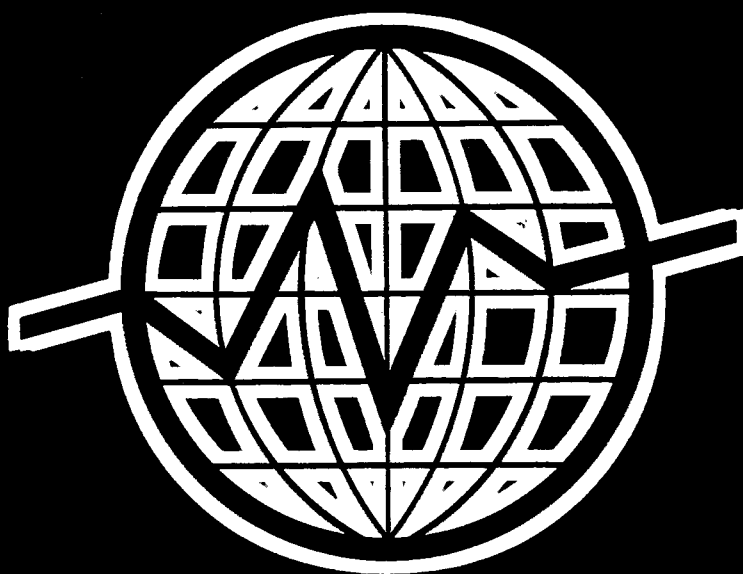


# INTERNATIONAL EQUITY OFFERS

CHANGES IN REGULATION SINCE APRIL, 1992



INTERNATIONAL ORGANISATION OF  
SECURITIES COMMISSIONS

October, 1994

*INTERNATIONAL EQUITY OFFERS  
CHANGES IN REGULATION SINCE APRIL, 1992*

*ANNUAL SURVEY REPORT OF  
IOSCO WORKING PARTY NO. 1*

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*October, 1994*

**INTERNATIONAL EQUITY OFFERS  
ANNUAL SURVEY REPORT  
OF  
IOSCO WORKING PARTY NO. 1**

**I. INTRODUCTION**

The first Report on International Equity Offers, published in September, 1989, included the recommendations of Working Party No. 1 that:

"...an annual survey be undertaken of the changes which could affect multinational offers which have been made in participating jurisdictions.

...each year, each jurisdiction represented on the Technical Committee produces a summary of such changes so that the Working Part can prepare its annual report for distribution at the next annual conference of IOSCO."

The full text of the 1989 recommendations is reprinted in Appendix A to this Annual Survey Report.

Regulatory changes that had become effective or that were proposed since April 30, 1992, are described in this Report. The questionnaire for the survey asked participants to consider particularly changes within the following areas:

**Regulatory requirements for public offers**

Registration procedures

- clearance period
- shelf registration

Listing procedures

- review period

Prospectus requirements

- number of years audited financial statements
- maximum period since last balance sheet

**Continuing reporting obligations**

Deadline for filing financial statements  
 Frequency of interim statements  
 Deadline for filing interim statements  
 Requirements for reports by insiders and reports of material changes

In particular, descriptions of any new accommodations granted to foreign issuers.

**Restrictions applying to private placement**

Factors precipitating a public offer  
 Documentation for private placements  
 Restrictions on resale

**Stabilization and other controls on dealings****Any other issues bearing on international equity offers****Survey participants**

Australia	Hong Kong	Spain
Belgium	Italy	Sweden
Canada	Japan	Switzerland
France	Luxembourg	United Kingdom
Germany	The Netherlands	United States

II. DETAILED CHANGES SINCE APRIL, 1992  
(INCLUDING PROPOSED CHANGES)

AUSTRALIA

1. Changes in regulatory requirements for public offers:
  - a. Registration Procedures: *no relevant changes*
  - b. Listing Procedures: *no relevant changes*
  - c. Prospectus Requirements: On 5 September 1994, new law commenced which amended the fundraising provisions of the Corporations Law. This law - referred to as the Corporate Law Reform Act - potentially affects both domestic and foreign issuers. One of the major aims of the Act is to require "disclosing entities" (a defined expression) to disclose material information on a periodic and continuous basis to enable investors to make informed investment decisions. Another significant aim is to streamline the prospectus provisions.

The Corporate Law Reform Act introduces the following key legislative changes:

- A. Certain entities (known as "disclosing entities") are required to notify the Australian Stock Exchange (ASX) (if listed on the ASX) or the ASC (in other cases) of material matters as they occur and are also required to prepare and lodge periodic reports. Essentially, a disclosing entity is an entity which has "ED Securities". The following are ED Securities:
  - (a) securities listed on the ASX;
  - (b) shares or prescribed interests issued under a prospectus where there are at least 100 security-holders;
  - (c) shares or prescribed interests issued under a takeover scheme or scheme of arrangement where there are at least 100 security-holders;

Note also that foreign companies are exempt from the disclosing entity provisions in relation to:

