatory approval to provide order-routing services through wireless application protocols (WAP).

The SC is also apprised of the fact that financial services are no longer provided in a traditional paper-based, bricks and mortar environment. As at September 2000, the SC had granted investment adviser's license to two pure online investment advisers operated by their investment advisory companies.

Aside from that, the SC is also seeing new developments in the use of the Internet by the industry. Some of these new developments that can be seen are:

eProspectus – The Malaysian Exchange of Securities Dealing & Automated Quotation Bhd (MESDAQ) saw the listing of its first company accompanied by the posting of its eProspectus on the MESDAQ's website which was considered to be the first in the region.

Application for the shares were carried out offline. Since then, there have been 2 other companies that have issued eProspectuses for their listing on MESDAQ and applications for the shares are still done offline. As for the unit trust industry, there are approximately 8 out of 34 unit trust funds that have posted prospectuses on their websites. KLSE, like MESDAQ, also posts their listed companies prospectuses on the KLSE 's website in which share applications are also done offline.

Introduction services for new start up companies – This service is provided by ME Net, which is run by MESDAQ and it provides a platform for new start up companies to post information. It assists companies to profile themselves to a pool of investors on its website. From there, interests can be merged whereby the investor can find its targeted investment while the company acquires the funds needed to meet its capital requirements.

Portals – These are basically Internet based aggregated sites. Presently, we estimate there are 18 financial portals which excludes bank and broker run portals. These portals are a mixture of those that are regionally and locally based.

Chatrooms/bulletin boards/Internet discussion sites – A platform or forum whereby investors or the general public meet to discuss on securities and other issues relating to the capital market. Out of the estimated 18 financial portals, 10 out of the 18 sites have bulletin board facilities of which 4 of them have higher viewer activity.

Kuala Lumpur Stock Exchange (KLSE) Link - An information dissemination platform, which is run by the KLSE to disseminate corporate announcements of listed companies of the Exchange to the general public.

Primary offerings via the Internet – Malaysian public investors have also been targetted as potential applicants to primary offerings offered by foreign issuers. The SC has issued a Policy Statement stating that primary offerings which are aimed at Malaysian resident and which are accessible by them would require the prior approval of the SC under the local securities law. However, certain factors will be taken into consideration in assessing whether approval is required. Further to the Policy Statement, the SC had also issued a press release warning the investing public of a foreign offshore fund that had not obtained the prior approval of the SC and that the public should be wary of the fund.

## **B. New developments with regard to the use of Internet by regulators**

In respect of training and educating investors, the SC is adopting a phased approach in enhancing investors education through the use of technology and acknowledges the importance of having well-informed and educated investors. It is the SC's hope that these investors will be able to self-police and provide the best defence against contravention of securities laws, particularly those perpetrated over the Internet. As a first step, the SC has posted the list of licensed intermediaries - futures brokers, fund managers and futures fund managers - on its website to enable investors to check and ensure that the intermediaries with whom they are dealing with are properly licensed by the SC. This list can be found on the SC's website ([www.sc.com.my](http://www.sc.com.my)).

The SC's website has also been used as a communications method in the public consultation process, for example the SC's Consultation Paper on the Implementation of Electronic Commerce in the Capital Market and the proposed Malaysian Capital Market Masterplan was put up on the SC's website for public information, viewing and comments. Other than that the SC's website contains a list of securities legislation, guidelines and practice notes that are within the responsibility of the SC which can be downloaded for free.

The Securities Industry Development Centre (SIDC), the training arm of the SC, had in 1999/2000 developed a computer-based simulation training game called "Wise Investor" which is a stock market simulation game aimed at teaching the general public about how to invest while giving out information about investments. The game will ultimately build a learner's understanding knowledge from a beginner to an intermediate level on investment. The game is sited at the SC's website and is available for free.

There is a Technical Reference Panel link in the SC's website which allows investors or members of the public to put forward any queries that they may have and which are more technical in nature. The SC is also currently looking into further enhancing investor education through the SC's website.

With the many different use of the Internet, the SC is also looking into the possibilities of submission of documentation required by intermediaries to the SC electronically. The SC is currently developing the "Electronic Reporting System" infrastructure for an electronic reporting and submission system to ease communication between the SC and the regulated intermediaries.

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Annex II – New Developments  
Malaysia (continued)

In terms of surveillance, several areas have been identified which are considered to be pertinent to further strengthen the surveillance of Internet activities particularly for any possible activities of fraud or manipulation. Effective monitoring of the Internet can only be achieved if the staffs involved in the surveillance work are equipped with the necessary skills and techniques. The SC hopes to seek assistance from their foreign counterparts to conduct specific technical training courses for the surveillance staff on how to perform effective Internet surveillance.

## 11. NETHERLANDS

### A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report

#### Figures/trends

According to Eurostat in 1999, 65% of the Dutch population had access to a PC. Internet was used by 35%. This figure means that the Netherlands are, after Scandinavia, highest in the European ranking.<sup>16</sup>

The expected growth of the number online securities accounts in The Dutch market is from 50,000 (ultimo 1999) to 960,000 (2004)<sup>17</sup>, which is more than the average growth in Europe.

In the middle of 2000 the estimated number of online investors in The Netherlands is 180,000 (total of 2.9 million in Europe<sup>18</sup>). The majority covers the category "new" investors, which are also known "active" investors. An example: Internet clients of the Rabobank (a major Dutch bank) (14% of the total number of investments clients of the Rabobank) generate 26% of all securities orders of the Rabobank .

On 1 January 2001, 11 Internet-brokers were operational in the Netherlands. E-broking in the Netherlands is particularly an activity of the established institutions: ABN Amro, Rabobank en Postbank (three major Dutch banks) have together 70% of all online-investment accounts

In 2000 the first non-Dutch online broker has entered the market in the Netherlands: Vms-Keytrade, a Belgian online-broker with a European passport.

There are no Day Trading Centres operational in the Netherlands. As a result of recent plans to start a DTC, the STE has decided in November 2000 that DTC's can be considered as brokers, and therefore need a licence.

#### Expected developments

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<sup>16</sup> Source: Economische Statistische Berichten, 25 August 2000, p 650. According to recent research in the Netherlands is the actual use of the Internet 58% of the Dutch population.

<sup>17</sup> Forrester report, januari 2000.

<sup>18</sup> FD 5 augustus 2000 en FD 12 augustus (bron J.P. Morgan). De grootste groep, 1, 2 miljoen bevindt zich in Duitsland. Na Duitsland komen Frankrijk, Zweden , Engeland en Nederland.

- Transactions world-wide
- After-hours trading
- Tools concerning risk-analysis, portfolio-management
- 'Tailor-made' advice (e.g. Decision Support Systems) based on the risk profile of the client
- Additional products like credit-cards, insurance, loans (concerning pure e-brokers like Charles Schwab and E-trade).
- Technological developments:
  - WAP (transactions via mobile phone)
  - close relation between brokers and software suppliers. Now the commercial battle between e-brokers on tariffs is almost over, the competition will concentrate on technology ('direct access', "smart order routing").
  - "Direct Access": Forrester Research expects that in 2005 in Europe the trade volume of ECN's will rise above the trade volume of the traditional exchanges.
- The common trend which e-brokers expect is that online investors want to control their own transactions. This trend will have consequences for the supervision.
- The possibility that auction sites like E-bay and QL will open special sites through which investors can trade securities among themselves.

## **B. New developments with regard to the use of Internet by regulators**

The website of the STE ([www.ste.nl](http://www.ste.nl)) is (besides general information about securities supervision, policy rules, press statements etc) currently used for:

- publication of the current register of licensees (market intermediaries, brokers etc.);
- publication of a "black-list" (observed unauthorized offering of investment services)
- publication of the notifications of major holdings in listed companies;
- publication of the notifications for the security transactions in the own issuing institutions.

### **Special Projects**

#### *project "Cybercop"*

In July 200 a project "Cybercop" was started in the Netherlands. Together with the National Police Force (KLPD) and the Economic Control Department (ECD) the three financial supervisors (the

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Securities Board of the Netherlands (STE), the Dutch Central Bank (DNB), the Insurance and Pension Fund Supervisor (PVK) ) participated in this project which is meant to elaborate the practical and juridical possibilities for the investigation and prosecution concerning illegal (financial) activities on the Internet. The KLPD provided the project with technical skills for monitoring the Internet. The project was completed in April 2001.

## **12. PORTUGAL**

### **A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report**

Since 1998 the use of the Internet in Portugal has increased significantly with a high rate growth.

At the present time, most of the more important banks provide online investment services namely securities and derivatives transactions and UCITS trade. Also, there are a certain number of investment services, brokers and dealers, that offer services of trading securities via the Internet.

Some statistical data collected directly by CMVM during the last five months of the year 2000 reveals that transactions via Internet represents already a significant percentage of the total stock exchange transactions and varied from 4.54% in August to 3,36% in December with a peak of 6.19% in October.

The number of issuers with a web presence has increased in Portugal and they use the Internet also to provide information about themselves to the markets and investors.

The BVLP – Lisbon & Oporto Exchange provides detailed information on the spot and the derivatives markets. In addition, the Interbolsa, the organisation, which runs the Central Securities Depository system and also acts as the National Numbering Agency, provide information on its activities on its Website.

The MTS Portugal – the company in charge of organising and managing the MEDIP (the special market for public dept) – started its operations on Monday 24<sup>th</sup> July 2000. It is a electronic trading wholesale secondary market in Portuguese government securities and its website provides detailed information on the MEDIP, including a Daily Bulletin.

### **B. New developments with regard to the use of Internet by regulators**

The CMVM, the securities regulator, uses increasingly the Internet for the dissemination of information among the investors and supervised entities in order to foster the market integrity and transparency.

The CMVM's website contains all the Portuguese legislation on securities markets, regulations, guidelines, recommendations and



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warnings addressed to investors, as well other data useful to improve the integrity and transparency of the markets.

The most important data on financial intermediaries, markets and public companies can be find in the CMVM's website, as well the significant corporate events on the listed companies received at the CMVM are immediately posted on the CMVM's website

The CMVM, recently (December 2000) changed its website pages in order to facilitate the users access and supply more and better information.