- (a) issues of securities in the context of certain foreign takeover schemes or schemes of arrangement (Corporations Regulation 1.2.02).
  - (b) issues of securities in the context of an employee share scheme where a prospectus is lodged with the ASC (Corporations Regulation 1.2.03).
- B. The provisions which previously required a secondary prospectus to be prepared by the seller of existing unquoted securities have been repealed. They have been replaced with provisions requiring a notice to be lodged with the ASC in the case of secondary offers of unquoted securities (refer to Division 3A of Part 7.12). Where the seller is offering 30% or more of the voting shares of an unlisted company for sale, the notice must contain information analogous to a prospectus. In other circumstances, a person selling unquoted securities must lodge a short notice containing, inter alia, the most recent balance sheet of the company. In accordance with previous policy, ASC Class Order 94/1284 provided relief from the requirements of Division 3A where the securities on offer are listed on certain recognized foreign exchanges.
- C. Shorter prospectuses which are required to contain transaction-specific information only are now permitted in the case of rights and other issues by companies listed on the ASX.
- D. Prospectuses may incorporate by reference documents lodged with the ASC. Incorporation by reference is allowed on the basis that the prospectus includes a summary of the document being incorporated. Investors are able to obtain the incorporated document free of charge on request.
- E. The provisions by which prospectuses are corrected where the prospectus contains a deficiency or where new relevant information comes to light have been amended.
- F. The maximum life of a prospectus has been extended from 6 to 12 months.
- G. Licensed dealers may now communicate with their clients in relation to both quoted and unquoted securities (including foreign securities) without contravening the share-hawking provisions of the law. Specific class relief previously given by the ASC for certain foreign

securities has been revoked as it is no longer necessary. Licensees should continue to be aware of license conditions or other requirements which may impose restrictions on dealing.

2. Continuing Reporting Obligations: Disclosing entities (as defined above) are now required to lodge yearly and half-yearly financial information.
3. Changes in Restrictions Applying to Private Placements: *no relevant changes.*
4. Stabilization and Other Controls over Dealings: *no relevant changes.*
5. Any Other Issues Bearing on International Equity Offerings: *no relevant changes.*

#### **BELGIUM**

- Royal Decree of 28 February 1993 on the Listing of Securities on the First Market of a Stock Exchange.

This decree repealed Royal Decree of 18 September 1990 on the Listing Committees with the National Stock Exchanges and on the Admission of Securities to Official Listing.

The regulation had to be adapted as a consequence of the transfer of competencies by virtue of Articles 12, § 1 and 95 of the Law of 4 December 1990 on Financial Transactions and Financial Markets. In application of said articles, the Stock Exchange Commission was, as of 1 January 1993, vested with the powers of the Listing Committees, with regard to the listing of securities on the First Market and their withdrawal.

Except Articles 19, 29 and 30, the Royal Decree of 28 February 1993 entered into force on 8 April 1993.

- Ministerial decree of 22 March 1993 on the Listing of Belgian Public Securities on the First Market of a Stock Exchange.

This decree replaces the Ministerial Decree of 19 September 1990 on the Admission of Belgian Public Securities to the First Market

## CANADA

### 1. Multijurisdictional Disclosure System

In June 1991, the Canadian Securities Administrators ("CSA") implemented as National Policy Statement No. 45 ("NP 45"), the Multijurisdictional Disclosure System ("MJDS"), between the provinces and territories of Canada and the United States. Under the MJDS, securities regulators in the home jurisdiction set the disclosure standards for and carry out regulatory review of cross-border securities transactions involving, and continuous reporting filings of, qualified Canadian and U.S. issuers. The CSA worked with the SEC and the North American Securities Administrators Association to develop the MJDS.

In December 1993, amendments were made to the eligibility requirements for the MJDS to further facilitate cross-border capital formation between the U.S. and Canada. The changes to NP 45 reduced the reporting history eligibility threshold from 36 to 12 months and eliminated the market capitalization requirement requiring only that the issuer have a public float of US \$75 million. The amendments also provide for recognition of rating agencies which can be used in determining whether a security is of investment grade for MJDS eligibility purposes. These amendments were implemented in part by changes to National Policy Statement No. 47 described below.

### 2. Derivatives

In January 1994, a report relating to over-the-counter derivatives was published by the Ontario Securities Commission (the "OSC") together with a draft policy statement entitled "Interpretation of Transactions in OTC Derivatives". These followed a study focusing on over the counter options, forwards and swaps of which the underlying interest is, or is based upon, an interest rate, a foreign currency, a commodity, an equity or a combination of any of the foregoing. The draft policy proposes to clarify the extent to which the Ontario Securities Act applies to trades in OTC derivative products and grant relief for certain transactions.

### 3. Prompt Offering Qualification System

In February of 1993, the CSA issued National Policy No. 47, implementing the Prompt Offering Qualification system ("POP System"). The essence of the POP System is to integrate offering documents with previously filed information concerning eligible reporting issuers by permitting a short form prospectus to be filed for offerings, so as to reduce the time period and streamline the



procedures by which such issuers may have access to Canadian capital markets. Quebec was not a participant in the National Policy because it has its own system under the Quebec legislation. However, the requirements of the Quebec system are substantially similar to those of the National Policy.

In December 1993, certain amendments to the eligibility requirements were made together with housekeeping and other amendments. The reporting history eligibility threshold was reduced from 36 to 12 months and the market capitalization eliminated as issuers must now have a public float of \$75 million.

#### **4. Foreign Issuer Prospectus and Continuous Disclosure System**

In August of 1993, the CSA released for comment draft National Policy Statement No. 53. It is intended to reduce the barriers to entry to the Canadian capital markets to world class foreign issuers and provide increased opportunity for the investment by Canadians in such offerings while maintaining an appropriate level of investor protection. It would apply to equity security offerings by issuers with market capitalization of Can. \$3 billion together with a public float of Can. \$1 billion following the offering. The offering document will be accepted as a prospectus and comply with the requirement of full true and plain disclosure of all material facts. The civil liability provisions of applicable Canadian legislation will apply.