## 13. SINGAPORE

### A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report

The growth of the Internet has made a huge impact on Singapore over the last few years. More Singaporeans are going online than ever to source for information and to purchase goods and services. This is evidenced by an increase in the Internet penetration rate of more than 6 times in the past 5 years, from 9% in 1996 to 59.5% as at December 2000.

According to the Survey on E-Commerce 2000 conducted by the Infocomm Development Authority of Singapore (IDA), B2B e-commerce sales value has increased more than 16-fold in the space of 2 years – from S\$5.67 billion in 1998 to an estimated S\$92 billion in 2000. In the same period of time, B2C e-commerce sales value also increased more than 36-fold from S\$36 million to an estimated S\$1.17 billion. For both these activities, the leading sector in 2000 was finance and banking.

The Survey on E-Commerce 2000 can be found on the [Infocomm Facts and Figures](http://www.ida.gov.sg) (Survey Results) section of the IDA website (<http://www.ida.gov.sg>).

#### Developments in Capital Markets

With the soaring popularity of the Internet as a medium for distribution of goods and services, there has been a corresponding emergence of websites, targeted at Singaporeans, offering investment advice, and performing a wide range of capital market activities online.

Overall, for the year 2000, online trading accounted for 3.8% of the total trading volume. As at 31 May 2001, 14 brokers are offering online trading, none of which are pure Internet brokerages. Out of these 14 brokers, 4 also provide WAP trading facilities.

The full liberalisation of brokerage commissions is widely expected to encourage growth in online trading. In fact, since brokerage commissions were liberalised on 1 October 2000, the proportion of total trading volume conducted online had increased from 3.4% (for the first three quarters of 2000) to 5.5% (for the final quarter of the year).

In the area of primary issues, the subscription of IPOs via the Internet is also gaining in popularity. In the second half of 2000, 41 IPOs were issued to the public, and more than 75% of these were offered for subscription on the Internet. Internet offers of IPOs must be accompanied by an electronic prospectus which is largely similar to the printed version. Such a prospectus must fulfill the same set of disclosure requirements as that which is imposed on a conventional prospectus.

In addition, a number of financial portals and financial supermarkets are currently acting as alternative distribution channels for financial products. Developments in this area will be facilitated by the clarification on MAS' regulatory stance on sale of securities on the Internet<sup>19</sup>.

The Singapore Exchange (SGX) has developed a Virtual Terminal Interface (VTI) to allow brokers to offer online trading facilities via the Internet. Orders entered by clients are automatically routed to the exchange for trade matching through a central scripless electronic trading system. The SGX has also implemented an Electronic Trading System (ETS) for derivative trading with enhanced trading capabilities including easier access for cross-exchange trading. With effect from April 2001, SGX futures brokers can also offer their clients Internet access to derivatives contracts traded on the ETS.

## **B. New developments with regard to the use of Internet by regulators**

### MAS Website

Leveraging on the ease of information dissemination through the Internet, the MAS provides the following information to investors and market participants at its website (<http://www.mas.gov.sg/>):

- a) Overview of the Singapore financial sector, including the equities, derivatives and fund management industries;
- b) All statutes, regulations and notices governing the financial sector in Singapore;

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<sup>19</sup> The MAS Guidelines on Offers of Securities made through the Internet was issued in February 2000. It applies to offers of shares, debentures and unit trusts and covers both initial as well as secondary offers of such securities. (Please also refer to Annex I)

- c) Public statements announcing and explaining any changes in regulatory policy adopted by the MAS;
- d) Guide to application procedures, and a list of FAQs for licences administered by MAS;
- e) A directory of financial institutions in Singapore including a list of licensed securities intermediaries; and
- f) Results of regular and occasional surveys conducted by the MAS – surveys currently posted on the website include surveys on the fund management activities in Singapore as well as a survey of the Singapore corporate debt market.

The MAS also publishes consultation papers and draft legislative amendments on its website. Active participation by the securities industry, investors and the general public is helpful in the formulation of appropriate regulatory policies that are proactive in meeting the regulatory challenges posed by the Internet, while balancing the interests of the parties involved.

#### MAS' Participation in the IOSCO International Internet Surf Day

In support of IOSCO's efforts to foster international cooperation in the combat against cross-border Internet fraud, MAS participated in the IOSCO International Internet Surf Day held on 23 April 2001. A total of 121 websites were reviewed, of which 28 were identified for possible follow-up action.

## **14. SPAIN**

### **A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report**

At the present time it is difficult to have reliable data on the activity of securities through Internet. Our latest figures estimate more than three million clients online using all type of services and more than a million of clients using securities accounts.

The current services offered by entities supervised by the CNMV, or the Central Bank of Spain, through Internet are mainly the following:

- Securities dealing.
- Real time price quotation.
- Research information.
- Investment advice.
- Securities offers, placements, etc.
- Securities margin financing.
- Futures and options dealing.
- Funds dealing.
- Bonds dealing.
- Stock borrowing and lending.
- Warrants dealing.
- Portfolio simulations.
- Transfers of funds.

Many of these services are offered to the clients for the national markets. Depending on the expertise of the clients the investors invest on other markets of developed or emerging countries reaching practically to all the variety of securities and financial instruments. At the moment they operate through Internet diverse national and foreign entities. These foreign entities are in majority from European Community.

Apart from the traditional ways of access to Internet, diverse entities offer services and products of the stock market through the WAP system.

### **B. New developments with regard to the use of Internet by regulators**

The CNMV website is increasingly used for the dissemination of information among investors and supervised entities. All databases containing the data filed at CNMV are accessible trough pages on the

web site as well as all the Spanish legislation on securities markets, guidelines, recommendations and warnings addressed to investors, and other data considered useful to improve the transparency of the markets. The significant corporate events received at the CNMV are immediately posted on the web site including all the attached documents in PDF format. On the same way the complete text of an issuing or listing prospectus is available at the web site as soon as it is approved by the CNMV. The CNMV also publishes in its web site planned legislation to give the financial community the opportunity to comment on the drafts.

The CNMV in its role of National Numbering Agency for Spain has the responsibility of allocating ISIN codes to all the securities issued in Spain. To provide the users of codes with the ISINs, the CNMV offers on its web site a querying facility to access the ISINs database.

But from the CNMV Internet is not seen only as a medium to disseminate information, the Internet is also used as an efficient means to exchange documents between CNMV and supervised entities.

### **Electronic exchange of documents**

Since 1998 the supervised entities can submit the documentation required by the CNMV via Internet using CIFRADOCC/CNMV. CIFRADOCC is software to encrypt and sign documents electronically. Brokers, Management Companies of Collective Investment Institutions and issuers can submit to the CNMV via Internet, balance sheets, information related to qualifying holdings on listed companies or corporate events and other documents to be filed at CNMV. The documentation can be prepared in a PC, encrypted and signed with CIFRADOCC and directly submitted to the CNMV as a file attached to an e-mail. In answer, the CNMV sends an electronic acknowledgement of the file received.

The encryption and digital signature guaranty confidentiality, integrity and authentication in the documentation exchange. The documents submitted with the digital signature have the same legal strength as those submitted on paper.

The CNMV provides CIFRADOCC free of cost to those entities wishing to use this system, but the use of CIFRADOCC is not mandatory, the entities can continue with the submission of papers or disks as long as they want. Anyway the electronic submission system has been proved as comfortable, secure, timely and less costly system that the entities are steady moving to this way of submission of documentation.

### **Virtual Desk**

As a further step in the process of e-government initiated by the CNMV, in the first half of 2001 it is envisaged to set up a “Virtual Desk” that will allow the entities to complete electronically through Internet a significant number of procedures before the CNMV. The needed interchange of information between entities and CNMV required in these procedures will be protected with CIFRADOCC.

Through this Virtual desk, accessible at the CNMV web site, all the supervised entities will be able of sending, consulting and modifying electronically the majority of data to be registered at the CNMV. For instance, the collective investment institutions management firms will be able of downloading their prospectuses already filed at CNMV, modifying them as they deem appropriate and sending the modified prospectus back to the CNMV via e-mail, previously encrypted and signed with CIFRADOCC.

To provide some of these new facilities, as the updating of prospectuses<sup>20</sup> for example, it has been necessary to develop a new version of CIFRADOCC that allows the double digital signature carried out in different places and time.

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<sup>20</sup> Spanish legislation requires the sign of both management and custodian entity to approve any change in the prospectus.

## 15. SWEDEN

### A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report

The use of Internet in Sweden has increased since the 1998 Report. The securities industry is advertising the use of new technologies such as “WAP broking”. The new technologies are not very frequently used because of lack of WAP telephones.

### B. New developments with regard to the use of Internet by regulators

Finansinspektionen has a website ([www.fi.se](http://www.fi.se)). In addition, the Swedish Consumer agency has a website ([www.konsumentverket.se](http://www.konsumentverket.se)).

In Sweden are Finansinspektionen responsible for supervision and regulations for companies in the insurance, credit and securities markets.

#### Finansinspektionen

Finansinspektionen (the Swedish Financial Supervisory Authority) is a public authority that is responsible for supervising companies in the insurance, credit and securities markets. Finansinspektionen’s overall objective is to contribute to the stability and efficiency of the financial sector in Sweden, and to promote satisfactory consumer protection.

Finansinspektionen monitors and analyses trends in the financial market. Finansinspektionen assess the financial health of individual companies, the various sectors and the financial market as a whole.

Finansinspektionen examines the risks and control systems in financial companies and supervise compliance with statutes, ordinances and other regulations.

Operations that involve offering financial services require a permit granted by Finansinspektionen. Finansinspektionen also issue regulations and general guidelines and assess whether existing legislation needs to be amended.

Finansinspektionen supervises compliance with the Swedish Insider Act, investigate cases of suspected offences and share price manipulations.



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In addition, Finansinspektionen monitor that companies disclose complete and clear information to their customers and ensure that routines for such information function satisfactorily.

Finansinspektionen's duties also include preparing rules for financial reporting by financial companies.

Finansinspektionen is doing a survey of the uses of the Internet in the financial industry will affect the supervision and regulation.

Finansinspektionen have a special unit for operational risks. Internet are one issue for this unit to scrutiny.