#### **5. Private Placements by Foreign Issuers**

In December 1993, the OSC published a blanket ruling which permits certain international offerings by foreign issuers to be made in Ontario by private placement without requiring that the purchasers be given a contractual right of action against the issuer. The offering must be concurrently made in the U.S. or U.K., specified U.S. or U.K. disclosure documents must be delivered to Ontario purchasers and other conditions fulfilled. The basis for relief is that, in the opinion of counsel, Ontario purchasers will have broadly equivalent civil remedies to the contractual right of action under Ontario law. The ruling also interprets National Policy Statement No. 14 on the use of foreign currencies and National Policy Statement No. 48 regarding future oriented financial information in offering documents by foreign issuers.

a case by case basis yet maintains high standards of investor protection for Ontario purchasers.

#### **6. Registration Waiver for Certain Non-Resident Salespersons and Supervisors**

In March of 1994, a request for comments was issued relating to the waiving of certain requirements of OSC Policy Statement No. 4.7 to permit the registration of certain individuals who are not residents of Canada as salespersons and supervisors under the Ontario Securities Act. A salesperson or supervisor registered in the United States and employed by a U.S. dealer would be registered in Ontario to perform trades in Ontario without being resident in Canada if such functions are performed through an affiliated Canadian entity that is registered as a Canadian dealer. The salesperson or supervisor would register with the Commission and comply with all requirements except the residency and dual employment requirements.

#### **7. Waiver of Residency Requirements for Advisers**

On August 30, 1994, the Director published a notice indicating that registration as an Adviser in Ontario may be granted to non-Canadian residents under certain conditions.

#### **FRANCE**

For the recent privatizations of French companies, the Commission has adopted the system of disclosures in order to adapt to new financial techniques, and to allow swifter launching of marketing campaigns, while at the same time seeking to improve methods of informing investors with better dissemination, and effective access of the public to the information in question.

This furnished the first opportunity to authorize a **preliminary prospectus**, presenting the characteristics of the operation (type and quantity of the shares offered, whether there were rights or priority attached, taxation of securities, organizations of placement tranches, etc...). However, it does not mention the price of the shares offered nor the timetable of the operation. Once this note has received Commission authorization, it is published in the press. It marks the start of the marketing campaign. It also enables orders to be sent or made available to natural persons via banking networks so that their intentions as regards subscription may be known.

A **final prospectus**, authorized just when the price is fixed, that is to say just before launching of the public offering, repeats the

contents of the preliminary operation note, adding the price and the schedule. It is also published in the press.

**Finally, prospectuses authorized by the COB are summed up.** The distribution of summaries of prospectuses authorized by the Commission is another way of getting financial information to investors, particularly to individual investors.

### GERMANY

There have been no changes in German regulation in the period from May 1, 1992, to April 30, 1994.

Intended amendments were to be included in the Second Financial Market Promotion Law, which creates the legal basis for setting up a new supervisory authority, the Federal Securities Supervisory Office (Bundesaufsichtsamt für den Wertpapierhandel, BAWe). The Second Financial Market Promotion Law passed German parliament in July 1994 and will come into effect on January 1, 1995 (some provisions have been in effect since August 1, 1994). Since this Act will induce important changes for the German capital markets it has been included in this update.

#### **1. Changes in regulatory requirements for public offerings**

##### a) Registration Procedures:

Amendments to the Securities Prospectus Act §§8 *Depositary Office*, 14(2) *Co-Operation within the European Economic Community* and 15(3) *Offers in more than one Member State of the European Economic Community* (will come into effect on January 1, 1995): The Federal Securities Supervisory Office is the depositary for prospectuses of all securities which are not officially listed. [In the past the depositaries were designated by the individual states (Länder).]

##### b) Listing Procedures:

Amendment to the Securities Prospectus Act § 4(1) No. 2 *Exemption Regarding Certain Securities* (will come into effect on January 1, 1995): A prospectus need not be published if the securities constitute shares with respect to which an application for official listing on a German stock exchange has been made, the number, estimated value or nominal value or, in the absence of a nominal

The same amendment will be made to the corresponding Stock Exchange Admission Regulation § 45 No. 3 b *Exemption from the Requirement to Publish a Prospectus with Regard to Specific Securities* (will come into effect on January 1, 1995).

Amendment to the Stock Exchange Admission Regulation § 11(2) *Admission of Securities with Exchange or Subscription Rights* (will come into effect on January 1, 1995): The Admissions Offices of the stock exchanges may admit securities to stock exchange trading if the securities to which the exchange or subscription rights relate are admitted on a market which is regulated and supervised by a regulator recognized by government authorities. In addition, the domestic investors may have the possibility to get regularly informed about the prices of this market. [In the past admission might be granted if the securities to which the exchange or subscription rights related were admitted to trading on a stock exchange in a member state of the Organization of Economic Cooperation and Development (OECD).]

c) Prospectus Requirements:

Amendment of the Securities Prospectus Act § 9(2) *Time and Form of Publication* (will come into effect on January 1, 1995): The prospectus shall be published by insertion in those designated stock exchange journals (Börsenpflichtblätter) in which the application for admission to official listing has been or is to be published, or by keeping it available without charge at the Admission Offices of the relevant stock exchanges and at the paying agents designated in the prospectus. [In the past, the second choice was not available. This amendment refers to the EEC-Council Directives 80/390/EEC and 89/298/EEC.]