Finansinspektionen have published a report " Financial services and the Internet; 2000:03" which are available on [www.fi.se](http://www.fi.se).

## **16. SWITZERLAND**

### **A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report**

A rapid increase in e-investment activities has been noticed in Switzerland since IOSCO published its report “Securities Activity on the Internet” in 1998. In the second half of 2000, however, the development seemed to lose some of its pace. While information gathering is and will probably be the most frequent use of the Internet in the finance business, transactional services are offered by a large number of Swiss banks and securities-dealers. Very few of these institutions are pure Internet banks and securities-dealers, the trend goes clearly towards so called multi-channel services where the clients have the choice of the way and means of communication (Internet, telephone, mail, face to face e.g.). In addition, both information as well as transactional services via WAP were introduced in 2000 by a number of financial institutions, the response of the public, however, has been modest.

Due to much enhanced order routing capacities of many Swiss financial institutions their customers are able to do direct trading on the Swiss Exchange SWX as well as on many of the most important international exchanges. While Internet induced trades represented only 1 % of all trades executed on the Swiss Stock Exchange in September 1998, this share increased to 14,25 % in December 2000. Increasingly underwriting banks and securities-dealers make use of the Internet for public offerings. In addition, some specialised platforms have been established where investors find information about and contact to (via hyper-links) companies looking for raising capital.

One large financial institution has introduced an after exchange market for trades in Swiss securities. However, only customers of this financial institution can have access to that particular service. The financial institution acts as the counterparty for all trades on this after exchange market.

### **B. New developments with regard to the use of Internet by regulators**

In spring 1999, the Swiss Federal Banking Commission (SFBC) established its home page on the Internet ([www.ebk.admin.ch](http://www.ebk.admin.ch)). The site provides information about the organisation and the activities of the SFBC and the sectors that are under its supervision. In addition, the relevant regulation is made accessible (in German, French and English) as well as a list of all licensed and supervised institutions.

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Furthermore, a FAQ-section has been established providing information both to investors/customers as well as to institutions seeking a license. Finally, on its website the SFBC provides access to its various publications and press releases.

## **17. TURKEY**

### **A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report**

There is an increasing trend in handling customer orders through electronic means. Estimated that 13% of all daily orders of securities at Istanbul Stock Exchange are received through electronic means (ATMs, bank branches, Internet, etc.). Since many intermediaries are planning to use the Internet in receiving orders, an increase in Internet usage is expected.

Intermediaries use the Internet both for the presentation of their activities and for the transmission of orders. In this context intermediaries generally supply information about their activities, markets, price and volume and research reports about certain securities on their Internet web sites. Currently, those that receive orders via their Internet web sites merely transmit these orders by telephone to their representative at the Istanbul Stock Exchange who then routes the orders to the exchange computer system for the completion of transactions. However, the Istanbul Stock Exchange is planning to introduce Wide Area Network for trading on the exchange. In this regard the transmission of orders to buy or sell securities via the Internet is not considered to be different from the transmission of orders via telephone or other similar communication devices. Thus the use of the Internet by intermediary organizations is not subject to any approval process. Nevertheless the principles that will be applied for communications and customer orders are set out in article 49 of the communiqué “The Communiqué on Principles Regarding the Intermediation and Intermediary Organizations”.

Another development with regard to the use of Internet in financial markets has been the use of Internet in collecting requests from investors in the public offering of the shares of companies. In the public offer, investors are able to place their requests on a special screen format in the Internet web site of the underwriter. The CMB approves the screen format designed by the underwriter considering that the format do not contain any invitation for the public to join the offer and information on the financial status of the company.

### **B. New developments with regard to the use of Internet by regulators**

Since the publication of the 1998 Report, the Capital Markets Board (CMB) has continued to improve its use of the Internet. These

improvements are largely concentrated on the objectives of investor education and transparency.

The CMB has its own home page (<http://www.spk.gov.tr>) where the following information can be found:

- General information about the CMB (organisation, objectives, duties and authorities);
- Capital Market Law/rules and regulations governing securities industry;
- Investor information (Investment instruments, what to observe before making an investment, how to contact the CMB-questions and complaints- etc.);
- Information for the issuers (registration procedure with the CMB, preparation of prospectuses and circulars, obligations of the publicly held companies etc.);
- Enforcement issues (litigations and actions taken by the CMB);
- Monthly and weekly bulletins of the CMB (statistical information on securities registered with the CMB, securities outstanding, secondary market trading, ISE indicators for equity market, collective investment institutions, intermediary institutions etc.);
- A list of the CMB publications;
- Selected research reports prepared by the CMB experts;
- List of portfolio management companies licensed by the CMB;
- Intermediary Institutions licensed by the CMB (types of licenses they have, address information, their ownership structure etc.);
- Information about mutual funds (portfolio composition, total portfolio value, price of the units etc.) and investment companies;
- Links to some important web-sites;

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- Announcements by the CMB (press releases, communiqués under consideration and published for comments, and some other notices).

## **18. UNITED KINGDOM**

### **A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report**

Since the report of the 1998 Report, there have been a number of significant market and regulatory developments in the UK.

The number of firms with a web presence has increased significantly in the UK, and so has the use of the Internet. Some firms use the Internet solely as a marketing medium, to provide details of their services. This is particularly marked among firms providing financial advice, but is also quite common among UCITS providers and fund management firms, although there have recently been a handful of firms that have established fund supermarkets and a few fund management firms that trade via the Internet. Third party Administrators have also been developing Internet capabilities for their clients, offering the facility to view an individual's portfolio on line, to value it and eventually to be able to trade. Firms have also used the Internet to distribute IPO prospectuses, and there has been an increase in the number of firms taking advantage of the single market to provide services within the EEA based on their authorisation in the UK.

The area, in which the Internet has had the greatest market impact, has been e-broking. Over 30 firms now allow their customers to buy and sell shares on an execution only basis via the Internet. The large banks as well as traditional brokers have been developing Internet operations, and there are also a number of brokers which provide services only over the Internet.

According to industry estimates, the number of active on-line accounts may have doubled in the first six months of the year 2000. On-line trading now represents about 25 per cent of all execution only transactions. Whilst there has been growth in the advisory and discretionary sectors, growth rates of execution only trades have increased considerably more.

In 1996 the number of execution only trades for private customers was 5.4 million and the number of trades for advisory and discretionary clients 4.1 million – the corresponding figures for 1999 were 10.6 million for execution only trades and 5.8 million for advisory and discretionary clients. Over the first quarter of 2000 the number of on-line private client trades more than doubled to 930,000. A year earlier the figure was 31,000.

The Internet has not just seen a shift in the way in which customers interact with markets and a fall in the cost of trading. It has also drawn new people into the equity markets. One indicator of this is the fall in the size of the average online trade. This has reduced from £13,752 in the first quarter of 1998 to £3,400 in the second quarter of 2000. The average account now trades 24 times a year.

In the provision of financial services to consumers, firms are looking at a number of different delivery channels. These include not just Internet access via a PC but also the use of mobile telephony and interactive digital television. The deployment of these newer media is still in its infancy. Their use as marketing and/or sales vehicles is likely to raise a number of significant issues, not least the areas of advertising, disclosure and security.

As downward cost pressures develop, some firms are examining different business models, for example, moving away from offering a functional service, such as execution only broking, to providing a full wealth management service.

Internet technologies have created new market opportunities. Some of these, such as day trading, have not had a particularly marked impact in the UK. In others the impact has been marked. For example, there has been considerable growth amongst infomediaries, that is firms which supply information and news on investments, tools for ranking investments according to pre-defined criteria, bulletin boards and chat fora.

Infomediaries have an important role to play in making markets more efficient, by increasing the amount of information available to the market, by improving its dissemination and by enhancing the understanding of financial news and products among the public. But the UK along with other countries has also seen abuse of these opportunities on the part of those who seek to profit from spreading false news or by engaging in other forms of market manipulation or insider trading.

When new legislation (the Financial Services and Markets Act) comes into force in the UK in 2001, the FSA will have significant new powers enabling it to take enforcement action against those who seek to abuse regulated markets.

## **B. New developments with regard to the use of Internet by regulators**

Market developments have raised a number of issues for UK regulators. These may summarised under the headings of:



Consumer information and education. The FSA's web-site has a specific section devoted to consumer issues. One of the FSA's four statutory objectives is to promote public understanding of the financial system. This objective is especially relevant to e-commerce. Some of the risks faced by consumers are familiar ones, e.g. not appreciating rapid price movements, not understanding limit orders, not understanding the importance of diversification. Some are newer and arise from the global potential of the Internet. This confers opportunities, since consumers may find suitable products which in the past would not have been accessible to them. On the other hand, consumers also need to inform their decision making with an understanding that by obtaining investment services from firms based in other jurisdictions, UK regulatory protection is forgone.

Regulated activities. A number of Internet Service Providers, portal sites and infomediaries have been in touch with the FSA to determine what their position is under UK legislation. The Internet, by shifting power along the value chain, places portal sites and especially infomediaries in a very attractive position to organise for their customers special deals with investment firms. Introducing a member of the public to an authorised firm may often constitute arranging deals, an activity which triggers an authorisation requirement.

Firms' systems security and capacity. The FSA introduced a systems questionnaire in Spring 1999 which firms applying for authorisation and planning to provide services via the Internet need to complete and have signed off by a third party auditor. In addition, the FSA conducted a review of Internet security in a small number of leading firms. The review will help inform the FSA as to whether individual firms are meeting current standards of best practice.

Operational issues for firms. Updated Guidance was provided in March 2000 on a number of issues. These, in summary, included: advising firms to discuss with the regulator their plans prior to starting a new service over the Internet; advising firms to undertake appropriate monitoring of any bulletin boards they operate; advising firms that have hyper-links to sites which are not subject to UK regulation that they need to provide a warning that the customer is leaving the firm's site with its associated UK regulatory protections; permitting the rule on the dispatch of contract notes to be met by a firm providing secure access to contract notes on its web-site; clarification on the circumstances in which repeat acceptance of risk warnings is required; clarification on the circumstances in which firms must store records of market data carried on their web-site; guidance on the handling of orders received out of trading hours and the requirement to notify a customer in these

circumstances that, where a large number of such orders are received, he or she will not necessarily obtain the opening market price of an instrument.