The same amendment will be made to the Stock Exchange Act § 36(4) *Admission* (will come into effect on January 1, 1995).

Amendment of the Stock Exchange Admission Regulation § 19(2) No. 5 a *Information about the Capital of the Issuer* (will come into effect on January 1, 1995): The prospectus shall contain information about the companies holding directly or indirectly at least five percent of subscribed capital of the issuer or having the right to exercise directly or indirectly at least five percent of the voting rights. [In the past, the figure was 20 percent. This amendment is part of the implementation of the EEC-Council Directive 88/627/EEC.]

## 2. Continuing Reporting Obligations

Amendments in regulation concerning ad hoc disclosure; § 15 Securities Trading Law (will take effect on January 1, 1995):

Issuers whose securities are admitted to trading on a German stock exchange are obliged to publish without delay all facts regarding the enterprise which have occurred in the field of its activities and are not known to the public provided such facts--due to the impact on the assets and financial position or on the general course of business of the issuer--may result in a significant change of the quotation price of the share. Before publication takes place, the stock exchanges and the Federal Securities Supervisory Office have to be notified. Failure to meet these requirements can be subject to a fine of up to DEM 3 million. Negligent omissions may also be subject to a fine. [This regulation will replace § 44a of the Stock Exchange Act.]

### **3. Changes in Restrictions Applying to Private Placements**

None.

### **4. Stabilization and other Controls over Dealings**

None.

### **5. Any other Issues bearing on International Equity Offers**

None.

## **HONG KONG**

### **Changes in Regulatory Requirements for Public Offers**

#### **a. Authorization of Prospectus for Registrar**

From 1 February 1993, the responsibility to vet prospectuses was transferred from the Registrar of Companies to the Securities and Futures Commission (the "Commission") under the Companies (Amendment) (No.2) Ordinance 1992. By way of a transfer order under Section 47 of the Securities and Futures Commission Ordinance, the Commission's responsibility to vet prospectus of listed companies and those of companies to be listed was in turn transferred to the Stock Exchange of Hong Kong Limited (the "SEHK"). The Commission retains responsibility for vetting and

## b. Prospectus Requirements

In 1992, the Companies Ordinance was amended to require financial results for three years if available prior to listing (the previous requirement was five years).

On 27 September 1993, the SEHK introduced Guidance Note 5 providing guidelines on prospectus disclosure for property valuations in developing markets, including the People's Republic of China.

## c. Listing Procedures

On 11 May 1992, the SEHK made a number of changes to the Listing Rules and Listing Agreement for secondary listings, particularly where the majority of the trading in such a company's securities was likely to be on the SEHK.

On 16 September 1992, the SEHK issued Guidance Note 4 which provides guidance on the listing requirements governing the trading record of a new applicant for listing. The emphasis of the Guidance Note is on continuity of management throughout the trading record period in order to enable investors to assess management's ability to manage the applicant's business and the likely performance of the business in the future.

On 1 August 1993, the Listing Rules were amended to (i) increase the minimum public float to HK\$50 million and the expected initial market capitalization to HK\$100 million, (ii) prohibit controlling shareholders from selling down their shareholdings in the first six months after first listing and disposing of control of the company in the following six months, and (iii) restrict a newly listed company from changing the fundamental nature of its main undertaking within 12 months of listing.

The SEHK has recently approved a new profit record requirement for companies seeking listing. The new rules will require all new applicants to have during the three financial years immediately prior to their applications for listing a profit record under which the profit attributable to shareholders must, in respect of the most recent year, be not less than HK\$20 million and, in respect of the two preceding years, be in aggregate, not less than HK\$30 million. These new rules are expected to come into force on 15 September 1994.

On 1 October 1993, new listing rules were promulgated to regulate the issue of derivative warrants. The new rules prohibit issue of derivative warrants by controlling shareholders or by persons with effective management control over the company, the shares of which are the underlying securities for the warrants.

In response to oversubscription of securities in new issues experienced in Hong Kong in 1993, the SEHK introduced a number of new listing rules. From 1 February 1994, a successfully listed issuer must publish in newspapers an announcement giving information on the outcome of a public offer including details of the spread of applications so that the market can gauge where the demand stems from.

From 16 March 1994, new rules were introduced prohibiting multiple applications, which include applications for more than 100% of the shares available in the offer.

#### Continuing Reporting Obligations

On 20 June 1992, the SEHK implemented Practice Note 8, which sets out changes to the Listing Rules to accommodate the implementations of the first phase of the central clearings and settlement system ("CCASS"). Under the Practice Note, listed issuers are now required to forward copies of shareholder communications to all participants in CCASS at the same time as they are sent to the common nominee (who will be the shareholder of record) and other registered shareholders.

On 1 April 1993, the Listing Rules were amended to require each listed company to appoint at least two independent non-executive directors.

From 1 February 1994, the periods within which listed issuers must public their half-yearly and annual accounts were shortened for the interim results to three months after the end of the six-month period (previously four months) and for the annual accounts to five months after the year end (previously six months).

#### Changes in Restrictions Applying to Private Placements

No changes.

#### Stabilization

Stabilization activities in Hong Kong may be in breach of the market manipulation provisions of the Securities Ordinance. However, where underwriters have over-allotted securities as part

to purchase securities in the secondary market in Hong Kong before a distribution is complete.