Use of electronic signatures. Guidance was provided in October 2000 for firms wanting to accept electronic communications as evidence of a customer's consent, agreement or acknowledgement of any document or other statement required under current rules. The Guidance stated that a firm should have in place appropriate arrangements – one proportionate to the levels of risk in a firm's business – for the secure transmission and receipt of the communication, for verifying its authenticity and integrity and the date and time of transmission and receipt whether by the customer or the firm.

A public key infrastructure is likely to be available shortly in the UK that will provide electronic signatures. Firms will need to decide if they wish to issue such signatures to their customers, and, if so, what the prudential implications are in respect of the adequacy of their risk management procedures regarding the issuance and cancellation of electronic signatures.

Provision of investment advice. A number of firms have sought clarification on the circumstances in which they can provide automated computer advice about the suitability of a product on-line. Where advice on suitability is provided, a full fact find as to the individual's circumstances must be conducted, so that the consumer can receive proper advice. If the computer programme fails to generate best advice in a particular case, then the customer would be entitled to redress. To date no firm has felt suitably confident about the reliability of its programme to offer automated advice as to the suitability of an investment product.

The distinction between information and advice. Firms have been keen not to be seen to be providing advice on suitability, but equally they have wanted to provide customers and potential customers with information about investments, investment products and why people might want to buy them. Firms have been advised that, in order to avoid information on their pages constituting advice, it is important that the area which provides generic advice on investments is kept distinct from that part of the web-site which provides information on a firm's specific products. In this context the use of financial health checks needs particular care, since the greater the number of questions which a firm asks, the more likely it is that a consumer will interpret the results as constituting individual advice.

The FSA is currently engaged in a thematic review of the risks and opportunities created by e-commerce. The aim of the review is to identify and then prioritise e-commerce related risks on the basis of the impact, should a risk arise, and the probability of it arising. The FSA will then be in a position to know the extent to which these risks have already been properly addressed, and if they have not been, what further measures are needed. The development of Internet technologies is likely to enhance the FSA's capacity to provide consumers with relevant and usable information, to improve remote monitoring of firms and to provide a cost effective approach to detecting breaches of UK regulatory and statutory requirements.

## 19. UNITED STATES

### A. New developments with regard to the use of the Internet in financial markets and industry since the 1998 Report

In the US, there have been new developments regarding the use of the Internet in a number of areas, including online offerings, electronic-only offerings, and access to historical information.

**Online Offerings.** Increasingly, issuers and broker-dealers are conducting securities offerings online, using the Internet, electronic mail and other electronic media to solicit prospective investors. Examples of these electronic communications include investor questionnaires on investment qualifications, broker-dealer account-opening procedures and directives on how to submit indications of interest or offers to buy in the context of a specific public offering. Today, most registered securities offerings will include an online component.

**Electronic-Only Offerings.** There has been growing interest in “electronic-only” offerings. In an “electronic-only” offering, investors are permitted to participate only if they agree to accept electronic delivery of all documents in connection with the offering. While the SEC, in 1995, indicated that an issuer could structure its offering as one that would be effected entirely through electronic media, it has continued to require a paper delivery alternative under certain circumstances. For example, an issuer or market intermediary must provide the required documents in paper form if an investor revokes his or her consent to electronic delivery before valid delivery is made. Additionally, in SEC releases in October 1995 and May 1996, the SEC provided that a paper copy of information previously delivered electronically should be delivered whenever an investor so requests, even when the revocation is made after electronic delivery or there has been no revocation at all.

Critics of “electronic-only” offerings fear that this arrangement would create a two-tiered system with access to some offerings available only to investors with Internet access. Procedural issues also are presented by this approach. Should an issuer be permitted to require investors to pay for paper delivery when they have consented to electronic-only delivery? In the event of technical difficulties, how would issuers and market intermediaries comply with their delivery obligations, other than by providing paper delivery? The SEC has solicited comment from market participants and other interested parties on “electronic-only” offerings in its most recent “Use of Electronic Media Release.”

**Access to Historical Information.** One of the unique characteristics of the Internet is the continuous availability of information once it is posted on a web site. For example, a press release disseminated over a wire service or through other customary means is considered to have been “issued” once, and thereafter is not recirculated to the marketplace. The same press release posted on an issuer’s web site potentially has a longer life because it provides a record that can be accessed by investors at any time and upon which investors potentially could rely when making an investment decision without independent verification. In effect, a statement may be considered to be “republished” each time that it is accessed by an investor or, for that matter, each day that it appears on the web site.

As issuers use their Internet web sites as repositories for all manner of information, there is growing concern over an issuer’s responsibility, if any, for maintaining and updating historical information about the issuer. Some commentators have suggested that if a statement is deemed to be republished, it may potentially give rise to antifraud liability under the U.S. federal securities laws if such information is out-of-date. Without expressing a view, the SEC has solicited comment from market participants and other interested parties on the “republishing” issue in its most recent “Use of Electronic Media Release.”

## **B. New developments with regard to the use of Internet by regulators**

In general, the Internet provides regulators with the ability to provide and share a great deal of information inexpensively and very quickly. The SEC’s and CFTC’s websites contain information such as litigation releases, proposed regulations, and reports concerning issues raised by the Internet. This information is available to anyone who has access to the Internet. Many other regulators and IOSCO also make available similar information via their respective web sites.

**Online Investor Survey.** On May 3, 2001, Laura Unger, Acting SEC Chairman, announced the SEC’s launch of a web-based survey to learn more about how investors are using electronic media, including the Internet, in making investment decisions. The survey will explore investor knowledge and experience, investor expectations of brokerage firms, trading frequencies, and how investors analyze risk. The survey, which takes about 20 minutes to complete, will be available until July 1, 2001 on the SEC’s website, as well as those of more than a dozen leading government, investor education, and

financial services industry organizations. The SEC will issue a report on the survey's findings. See press release at <http://www.sec.gov/news/press/2001-41.txt>.

**Amendments to Investment Advisers Act Release.**<sup>21</sup> The SEC and US state regulators have created an Internet-based electronic filing system for investment advisers. This system, which is operated by NASDR, permits investment advisers to satisfy their filing obligations with state and federal regulators with a single electronic filing made over the Internet. The system also provides public access through the SEC's website to information on investment advisers and the persons who work for them.

**CFTC participates in joint law enforcement initiative aimed at cleaning up the Internet.** The CFTC participated in the **TopTenDotCons Sweep**, a joint law enforcement project sponsored by the Federal Trade Commission (FTC). The TopTenDotCons Sweep focuses on the "Top Ten" Internet related consumer frauds and includes civil and criminal actions brought by federal, state and foreign agencies. See CFTC News Release 4466-00, October 31, 2000 at: <http://www.cftc.gov/opa/enf00/4466-00.htm> See also Federal Trade Commission web-site for further details: <http://www.ftc.gov/opa/2000/10/topten.htm>

**Fraudulent Internet solicitations.** On September 6, 2000, the CFTC filed and simultaneously settled administrative enforcement actions in a second sweep against four more promoters of commodity trading systems using the Internet. In each of these actions, the CFTC found that the promoters of commodity trading systems made fraudulent claims on the Internet concerning the purportedly extraordinary profits to be realized by using their systems to trade commodity futures or options contracts. The respondents, without admitting or denying the findings, consented to the entry of orders that directed them to cease and desist from further violations, as charged; make no unsubstantiated profit or risk claims; and pay civil monetary penalties, unless they demonstrated that they did not have the financial ability to pay such a penalty. One respondent's registration with the CFTC also was suspended for a six-month period. Also on September 6, 2000, the CFTC filed a civil injunctive action against the developer of a commodity trading system that he marketed to the general public, in part, on the Internet. See <http://www.cftc.gov/opa/enf00/4442-00.htm>

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<sup>21</sup> Electronic Recordkeeping By Investment Companies and Investment Advisers; Amendments to Rule 31a-2 [17 CFR 270.31a-2] of the Investment Company Act of 1940 [15 U.S.C. 80a] and Rule 204-2 [17 CFR 275.204.2] of the Investment Advisers Act of 1940 [15 U.S.C. 80b].

To maximize the impact of the Surf Day initiative, the CFTC announced on May 1, 2000 that it had filed and simultaneously settled ten administrative enforcement actions. The respondents, without admitting or denying the findings, consented to the entry of orders that directed them to cease and desist from further violations, as charged, and that further ordered them to comply with their undertakings to: not misrepresent the risks or results associated with any commodity futures or options trading system or advisory service; not present any hypothetical trading performance without a disclaimer; and not make any representation regarding the financial benefits of any trading system or advisory service without first prominently disclosing that futures trading involves high risks with the potential for substantial losses. Civil monetary penalties of \$10,000 were imposed against all respondents but those who demonstrated a financial inability to pay the penalty based upon evidence of their financial condition, including a sworn Financial Disclosure Statement. See <http://www.cftc.gov/opa/enf00/4397-00.htm>

**CFTC issues consumer advisory.** The CFTC tied the filing of these enforcement actions to its public education efforts by issuing, on the same date, a Consumer Advisory warning the public about Internet websites selling commodity trading systems that guarantee high profits with minimal risk. The Advisory warns consumers that: commodity futures and options typically are high-risk endeavors; no computer trading system can guarantee profits; and the hypothetical results used by many trading system promoters to advertise their systems can be unreliable. This Consumer Advisory is available on the CFTC's Internet website, along with other Advisories concerning possible fraudulent activity in the commodity futures and options industry. See <http://www.cftc.gov/enf/00orders/posting4-tradingsystem.htm>.

**IOSCO Internet Surf Day.** The members of WP4 have devoted increasing resources to combating Internet fraud. WP4 organized an "International Surf Day." The CFTC was the primary organizer of the event and prepared all the instructional materials and reporting forms. WP4 members surveyed the World Wide Web in order to detect fraudulent or otherwise illegal schemes involving investment and trading opportunities in securities and derivatives. The surf took place on March 28, 2000, and was considered very successful by WP4 members. Approximately 10,000 sites were visited by IOSCO members and approximately 1,000 were identified for further review, including approximately 250 sites that involved cross border activity. CFTC staff identified 88 for follow up review, including 72 involving cross-border activity, and SEC staff identified 78 sites for follow up

review. The Surf also resulted in numerous referrals. Press releases are available at the following:  
for the CFTC: <http://www.cftc.gov/opa/enf00/4399-00.htm>; and  
for the SEC: <http://www.sec.gov/news/press/2000-64.txt>.