### Equity Offerings by Chinese Companies

Hong Kong actively participated in global offerings by companies established in the PRC. Once listed on the SEHK, a PRC issuer is subject to relevant statutory and non-statutory requirements (including the Hong Kong Codes on Takeovers and Mergers and Share Repurchases) in Hong Kong which apply to other Hong Kong Listed companies, wherever incorporated.

A new legal framework for "H" shares was introduced by the PRC in May 1993. This framework consisted of the Standard Opinion for Joint Stock Limited Companies and the Addendum thereto. The SEHK introduced new listing rules specifically designed for PRC issuers (See Chapter 19A and Appendix 13D which came into effect on 15 June 1993). The listing rules require PRC issuers to include in their Articles of Associations mandatory provisions which are designed to give shareholders substantially equivalent rights and protections as they would have in other companies listed in Hong Kong.

The new Company Law of the PRC (enacted on 29 December 1993) which replaces the Standard Opinion came into force on 1 July 1994. Pending promulgation of subsidiary regulation under the new Company Law, the SEHK will make corresponding amendments to Chapter 19A and Appendix 13D of the Listing Rules.

### ITALY

During 1992, 1993, and the first half of 1994, numerous legislative and regulatory measures were adopted that resulted in significant changes in the rules governing securities markets:

- a) Law 474 of 30 July 1994 ("Provisions to accelerate the procedures for disposing of holdings of the state and public entities in companies limited by shares");
- b) Amendments to the general provisions concerning the drawing-up of prospectuses and the manner of publicizing offers regarding operations involving the raising of funds from the public carried out pursuant to Article 1/18 of Law 216 of 7 June 1974, adopted in Consob Resolutions 6430 of 26 August 1992 and 8085 of 26 May 1994;
- c) Amendments to the Regulations for the admission of securities to official stock exchange listing, adopted in Consob Resolution 7456 of 20 October 1993;



- d) Regulations concerning the criteria for drawing up the report on operations for the first half of the financial year and the procedures and time limits for its publication, adopted in Consob Resolution 8195 of 30 June 1994.

## **1. Changes in regulatory requirements for public offers**

### **a) Registration procedures**

Four new cases have been laid down in which the provisions on raising funds from the public are waived:

- a) establishment of a company by way of public subscription;
  - b) offers of securities restricted to the managers of the issuing company and the managers of companies that control or are controlled by the issuing company;
  - c) offers of securities restricted to the individually identified employees of the issuing company, provided the amount to be allotted to each employee is predetermined and reserved exclusively thereto;
  - d) offers of securities issued by undertakings in the field of sports.
- A provision has been introduced requiring the offer to be carried out, on pain of the authorization to publish the prospectus expiring, within ninety days of the prospectus being deposited in the Consob's Prospectus Archive.
  - Any change with respect to the data and information contained in the prospectus that is likely to influence the value of the securities must be disclosed in a supplement to the prospectus. The supplement must be submitted in advance to the Consob for authorization of its distribution.
  - The time limit for the Consob to issue authorization for publication of the prospectus has been extended from 20 to 40 days.
  - Prior to the publication of the prospectus, circulating news, conducting market surveys and taking preliminary expressions of intent to purchase or sell regarding operations involving the raising of funds from the public are permitted only with prior authorization by the Consob, which has to be granted case by case in accordance with the general criteria established by it in advance.

b) Listing procedures

- The Consob has been empowered to exempt issuers that apply simultaneously for listing of securities on Italian and foreign markets from the obligation to deliver the securities to those entitled, a requirement for the commencement of stock exchange trading of securities admitted to listing deriving from public offers. This change will tend to permit the commencement of trading in securities for which listing is sought simultaneously in Italy and abroad to be synchronized in all the markets involved. The power in question is exercisable by the Consob case by case, where it is considered feasible in the light of the characteristics of the foreign markets involved.
- The exemption is subject to the condition that the issuer, on pain of rejection of the application for listing in Italy, ensure, by way of statements of commitment by the persons engaged to effect the public offer abroad, that in effecting the public offer abroad the latter will refrain from carrying out transactions in the securities before the commencement of trading in Italy.

c) Prospectus requirements

- With the aim of ensuring the maximum circulation of information regarding public offers, provision has been made for the possibility of drawing up, in addition to the prospectus, a summary information note containing the highlights of the operation.
- The summary information note must be published in full in at least one national daily newspaper and delivered to each investor together with the subscription form, without detriment to the requirement of the prospectus being made available to the public at all the branches of the intermediaries involved in the operation.
- In the case of international offers for which the Consob has recognized the prospectus approved by the competent authority of another member state of the European community, the possibility of publishing summary information documents will be assessed case by case on the basis of three requirements: such documents must contain only data and information contained in the recognized prospectus; the use of such documents must be permitted in the state of the authority that scrutinized the prospectus; and the Consob must judge them fit to perform the same function attributed to the summary information note.
- The format of the prospectus for offers of units of securities investment funds has been revised and a new prospectus format has been introduced for offers of shares of SICAVs. The new

prospectus format is distinguished by its provisions for precise references to fund management rules.