**Federal Trade Commission Surf Day.** The CFTC and the SEC also participated in an interagency Internet surf organized by the US Federal Trade Commission during the week of February 28, 2000, with law enforcement and consumer protection agencies from 32 countries. The CFTC alone examined approximately 300 Internet Web sites and identified dozens for follow-up review. These Web sites dangle the promise of quick riches with little or no risk. The sites promote a variety of questionable investment schemes involving commodity futures and options, including: computerized trading systems promising highly successful buy and sell signals; trade recommendations based on seasonal trends in the prices of commodities like heating oil and gasoline; and purported profit opportunities on commodities such as foreign currencies (or "forex"), precious metals, and stock indices. Further information regarding the Internet Surf is available at [www.ftc.gov](http://www.ftc.gov) and [www.consumer.gov/bizonline](http://www.consumer.gov/bizonline).

**IOSCO Internet Surveillance Training Program.** The CFTC and the SEC hosted jointly a second Internet Surveillance Training Program for relevant enforcement staff from WP4 members on June 15<sup>th</sup> & 16<sup>th</sup>, 2000. The program was held at the CFTC. This training program brought together experts from regulators with Internet enforcement programs to provide instruction on areas such as the use of search engines for detecting securities offenses, Internet resources that identify authors of anonymous newsgroup postings and e-mail messages, and methods of preserving and authenticating electronic evidence. There was also a panel discussion on the organization of Internet surveillance and Internet enforcement programs. We reached out to foreign authorities as well as domestic, such as the FBI, to share their knowledge and experiences at the training program. The program was attended by 22 participants from 19 different jurisdictions.

**Former CFTC Chairman Commenting on regulatory response to impersonal nature of electronic trading environment.** Former CFTC Chairman Rainer commented on the regulatory response to electronic trading in a speech that was delivered on November 19, 2000 at the IOSCO Emerging Markets Committee Panel Discussion on Internet-Related Market Developments from a Regulatory Perspective:

The impersonal nature of electronic trading, especially cross-border trading, demands an increasingly "personal" response from financial regulators. This response should make use of new technology to help



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United States (continued)

foster appropriate levels of customer and market protection without impeding the efficiency that technology brings to trading. Importantly, in an environment of inevitable and rapid change, it should avoid prescriptive rules that could inappropriately thwart new ventures. The types of "personal" responses that I contemplate regulators exploring fall into four categories:

- Enhanced regulatory coordination and cooperation;
- Enhanced transparency;
- More, and more tailored, investor education; and
- Competition.

See full text at: <http://www.cftc.gov/opa/speeches00/rainer-10.htm>

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SECURITIES ACTIVITY ON THE INTERNET II**

**ANNEX III**

**LIST OF WEBSITES OF REGULATORS, SELF-REGULATORY  
ORGANIZATIONS AND OTHER SECURITIES-RELATED ENTITIES**

The following are the preliminary results of an initiative by IOSCO members to establish a consolidated list of official web addresses for regulators and self-regulatory organizations in each jurisdiction. These websites are provided with the intention that they may facilitate investors' ability to determine whether a given security or intermediary is registered or licensed within a given jurisdiction.

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## 1. ARGENTINA

Market Intermediaries:	
Investment Advisers:	
Collective Investment Schemes:	
Markets:	<p>Comisión Nacional de Valores (National Securities Commission) <a href="http://www.cnv.gov.ar">http://www.cnv.gov.ar</a></p> <p>Ministerio de Economía (Ministry of Economy) <a href="http://www.mecon.gov.ar">http://www.mecon.gov.ar</a></p> <p>Bolsa de Comercio de Buenos Aires (Buenos Aires Stock Exchange) <a href="http://www.bcba.sba.com.ar">http://www.bcba.sba.com.ar</a></p> <p>Bolsa Net – Web del Sistema Bursátil Argentino (Web site of the Argentine Stock System) <a href="http://www.bolsar.com">http://www.bolsar.com</a></p> <p>Mercado de Valores de Buenos Aires (Buenos Aires Stock Market) <a href="http://www.merval.sba.com.ar">http://www.merval.sba.com.ar</a></p> <p>Mercado Abierto Electrónico (Over-the-Counter market) <a href="http://www.mae.com.ar">http://www.mae.com.ar</a></p> <p>Caja de Valores (Central Depository of Securities) <a href="http://www.merval.sba.com.ar">http://www.merval.sba.com.ar</a></p> <p>Mercado a Término de Buenos Aires (Buenos Aires Future Commodity Market) <a href="http://www.matba.com.ar">http://www.matba.com.ar</a></p> <p>Rofex – Rosario Futures Exchange <a href="http://www.rofex.com.ar">http://www.rofex.com.ar</a> e-mail: <a href="mailto:info@rofex.com.ar">info@rofex.com.ar</a></p>

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<p>Cámara de Sociedades Anónimas (Argentine Corporations Chamber) <a href="http://www.camsocanon.com">http://www.camsocanon.com</a></p> <p>CAFCI –Cámara Argentina de Fondos Comunes de Inversión (Argentine Mutual Funds Chamber) <a href="http://www.fondos.org.ar">http://www.fondos.org.ar</a></p> <p>ADA – Asociación de Derivados de Argentina (Argentine Derivative Association) <a href="http://www.ada.org.ar">http://www.ada.org.ar</a></p> <p>Bolsa de Comercio de Rosario (Rosario Stock Exchange) <a href="http://www.bolsarosario.com">http://www.bolsarosario.com</a></p> <p>Mercado de Valores de Rosario (Rosario Stock Market) <a href="http://www.mervaros.com.ar">http://www.mervaros.com.ar</a></p> <p>Mercado de Valores de Córdoba (Cordoba Stock Market) <a href="http://www.mervalcordoba.com.ar">http://www.mervalcordoba.com.ar</a></p> <p>Bolsa de Comercio de Cordoba (Cordoba Stock Exchange) <a href="http://www.bolsacba.com.ar">http://www.bolsacba.com.ar</a></p> <p>Bolsa de Comercio de Mendoza (Mendoza Stock Exchange) <a href="http://www.bolsamza.com.ar">http://www.bolsamza.com.ar</a></p> <p>Mercado de Valores de Mendoza (Mendoza Stock Market) e-mail: <a href="mailto:institucionale@bolsamza.com.ar">institucionale@bolsamza.com.ar</a></p> <p>Banco Central de la República Argentina (Central Bank of Argentina) <a href="http://www.bcra.gov.ar">http://www.bcra.gov.ar</a></p>
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**2. AUSTRALIA**

Market Intermediaries:	<ul style="list-style-type: none"><li>the Australian Securities &amp; Investment Commission (ASIC)</li></ul>
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	<p>general website located @ <a href="http://www.asic.gov.au/">http://www.asic.gov.au/</a></p> <ul style="list-style-type: none"> <li>the Australian Securities &amp; Investment Commission (ASIC) consumer website located @ <a href="http://www.fido.asic.gov.au/">http://www.fido.asic.gov.au/</a></li> </ul> <p>Registered Securities Dealers, Futures Brokers, Futures Advisors, Life Insurance Brokers, General Insurance Brokers and Foreign Insurance Brokers: <a href="http://www.search.asic.gov.au/pro.html">www.search.asic.gov.au/pro.html</a></p>
Investment Advisers:	Registered Investment Advisers: <a href="http://www.search.asic.gov.au/pro.html">www.search.asic.gov.au/pro.html</a>
Collective Investment Schemes:	<a href="http://www.search.asic.gov.au/pro.html">www.search.asic.gov.au/pro.html</a>
Markets:	<ul style="list-style-type: none"> <li>the Australian Stock Exchange (ASX) website located @ <a href="http://www.asx.com.au/">http://www.asx.com.au/</a></li> <li>the Sydney Futures Exchange (SFE) website located @ <a href="http://www.sfe.com.au/">http://www.sfe.com.au/</a></li> <li>The Bendigo Stock Exchange (BSX) located @ <a href="http://www.bsx.com.au/">http://www.bsx.com.au/</a></li> <li>The Stock Exchange of Newcastle (NSX) located @ <a href="http://www.newsx.com.au/">http://www.newsx.com.au/</a></li> </ul>

**3. BRAZIL**

Market Intermediaries:	<a href="http://www.cvm.gov.br">www.cvm.gov.br</a>
Investment Advisers:	
Collective Investment Schemes:	<a href="http://www.cvm.gov.br">www.cvm.gov.br</a>
Markets:	<a href="http://www.cvm.gov.br">www.cvm.gov.br</a>

**4. CANADA**

Market Intermediaries:	List of authorized investment firms <a href="http://www.ida.ca">http://www.ida.ca</a>
Investment Advisers:	

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Collective Investment Schemes:	List of members, funds managed and statistics: <a href="http://www.ific.ca">http://www.ific.ca</a>
Markets:	<p>Securities Regulators:  <a href="http://www.albertasecurities.com">http://www.albertasecurities.com</a>  <a href="http://www.bcsc.bc.ca">http://www.bcsc.bc.ca</a>  <a href="http://www.msc.gov.mb.ca">http://www.msc.gov.mb.ca</a>  <a href="http://www.gov.nb.ca">http://www.gov.nb.ca</a>  <a href="http://www.gov.nf.ca">http://www.gov.nf.ca</a>  <a href="http://www.gov.ns.ca">http://www.gov.ns.ca</a>  <a href="http://www.gov.nt.ca">http://www.gov.nt.ca</a>  <a href="http://www.osc.gov.on.ca">http://www.osc.gov.on.ca</a>  <a href="http://www.gov.pe.ca">http://www.gov.pe.ca</a>  <a href="http://www.cvmq.com">http://www.cvmq.com</a>  <a href="http://www.ssc.gov.sk.ca">http://www.ssc.gov.sk.ca</a>  <a href="http://www.gov.yk.ca">http://www.gov.yk.ca</a></p> <p>System for Electronic Document Analysis and Retrieval:  <a href="http://www.sedar.com">http://www.sedar.com</a></p> <p>Recognized Exchanges:  <a href="http://www.tse.com">http://www.tse.com</a>  <a href="http://www.cdnx.com">http://www.cdnx.com</a>  <a href="http://www.bdm.org">http://www.bdm.org</a></p> <p>SROs:  <a href="http://www.ida.ca">http://www.ida.ca</a>  <a href="http://www.mfda.ca">http://www.mfda.ca</a></p>

**5. FRANCE**

Market Intermediaries:	<p>List of authorized investment firms and credit institutions:  <a href="http://www.banque-france.fr">www.banque-france.fr</a></p> <p>Firms authorized for custody and account keeping:  <a href="http://www.cmf-france.org">www.cmf-france.org</a></p>
Investment Advisers:	Non regulated in France
Collective Investment Schemes:	<p><a href="http://www.cob.fr">www.cob.fr</a></p> <p>more specific information (summary of the mandatory information note for CIS, date of approval, main characteristics) are available on the Minitel electronic network 3617 COB</p>

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Markets:	Regulated markets in the EEC: <a href="http://www.europefesco.org">www.europefesco.org</a>  Euronext: <a href="http://www.euronext.com">www.euronext.com</a>
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**6. GERMANY**

Market Intermediaries:	Licensed credit institutions and financial service institutions: <a href="http://www.bawe.de">www.bawe.de</a> ; <a href="http://www.bakred.de/list/auswahl.html">www.bakred.de/list/auswahl.html</a>
Investment Advisers:	As far as „investment advice“ is the only service offered it is not regulated in Germany. If it is offered in connection with other investment services: <a href="http://www.bawe.de">www.bawe.de</a> ; <a href="http://www.bakred.de/list/auswahl.html">www.bakred.de/list/auswahl.html</a>
Collective Investment Schemes:	Collective Investment Schemes: <a href="http://www.bakred.de/list/auswahl.html">www.bakred.de/list/auswahl.html</a>
Markets:	Regulated Markets in the EEC: <a href="http://www.europefesco.org">www.europefesco.org</a>  Supervisory Authorities of the Federal States: <a href="http://www.boersenaufsicht.de">www.boersenaufsicht.de</a>  Exchanges: Berlin: <a href="http://www.berlinboerse.de">www.berlinboerse.de</a> Bremen: <a href="http://www.boerse-bremen.de">www.boerse-bremen.de</a> Hamburg: <a href="http://www.boersenag.de">www.boersenag.de</a> Hannover: <a href="http://www.boerse-hannover.de">www.boerse-hannover.de</a> <a href="http://www.wtb-hannover.de">www.wtb-hannover.de</a> Eurex: <a href="http://www.eurexexchange.de">www.eurexexchange.de</a> Frankfurt: <a href="http://www.deutsche-boerse.com">www.deutsche-boerse.com</a> München: <a href="http://www.bayerischeboerse.de">www.bayerischeboerse.de</a> Stuttgart: <a href="http://www.boerse-stuttgart.de">www.boerse-stuttgart.de</a>  European Energy Exchange: <a href="http://www.eex.de">www.eex.de</a> Leipziger Power Exchange: <a href="http://www.lpx.de">www.lpx.de</a>  Clearing Houses Clearstream: <a href="http://www.clearstream.de">www.clearstream.de</a>



## 7. HONG KONG

Market Intermediaries:	Registry of licensed and registered intermediaries and of authorized investment products: <a href="http://www.hksfc.org.hk">www.hksfc.org.hk</a>  Registry of licensed banks, of restricted license banks and of deposit-taking companies: <a href="http://www.info.gov.hk/hkma">www.info.gov.hk/hkma</a>
Investment Advisers:	<a href="http://www.hksfc.org.hk">www.hksfc.org.hk</a>
Collective Investment Schemes:	<a href="http://www.hksfc.org.hk">www.hksfc.org.hk</a>
Markets:	Registry of Stock Exchange participants, of Futures Exchange participants and of Clearing House participants:  <a href="http://www.hkex.com.hk">www.hkex.com.hk</a>

## 8. ITALY

Market Intermediaries:	<a href="http://www.consob.it">www.consob.it</a>
Investment Advisers:	
Collective Investment Schemes:	<a href="http://www.consob.it">www.consob.it</a>
Markets:	Regulated markets in the EEC: <a href="http://www.europefesco.org">www.europefesco.org</a>

## 9. JAPAN

Market Intermediaries:	List of registered broker-dealers is available (only in Japanese) at the FSA website below. <a href="http://www.fsa.go.jp/densi/densij/syouken_itiran.pdf">http://www.fsa.go.jp/densi/densij/syouken_itiran.pdf</a>
Investment Advisers:	List of members of Japan Securities Investment Advisers association (JSIAA) is available (only in Japanese) at its own website below.

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	<p><a href="http://www5.mediagalaxy.co.jp/jsiaa/aramasi/index.html">http://www5.mediagalaxy.co.jp/jsiaa/aramasi/index.html</a> This is not an exclusive list of investment advisers in Japan. (An investment adviser is not necessarily a member of the JSIAA).</p>
Collective Investment Schemes:	<p>List of members of the Investment Trusts Association, Japan (ITA) is available (only in Japanese) at its own website below. <a href="http://www.toushin.or.jp/data/member.htm">http://www.toushin.or.jp/data/member.htm</a> There is no legal requirement for investment companies to be members of ITA. However, all registered investment companies are members of ITA as of March 2001.</p>
Markets:	<p>The FSA website below contains links to websites of authorized markets. (Available only in Japanese) <a href="http://www.fsa.go.jp/link/link.html">http://www.fsa.go.jp/link/link.html</a></p>

**10. MALAYSIA**

Market Intermediaries:	<p>List of licenced persons (future brokers, fund managers, dealers, investment advisers and futures fund managers):<a href="http://www.sc.com.my">www.sc.com.my</a></p> <p>List of members of the Kuala Lumpur Option and Financial Future Exchange (KLOFFE) at <a href="http://www.kloff.com.my">www.kloff.com.my</a></p> <p>List of members of the Malaysian Exchange of Securities Dealing &amp; Automated Quotation (MESDAQ) and the list of MESDAQ registered dealers representatives at <a href="http://www.mesdaq.com.my">www.mesdaq.com.my</a></p> <p>List of members of the Commodity and Monetary Exchange of Malaysia (COMMEX) at <a href="http://www.commex.com.my">www.commex.com.my</a></p>
Investment Advisers:	<p>List of licensed investment advisers <a href="http://www.sc.com.my">www.sc.com.my</a></p>
Collective Investment	

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<p>Schemes:</p> <p>Markets:</p>	<p>Exchanges</p> <p>Kuala Lumpur Stock Exchange at <a href="http://www.klse.com.my">www.klse.com.my</a></p> <p>Kuala Lumpur Option and Financial Future Exchange (KLOFFE) at <a href="http://www.kloffe.com.my">www.kloffe.com.my</a></p> <p>Malaysian Exchange of Securities Dealing &amp; Automated Quotation (MESDAQ) at <a href="http://www.mesdaq.com.my">www.mesdaq.com.my</a></p> <p>Commodity and Monetary Exchange of Malaysia (COMMEX) at <a href="http://www.commex.com.my">www.commex.com.my</a></p> <p>List of approved securities by the SC's Syariah Advisory Council which are listed on the KLSE and MESDAQ - This is a list of approved securities by SC's Syari'ah Advisory Council (SAC) who approves certain securities listed on the Kuala Lumpur Stock Exchange (KLSE) and Malaysia Exchange of Securities Dealing &amp; Automated Quotation (MESDAQ) to be in accordance with the Islamic principles. This list can be found at: <a href="http://www.sc.com.my/html.publications/press/pr_20001027.html">www.sc.com.my/html.publications/press/pr_20001027.html</a></p> <p>Clearing Houses</p> <p>Securities Clearing Automated Network Services Sdn Bhd (SCANS) at <a href="http://www.klse.com.my">www.klse.com.my</a></p> <p>Central Depository</p> <p>Malaysian Central Depository Sdn Bhd (MCD) at <a href="http://www.klse.com.my">www.klse.com.my</a></p>
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## 11. THE NETHERLANDS

Market Intermediaries:	<a href="http://www.ste.nl">www.ste.nl</a>
Investment Advisers:	Not regulated
Collective Investment Schemes:	<a href="http://www.dnb.nl">www.dnb.nl</a>
Markets:	Regulated markets in the EEC: <a href="http://www.europefesco.org">www.europefesco.org</a>  Euronext: <a href="http://www.euronext.com">www.euronext.com</a>

## 12. PORTUGAL

Market Intermediaries:	List of banks and other financial institutions: <a href="http://www.bportugal.pt">www.bportugal.pt</a>  List of banks, broker dealer companies: <a href="http://www.cmvm.pt">www.cmvm.pt</a>
Investment Advisers:	
Collective Investment Schemes:	List of investment fund management companies, assets management companies, real estate investment funds management companies, investment funds: <a href="http://www.cmvm.pt">www.cmvm.pt</a>
Markets:	List of regulated markets and settlement systems: <a href="http://www.cmvm.pt">www.cmvm.pt</a>  Cash market and derivatives: <a href="http://www.bvl.pt">www.bvl.pt</a>  Special market for public dept.: <a href="http://www.mtsportugal.com">www.mtsportugal.com</a>

## 13. SINGAPORE

Market Intermediaries:	Dealers, SGX Derivatives Trading Limited Members <a href="http://www.mas.gov.sg/directory/index.html">www.mas.gov.sg/directory/index.html</a>
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Investment Advisers:	Investment Advisers, Futures Trading Advisers, Futures Pool Operators <a href="http://www.mas.gov.sg/directory/index.html">www.mas.gov.sg/directory/index.html</a>
Collective Investment Schemes:	Note: Fund managers are licensed as Investment Advisers in Singapore
Markets:	The Singapore Exchange <a href="http://www.sgx.com">www.sgx.com</a>