## **2. Continuing reporting obligations**

- As regards the information to be supplied to the market on a continuing basis, the Consob Regulations adopted in Resolution 8195 of 30 June 1994, amend the previous rules governing the criteria for drawing up the report on operations for the first half of the financial year and the procedures and time limits for its publication. The amendments were made necessary following the transposition into Italian law of the European Union's Directives concerning the annual and consolidated accounts of industrial and commercial undertakings (Directives 78/660/EEC and 83/349/EEC) and of banks and other financial institutions (Directives 86/635/EEC and 89/117/EEC).
- Compared with the rules previously in force, the new Regulations introduce a number of important innovations. In the first place, all the provisions governing the half-yearly report are now contained in the Regulations and the appendices thereto, which constitute an integral part of the Regulations. This reflects the assessment that the new formats of the annual accounts and directors' report introduced by Legislative Decrees 127/1991 and 87/1992 are a valid and meaningful point of reference also for the half-yearly report, which constitutes an element of continuity between successive annual reports and accounts.
- The new Regulations make it mandatory for companies that are required to draw up consolidated accounts to include both the data regarding the parent company and the consolidated data at group level; by contrast, the previous provisions had given such companies the option whether or not to publish the data in consolidated form.
- With regard to the report on operations, it is to contain a selection of the information that must be published in the annual report or in the notes to the annual accounts. Where such information is insufficient to permit investors to reach an informed opinion regarding the undertaking, the necessary additional information must be supplied. Moreover, the report on operations must indicate significant events that have occurred after the close of the first half of the year. the

Article 6(1) provides that the report must be made public at the time that it is transmitted to the Consob.

- With reference to issuers constituted under foreign law that are listed in Italy, the Consob is to issue specific measures establishing case by case the criteria for drawing up the half-yearly report and the procedures and time limits for its publication.

\* \* \*

- As regards independent auditing, on 1 March 1994, the Consob approved the new format of the audit report, repealing the previous relevant Consob communications. The innovations introduced in the format were made necessary following the transposition into Italian law of the EEC Directives on annual and consolidated accounts.
- Finally, it has been established that for the purpose of performing accounting control the auditors must refer to the rules recommended by the Consob, in conformity with the principles issued by the International Federation of Accountants.
- Provisions have been made for reports on the accounts of foreign companies applying for their securities to be admitted to official listing on an Italian stock exchange or wishing to raise funds from the public in Italy to be recognized if they have been prepared in conformity with the standards on accounting adopted during the 17th IOSCO Annual Conference. The provisions on independence and qualifications of the person engaged to audit the accounts in force in the country of origin have to be comparable to those of European Union and Italian law.

## JAPAN

The Reform of the Securities and Exchange Law was implemented in April 1993.

1. Review of the concept of public offer and amendments concerning private placement.

To prevent the evasion of disclosure requirements and to keep up with the development of institutional investors in recent years, the concept of public offer in the Securities and Exchange Law has

been reviewed, and the criterion of the number of offerees has been clarified.

(1) Public offer is defined as a solicitation of offers to buy securities to "a large number of persons," and those who make public offers have the obligation to file disclosure documents such as a registration statement and an annual securities report. The criterion for public offer in terms of the number of persons to whom a solicitation is made has been clarified in the Cabinet Order Implementing Securities and Exchange Law by the Reform. In principle, in cases where offerees number 50 persons or more, the offer is public. On the other hand, if fewer than 50 persons are contacted and the conditions stipulated in the Cabinet Order are met so that the securities are deemed not to be resold to more than 50 persons, the offer is not public.

(2) The Reform has introduced the concept of "qualified institutional investor," which is a person designated in the Ministerial Ordinance as one who has expertise and experience in securities investments. If solicitation is made only to qualified institutional investors and securities are deemed not to be transferred to persons other than qualified institutional investors by satisfying the conditions provided in the Cabinet Order, it is not a public offer even if the number of persons solicited exceeds 50.

(3) The filing of a registration statement is not required for securities that have been issued through private placement rather than public offer. The reform has imposed restrictions on the resale of these securities (e.g., the obligation to file a registration statement before transferring securities issued only to qualified institutional investors to a person who is not a qualified institutional investor, prohibition of resale of securities except reselling all of the acquired securities in a single transaction, and prohibition of dividing a security). Restrictions imposed on the resale of securities must be notified to the buyers of securities to prevent the evasion of disclosure requirements.

Reform to file disclosure documents, including annual securities report.

(2) In cases where the Minister of Finance deems that the contents of a filed registration statement are readily comprehensible to the public, or that information about the applicant has already been widely furnished to the public, the Minister is authorized under the Reform to notify the applicant that the registration takes effect forthwith or on the next day following the date of statement filing. Before the Reform, registration could become effective only on the day following the elapse of at least one day from the filing date. (To date, in only one case (a case of amended registration statements) did the registration statement take effect the day after filing. There have been no cases of registration statements becoming effective forthwith.)

## LUXEMBOURG

### *1. Changes in regulatory requirements for public offers*

#### **Prospectus Requirements**

The rules and regulations of the Luxembourg Stock Exchange provide that a company which is applying for admission to official stock exchange listing must have published or filed its annual accounts in accordance with national law for the three financial years preceding the application. But, by way of exception, it could be derogated from this requirement when such derogation is justified.

The Commissariat aux Bourses has, by the circular CAB 94/5, introduced a new provision concerning the companies which cannot fulfill the requirement of period of existence of at least three years. These companies, which are essentially new companies, have to include, since July 1, 1994, in the listing particulars for admission to official stock exchange listing, financial forecasts. These financial forecasts have to be established at least for three years and have to give information regarding the activities of the company, the viability of its business, its commercial potentialities and all other estimates concerning any financial performance. These financial forecasts have to be either established by a consultant or an entitled independent professional, or submitted to a consultant or independent professional, in the case where they have been established by the company itself.

## ***2. Continuing Reporting Obligations***

The rules and regulations of the Luxembourg Stock Exchange have introduced a new provision concerning periodic information to be published by companies which have no period of existence of at least three years.

Those companies have to submit to the Luxembourg Stock Exchange quarterly reports at least for the period for which a derogation has been granted. This means that quarterly information has to be set up by the issuers until the publication or the registration of their annual accounts relevant to the third financial year.

### **NETHERLANDS**

#### **SUMMARY OF THE REGULATIONS GOVERNING THE SUPERVISION OF SECURITIES TRADE**

On 15 June 1992, the Act on the Supervision of Securities Trade (Wetoezicht effectenverkeer, Wte) and the Decree on the Supervision of Securities Trade (Besluit toezicht effectenverkeer, Bte) came into effect. They have replaced the Securities Transactions Act and the Securities Transaction Decree. The final part of the new legislation in the field of securities trading, the Regulations governing the Supervision of Securities Trade (Regulations), also came into force on 15 June 1992. These Regulations have been laid down by the Securities Board of the Netherlands (Stichting Toezicht Effectenverkeer, STE), the body that is supervising all securities transactions since 15 June 1992. The regulations provide further details of the standards contained in the Bte on the basis of the structure outlined in the explanatory note to the Bte.

#### **PROVISION OF INFORMATION BY INSTITUTIONS ISSUING SECURITIES**

The issue of securities beyond a restricted circle must be accompanied by a prospectus. The Regulations contain provisions designed to make that prospectus more accessible. Thus the Regulations prescribe an indicative summary of the principal data from the prospectus.

contain explanatory notes covering that information. Besides this, information from the issuer on a semi-annual basis must also be provided to the STE.

Several provisions for multinational offerings with respect to the prospectus and the provision of information by the issuer are made in the Act, the Decree and the Regulations. Upon request a dispensation can be granted to an issuer of securities. Restrictions and conditions can be attached to a dispensation with a view to an adequate functioning of the securities markets and the position of the investors in these markets.

Besides this, an exemption from the prohibition to offer securities (without a prospectus) is granted for securities in some cases. The cases with respect to the multinational offerings are:

- **Section 2 sub 4 Decree:**

4. Subsections 1 and 2 shall not apply to the issuing institution which makes a prospectus publicly available:
  - a. if, at least six months before the date on which the offer of securities upon issue is to be made, the prospectus has been approved by the competent authority referred to in Section 20(1) or Section 21(2) of the Council Directive of the European Communities of April 17, 1989, (89/298/EEC) (OJEC L 124) of another Member State and the prospectus has been drawn up in accordance with Section 8 or 12 of this Directive; or
  - b. if the competent authority referred to in Section 20(1) or Section 21(2) of Directive 89/298/EEC has granted a dispensation or derogation in respect of one or more parts of the approved prospectus referred to in point a of this subsection, provided that in the supervisor's opinion, the same conditions as those which justify the dispensation or derogation also exist in the Netherlands. The supervisor shall be entitled to demand that certain information referred to in the annex to Section 2 of this Decree be added to the prospectus referred to in this subsection in order to provide further information of specific relevance to the offer in the Netherlands.

The basic articles concerning the prospectus and continuing reporting requirements are articles 3 (1) and 5 (1) from the Securities Trade Supervision Act:

**Section 3**

1. It shall be prohibited to offer securities upon issue in or from the Netherlands, beyond a restricted circle or to announce such an offer by means of advertisements or other documents.



**Section 5**

1. Institutions for the account of which securities have been issued beyond a restricted circle, which as have not been admitted to the listing of a securities exchange granted recognized status under Section 16, shall, insofar as they are not already obliged to do so under Section 360 of book 2 of the Civil Code, ensure that information on their business activities is made publicly available. Both such information and the manner in which it is made available shall satisfy requirements to be laid down by or pursuant to an order in council, and shall take the form of regular reporting on the financial position of the issuing institution and any facts relating to the issuing institution which may have a material influence on the price of its securities.

The following articles are exemptions regarding the articles 3(1) and/or 5(1)

- **Section 3 Exemption Regulation**

**Section 3**

Exemption from the prohibition contained in Section 3(1) of the Act shall be granted if the securities are offered in denominations of at least one hundred thousand guilders or the equivalent of this amount in foreign currency.

- **Section 4 Exemption Regulation**

**Section 4**

Exemption from the prohibition contained in Section 3(1) of the Act shall be granted if the offer concerns Euro-securities which are not generally advertised or canvassed.

- **Section 6 Exemption Regulation**

**Section 6**

Exemption from the prohibition contained in Section 3(1) of the Act shall be granted if the offer relates to securities which are issued by a Member State of the European Communities or by a regional or local public authority of a Member State of the European Communities or by a public international body of which one Member State of the European Communities is a member.

solely made to persons who are established, settled or ordinarily reside outside the Netherlands.

2. To the exemption as referred to in subsection 1, the following conditions are attached:

- (a) the offer or notice of offer, the advertisements and the documents announcing a forthcoming offer of securities should contain a statement that the offer is not or shall not be made to persons who are established, settled or ordinarily reside in the Netherlands; and
- (b) the statutory and administrative rules of the State in which the offer is made and provisions by or pursuant to them should be complied with in respect of the offer or notice of offer, the advertisements and the documents announcing an offer of securities. A statement of the issuing institution confirming compliance with these rules should be filed with the supervisory authority prior to the offer. This declaration should be included in the notice of offer, advertisement and documents referred to under (a).