**14. SPAIN**

Market Intermediaries:	<ul style="list-style-type: none"> <li>◆ Brokers and Broker Dealers (Sociedades y Agencias de Valores) <a href="http://www.cnmv.es/consultas/reg_ofi_soc_a_gen_valo/sav.htm">http://www.cnmv.es/consultas/reg_ofi_soc_a_gen_valo/sav.htm</a></li> <li>◆ Management Portfolio Companies (Sociedades Gestoras de Carteras) <a href="http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/sgc/sgc.htm">http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/sgc/sgc.htm</a></li> <li>◆ Investment Service Companies under the European passport (Empresas de servicios de inversión con pasaporte europeo) <a href="http://www.cnmv.es/cgi/dpei.dll/GENERA">http://www.cnmv.es/cgi/dpei.dll/GENERA</a></li> </ul>
Listed Companies:	<ul style="list-style-type: none"> <li>◆ Listed companies. Access by name <a href="http://www.cnmv.es/consultas/reg_ofi_ent_emisoras/ent_registradas/accesonombre.htm">http://www.cnmv.es/consultas/reg_ofi_ent_emisoras/ent_registradas/accesonombre.htm</a> Access by Sector <a href="http://www.cnmv.es/cgi/dpemhtml.dll/SECTOR">http://www.cnmv.es/cgi/dpemhtml.dll/SECTOR</a></li> <li>◆ Other information about listed Companies - Take over bids <a href="http://www.cnmv.es/consultas/reg_ofi_ent_emisoras/opas/regopas.htm">http://www.cnmv.es/consultas/reg_ofi_ent_emisoras/opas/regopas.htm</a> - Audit annual reports <a href="http://www.cnmv.es/consultas/reg_ofi_ent_emisoras/cuentas_anuales/auditorias/dpau.htm">http://www.cnmv.es/consultas/reg_ofi_ent_emisoras/cuentas_anuales/auditorias/dpau.htm</a></li> </ul>

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	<p><u>m</u></p> <ul style="list-style-type: none"> <li>- Periodic public information <a href="http://www.cnmv.es/consultas/reg_ofi_ent_e_misoras/info_fin_period/info_fin_period.htm">http://www.cnmv.es/consultas/reg_ofi_ent_e_misoras/info_fin_period/info_fin_period.htm</a></li> <li>- Significant shareholders <a href="http://www.cnmv.es/consultas/reg_ofi_ent_e_misoras/partic_signific/partic_signific.htm">http://www.cnmv.es/consultas/reg_ofi_ent_e_misoras/partic_signific/partic_signific.htm</a></li> <li>- Significant events <a href="http://www.cnmv.es/consultas/reg_ofi_ent_e_misoras/hechos_relevantes/significativos.htm">http://www.cnmv.es/consultas/reg_ofi_ent_e_misoras/hechos_relevantes/significativos.htm</a></li> </ul>
Investment Advisers:	
Collective Investment Schemes:	<ul style="list-style-type: none"> <li>◆ Access by type of entity <a href="http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/dpiic.htm">http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/dpiic.htm</a></li> <li>◆ Funds Management Companies (List of Entities) (Sociedades Gestoras de Instituciones de Inversión Colectiva Lista por entidades)  <a href="http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/sqiic/sqiic.htm">http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/sqiic/sqiic.htm</a></li> <li>◆ And the Funds (Investment Funds and Monetary Funds) managed by them (FIM and FIAMM) <a href="http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/fim/fim.htm">Http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/fim/fim.htm</a>  <a href="http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/fiamm/fiamm.htm">Http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/fiamm/fiamm.htm</a></li> <li>◆ Real Estate Funds (FII) <a href="http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/fii/fii.htm">Http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/fii/fii.htm</a></li> <li>◆ Close End Companies (Sociedades de Inversión Mobiliaria) <a href="http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/sim/sim.htm">Http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/sim/sim.htm</a></li> <li>◆ Open End Companies (Sociedades de Inversión Mobiliaria de Capital Variable)</li> </ul>

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	<p><a href="http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/simcav/simcav.htm">http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/simcav/simcav.htm</a></p> <ul style="list-style-type: none"> <li>◆ Depositaries ( Sociedades Depositarias) <a href="http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/depo/depo.htm">http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/depo/depo.htm</a></li> <li>◆ Foreign Collective Investment Schemes List <a href="http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/extr/extr.htm">http://www.cnmv.es/consultas/reg_ofi_inst_in_v_colec/ent_registradas/extr/extr.htm</a></li> </ul>
Markets:	<ul style="list-style-type: none"> <li>◆ Regulated markets in the EEC: <a href="http://www.europefesco.org">www.europefesco.org</a></li> </ul>

**15. SWEDEN**

Market Intermediaries:	
Investment Advisers:	
Collective Investment Schemes:	
Markets:	

**16. SWITZERLAND**

Market Intermediaries:	<p><a href="http://www.sfbc.admin.ch/e">www.sfbc.admin.ch/e</a></p> <p>List of licensed banks, securities dealers: <a href="http://www.sfbc.admin.ch/e/societe/index">www.sfbc.admin.ch/e/societe/index</a></p>
Investment Advisers:	Not regulated
Collective Investment Schemes:	<a href="http://www.sfbc.admin.ch/e/societe/index">www.sfbc.admin.ch/e/societe/index</a>
Markets:	<p><a href="http://www.sfbc.admin.ch/e/societe/index">www.sfbc.admin.ch/e/societe/index</a></p> <p>Exchanges: <a href="http://www.swx.com">www.swx.com</a> <a href="http://www.eurex.ch">www.eurex.ch</a></p>

**17. TURKEY**

Market Intermediaries:	<a href="http://www.spk.gov.tr">www.spk.gov.tr</a>
Investment Advisers:	<a href="http://www.spk.gov.tr">www.spk.gov.tr</a>
Collective Investment Schemes:	<a href="http://www.spk.gov.tr">www.spk.gov.tr</a>
Markets:	Istanbul Stock Exchange: <a href="http://www.imkb.gov.tr">www.imkb.gov.tr</a> or <a href="http://www.ise.org">www.ise.org</a>  ISE Settlement and Custody Bank Inc. <a href="http://www.takasbank.com.tr">www.takasbank.com.tr</a>  <a href="http://www.spk.gov.tr">www.spk.gov.tr</a>

**18. UK**

Market Intermediaries:	<a href="http://www.thecentralregister.co.uk">www.thecentralregister.co.uk</a>
Investment Advisers:	<a href="http://www.thecentralregister.co.uk">www.thecentralregister.co.uk</a>
Collective Investment Schemes:	<a href="http://www.thecentralregister.co.uk">www.thecentralregister.co.uk</a>
Markets:	Regulated markets in the EEC: <a href="http://www.europefesco.org">www.europefesco.org</a>
FSA's web-site, including FSA publications	<a href="http://www.fsa.gov.uk">www.fsa.gov.uk</a>

**19. USA**

Market Intermediaries:	Public information about broker-dealers is available through the NASD Regulation Public Disclosure Program at <a href="http://www.nasdr.com/2000.htm">www.nasdr.com/2000.htm</a> .  This site contains information about NASD member firms (all US broker-dealers must be NASD members) and associated persons, including current employment, previous employment, and approved registrations for brokers; address information, types of business conducted, legal status, and
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approved registrations for firms; and a section to request reports of disclosure information.

Also, a list of SEC registered broker-dealers is available as a downloadable file from the SEC's website at [www.sec.gov/asec/foia/foiadocs.htm](http://www.sec.gov/asec/foia/foiadocs.htm).

The National Futures Association maintains information regarding the registration status and public disciplinary records of individuals and entities involved in the futures and commodities markets, at [www.nfa.futures.org/basic/welcome.asp](http://www.nfa.futures.org/basic/welcome.asp).

The CFTC web site at [www.cftc.gov/cftc/cftchome.htm](http://www.cftc.gov/cftc/cftchome.htm) contains a variety of information concerning intermediaries and markets and the CFTC's oversight activities.

The CFTC's web site at [www.cftc.gov/tm/tmfcm.htm](http://www.cftc.gov/tm/tmfcm.htm) makes available financial reports that are filed by futures commission merchants (FCMs). The summary is available in both html and Microsoft Excel spreadsheet formats for viewing or downloading.

CFTC financial and sales practice oversight reviews of SRO programs relating to intermediaries are available at [www.cftc.gov/tm/tmfinancialrers.htm](http://www.cftc.gov/tm/tmfinancialrers.htm)

The CFTC's web-site also contains numerous lists that relate to a firm or person's disciplinary history:

The **Annual Proceedings Bulletin** lists, in alphabetical order, persons and companies (1) that have been charged either administratively or injunctively with violations of the *Commodity Exchange Act* and/or CFTC regulations or (2) that have been alleged by the CFTC to be statutorily disqualified from registration. The names of parties who were initially charged and subsequently dismissed from a proceeding, or against whom no sanctions were imposed,

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	<p>are not included in the Bulletin unless the case is on appeal. See <a href="http://www.cftc.gov/pb/pbproceedings.htm">www.cftc.gov/pb/pbproceedings.htm</a> The <b>Administrative Sanctions in Effect</b> list contains the names of firms and individuals that currently have registrations and trading sanctions in effect as a result of administrative and statutory disqualification proceedings. See <a href="http://www.cftc.gov/proc/pcdadmsanclst.htm">www.cftc.gov/proc/pcdadmsanclst.htm</a> The <b>Reparations Sanctions in Effect</b> list contain the names of individuals or firms who have not paid awards which were levied against them as a result of reparations proceedings. See <a href="http://www.cftc.gov/porc/pcdrepsanct.htm">www.cftc.gov/porc/pcdrepsanct.htm</a> The full text of CFTC <b>Enforcement Orders and Complaints</b> is available at: <a href="http://www.cftc.gov/enf/enfcomplaints.htm">www.cftc.gov/enf/enfcomplaints.htm</a></p>
<p>Investment Advisers:</p>	<p>The SEC and US state securities authorities have created the Investment Adviser Registration Depository (“IARD”) system. The IARD is an Internet-based system of electronic filing for investment advisers operated by NASD Regulation. Information contained in filings made through the IARD is stored in a publicly accessible database. Additionally, a list of SEC registered investment advisers is available as a downloadable file from the SEC’s website at <a href="http://www.sec.gov/asec/foia/foiadocs.htm">www.sec.gov/asec/foia/foiadocs.htm</a>.</p> <p>Additionally, the North American Securities Administrators’ Association (“NASAA”) maintains a website that provides contact information for US state securities authorities at <a href="http://www.nasaa.org/regulator">www.nasaa.org/regulator</a>.</p> <p>Futures Advisors: <a href="http://www.nfa.futures.org/basic/welcome.asp">www.nfa.futures.org/basic/welcome.asp</a></p>
<p>Collective Investment Schemes:</p>	<p>Registration data on commodity pool operators is available on the NFA BASICS web-site at</p>

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	<p><a href="http://www.nfa.futures.org/basic/welcome.asp">http://www.nfa.futures.org/basic/welcome.asp</a></p>
<p>Markets:</p>	<p>The SEC website, <a href="http://www.sec.gov">www.sec.gov</a>, contains links to websites of US self-regulatory organizations, including the following:</p> <p>American Stock Exchange, <a href="http://www.amex.com">www.amex.com</a>.  Boston Stock Exchange, <a href="http://www.bostonstock.com">www.bostonstock.com</a>.  Chicago Board Options Exchange, <a href="http://www.cboe.com">www.cboe.com</a>.  Chicago Stock Exchange, <a href="http://www.chicagostockex.com">www.chicagostockex.com</a>.  International Securities Exchange, <a href="http://www.iseoptions.com">www.iseoptions.com</a>.  NASD, Inc., <a href="http://www.nasd.com">www.nasd.com</a>.  The NASDAQ Stock Market, Inc., <a href="http://www.nasdaq.com">www.nasdaq.com</a>.  NASD Regulation, Inc., <a href="http://www.nasdr.com">www.nasdr.com</a>.  New York Stock Exchange, <a href="http://www.nyse.com">www.nyse.com</a>.  Pacific Exchange, <a href="http://www.pacificex.com">www.pacificex.com</a>.  Philadelphia Stock Exchange, <a href="http://www.phlx.com">www.phlx.com</a>.  Municipal Securities Rulemaking Board, <a href="http://www.msrb.org">www.msrb.org</a>.</p> <p>CFTC oversight reviews of designated contract markets are available at: <a href="http://www.cftc.gov/tm/tmexchrer.htm">http://www.cftc.gov/tm/tmexchrer.htm</a>  CFTC commitments of traders reports are available at: <a href="http://www.cftc.gov/cftc/cftccotreports.htm">http://www.cftc.gov/cftc/cftccotreports.htm</a>  The CFTC's web-site at <a href="http://www.cftc.gov/dea/deadcms_table.htm">http://www.cftc.gov/dea/deadcms_table.htm</a> and <a href="http://www.cftc.gov/cftc/cftcrellinks.htm">http://www.cftc.gov/cftc/cftcrellinks.htm</a> contains links to the following domestic futures exchanges and clearing organizations:</p> <p>Exchanges Domestic  <a href="#">Cantor Financial Futures Exchange</a>  <a href="#">Chicago Board of Trade</a>  <a href="#">Chicago Board Options Exchange</a>  <a href="#">Chicago Mercantile Exchange</a>  FutureCom <a href="http://www.futurecom.org/">http://www.futurecom.org/</a></p>

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Kansas City Board of Trade  
Merchant's Exchange of St. Louis  
<http://www.merchants-exchange.net/>  
Minneapolis Grain Exchange  
New York Board of Trade  
New York Mercantile Exchange  
OnExchange Board of Trade  
<http://www.onexchange.com/>  
Philadelphia Board of Trade  
<http://www.phlx.com/>

Clearing Organizations

Board of Trade Clearing Corp.

**REPORT ON  
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**ANNEX IV**

**REVIEW OF THE WORK OF OTHER INTERNATIONAL FORA AND  
COMMITTEES RELATING TO THE INTERNET**

Various International Fora and Organisations have done significant work in evaluating trends in e-finance and their implications for financial supervision and regulation. Some of the recent and ongoing work on Internet-related issues is summarised below:

**World Bank:** The World Bank is doing some work on policy issues of e-finance for developing countries and have issued in September 2000 a first discussion paper on electronic finance (*“Electronic Finance: Reshaping the Financial Landscape Around the World”*). The paper surveys the impact of e-finance on developing countries in consideration of recent trends in financial services and implication for public-policy (web site: [www.worldbank.org](http://www.worldbank.org)).

**Fédération International des Bourses de Valeurs (FIBV):** In May 2000 the FIBV had an IT workshop for exchange IT directors at the Massachusetts Institute of Technology. The intention was to enable exchange IT directors to review research well upstream and to get some perspective on new technology developments for business planning (Web site: [www.fibv.org](http://www.fibv.org)).

**Financial Stability Forum (FSF):** The FSF has established an informal contact group on e-finance comprising the chairpersons of the Basel-based Committees’ and IOSCO’s working groups on e-finance, the OECD’s co-ordinator for work on e-finance and the supporting secretariats. The primary function of the group is to monitor e-finance issues, to exchange information, and foster co-ordination among the bodies and groupings working in this area (web site: [www.bis.org](http://www.bis.org)).

**Bank of International Settlement (BIS):** The BIS has organised a workshop on e-finance in October 2000 with representatives of relevant international groupings. The workshop was organised to examine how developments in e-finance could have impact on the financial system ([www.bis.org](http://www.bis.org)).

**Committee on Payment and Settlement Systems (CPSS):** The Working Group on Retail Payment Systems (WGRPS) has released two reports. The first one examines the features of Internet payment methods other than e-money (Internet credit

transfers, Internet debit transfers, electronic cheques) as new distribution channels for traditional payment instruments. The second report shows that, at present, also innovative electronic payment methods use conventional clearing and settlement systems based on closed networks and daily operational cycles. The WGRS is currently analysing the policies of central banks for the development of retail payments. As far as e-payments are concerned, particular attention is devoted to the strategies with respect to innovations in payment systems (web site: [www.bis.org](http://www.bis.org)).

**Basel Committee on Banking Supervision (BCBS):** The Electronic Banking Group (EBG) of BCBS has released in October 2000 a report on Supervisory Issues and Recommendations Relating to Electronic Banking Developments (*Report on Risk Management Issues and Cross-Border Supervisory Considerations arising from E-Banking Developments*), which identifies the need for further work in risk management and prudential standards; cross-border issues; promoting international cooperation and encouraging supervisory training. The EBG is currently in the process of finalizing its report on Risk Management Principles for Electronic Banking which identifies key risk management principles regarding risk management policies and processes for e-banking activities. The EBG is preparing a report on *Cross-Border Supervisory Coordination Issues for E-Banking*. This report is intended to address the cross-border cooperation challenges for bank supervisors that result inter alia from the potential ability of a bank or non-bank to use the Internet to cross-borders and to seamlessly link banking activities that have typically been subject to supervision with non-banking activities (web site: [www.bis.org](http://www.bis.org)).

**Committee on the Global Financial System (CGFS):** The CGFS established the ad hoc Working Group on Electronic Trading to study how electronic trading systems function in those wholesale financial markets most relevant to central banks and to assess their actual and potential impact on market structure, price dynamics and overall financial intermediation. The Working Group presented its findings in an report. The CGFS expects to continue monitoring the significance of the developments in ICT for the functioning and stability of financial markets (web site: [www.bis.org](http://www.bis.org)).

**International Association of Insurance Supervisors (IAIS):** The Working Group on Electronic Commerce and the Internet has released a paper (*Principles on the Supervision of Insurance Activities on the Internet*) on the use of the Internet as a distribution channel for insurance products. The areas covered include consistency and exercise of regulatory authority, consumer protection, transparency and disclosure, internal controls and cross-border co-operation. The Working Group is currently working on a paper on the risks related with the insurance activities on the Internet (web site: [www.iaisweb.org](http://www.iaisweb.org)).

**Organisation for Economic Co-operation and Development (OECD):** OECD work in the financial area will focus on two main topics: the implications of e-finance for cross-border trade in financial services and the impact of ITC on government dept management and fixed-income securities markets. *The Committee on Capital Movements and Invisibles Transactions* (CMIT) intends to review the extent to which the advent of electronic finance has consequences for the member countries' obligations laid down in two OECD codes. The Committee on Financial Markets (CMF) will consider (at its meeting in October 2001) a report entitled „Cross-Border Trade in Financial Services: the Implications of Electronic Finance“. The CMF Working Party on Public Dept Management has an ongoing project on the implications of technology development on public dept management and government securities markets (web site: [www.oecd.org](http://www.oecd.org)).

**Financial Action Task Force on Money Laundering (FATF):** The FATF released a report on money laundering typologies which examines inter alia money laundering typologies relating to online banking and expand consideration of web-based laundering to other areas including gambling through the Internet (web site: [www.bis.org](http://www.bis.org)).

**European Union (EU):** The EU enacted an Electronic Signature Directive, a proposal for a Distance-Selling Directive on Financial Services and for an E-Commerce Directive. The Directive on electronic signatures rules the application of electronic signatures and aims at a EU-wide harmonisation of electronic authentication. It stipulates an equal value of evidence of hand written and electronic signatures provided that the latter are based on a qualified certificate issued by a



certificate-service-provider. Implementation of the Directive shall be finished until July 2001. The main issues the proposal for a Directive concerning the distance marketing of consumer financial services deals with are: information and transparency as well as the right of withdrawal and protection against unsolicited services. The supplier must provide certain information about its identity, the main characteristics of its product, the contractual terms and the jurisdiction. The investor has a right to withdraw from transactions not being made on an exchange. The proposal has been adopted by the European Parliament. The Directive on Electronic Commerce outlines similar stipulations as transparency, information about the provider and its products as well as the provider's liability (web site: [www.europa.eu.int](http://www.europa.eu.int)).

**APEC Working Group on Electronic Financial Transactions Systems (E-FITS):**

The APEC Finance Ministers established the APEC E-FITS in September 2000 to promote regional co-operation in developing electronic financial services and electronic payment and settlement systems (including those in support of paperless trading). The Working Group expects to present a report at the next APEC Finance Ministers Meeting in September 2001 (web site: [www.apec.org](http://www.apec.org)).