- **Section 9 Exemption Regulation**

**Section 9**

Exemption shall be granted from rules in Section 5(1) of the Act if the offer of the securities has been exempted pursuant to Section 3, 6 or 8 of this Regulation.

**SPAIN**

**1. Regulatory Requirements for public offers**

**a. Registration Procedures.**

**Registration procedures for all issuers**

As of July 22, 1993, the Ministerial Order of July 12, 1993 on "*Prospectuses and Other Developments of Royal Decree 291/1992 regarding Issues and Public Offers of Securities*" was published in the official gazette, replacing and repealing all previous regulation concerning the contents of prospectuses regarding issuers and public offerings of securities. In particular this new Ministerial Order has superseded the previous Ministerial Order of November 17, 1981 by which the European Communities Directive on listing particulars (Directive 80/390 EC) was first transposed twelve years ago into the Spanish securities market legislation.

i. General changes introduced by the Ministerial Order July 12, 1993

The new Ministerial Order of July 12, 1993, on the contents of prospectuses, covers the European Directives 89/298 and 90/211 on prospectuses for issues and public offers for sale of securities and European Directives 80/390 and 87/345 on prospectuses for admission to official Stock Exchange listing. This New Ministerial Order completes the process of transposition of all existing European Directives relating to informative prospectuses on public offers of securities and on admission to official Spanish Stock Exchange listing, including the mutual recognition of prospectuses of offers and admission to Stock Exchange listing of securities from companies registered in a Member State of the European Union. This new Ministerial Order has also upgraded the minimum contents of information required by the European Community Directives for its State-members prospectuses, as it has introduced in the Spanish prospectuses for issues and public offerings of securities and/or prospectuses for admission to official Stock Exchange listing, additional requirements of information to cover certain information-disclosure topics or items included in the 1991 IOSCO report on "Comparative Analysis of Disclosure Regimes."

ii. Shelf Registration Procedure reintroduced by the Ministerial Order July 12, 1993

The Ministerial Order of July 12, 1993, has also re-introduced into the Spanish rules on issues and public offers of securities, the shelf registration procedures for any type of issuer, but especially for those with listed securities. According to the present Spanish shelf registration procedure, issuers may register during a certain period of time in each year (from the date in which the companies get from their auditors the final signed audit report on their annual accounts, until 30 days after the date in which the shareholders meeting where the annual accounts are approved is held) an "*Incomplete Prospectus*" at the Spanish Securities Commission (CNMV). This "*Incomplete Prospectus*" is a prospectus which does not contain information about any particular corporate-finance operation, because its purpose is to cover companies information about their audited financial statements, their financial condition and results of operations, description of business and its general development, information about industry segments, subsidiaries, security ownership, directors and officers, prospects, etc. That is, the "*Incomplete Prospectus*" is like an annual financial report readapted to the format and upgraded to the

*Prospectus* must be "completed" or "supplemented" with the "*Reduced Prospectus*" (an "*Incomplete Prospectus*" plus a "*Reduced Prospectus*" equal a "*Complete Prospectus*") which must contain the detailed and specific information (i.e., types of securities being issued or placed, amounts to be issued or placed, prices, period of placement, underwriting agreements, etc.) of the particular public issue or offer of securities. Additionally, if at the time of a particular corporate-finance operation to be made by a company, the last financial statements contained in the registered "*Incomplete Prospectus*", which is to be supplemented by a "*Reduced Prospectus*", refer to a date more than six months prior to the submission of the said "*Reduced Prospectus*," this "*Reduced Prospectus*" shall necessarily include, as an annex, updated financial statements (provisional or final, audited or non-audited) dated within the said six-month period. In all cases, each "*Reduced Prospectus*", once registered at the Spanish CNMV, must always refer to a previous registered and valid "*Incomplete Prospectus*" which it supplements, and both documents must be always made publicly available to potential investors before the planned starting date of the relating issue or public offer of securities.

Registration in Spain for foreign issuers.

i. No requirement for prior authorization

In December 1992, a Ministerial Order dated December 18, 1992, regarding *issuers of securities from non-residents* (non-Spanish registered entities) repealed and derogated the requirement for "*prior authorization*" from the Spanish Ministry of Economy that was established in a previous Ministerial Order dated November 14, 1989 and that was applicable, until the end of 1992, for all issues or offers of securities in Spain from non-Spanish resident issuers as well as for all issues or offers of securities in Spain from non-Spanish resident issuers as well as for all issues or offers of securities in Spain denominated in a foreign currency.

ii. Detailed procedure established in Ministerial Order July 12, 1993 for the recognition in Spain of prospectuses of offer and prospectuses for admission to official Stock Exchange listing of securities issued by companies registered in another Member State of the European Union.

Where public offers for sale of securities are made both on the Spanish market and on the market of other States simultaneously or within a short interval of one another, by a company registered in another Member State of the European Union, the related prospectus validated by the competent authority of the said Member State, or the European Union State where the issue or public offering is made, if not made in the former, shall be accepted and publicly registered in Spain, after its translation into the Spanish language, with no additional information requirements except for

certain supplementary specific information relevant for Spanish investors. The same procedure shall be applied for public offers of securities that have been admitted to Stock Exchange listing in another Member State of the European Union within six months prior to the date in which the public offering starts in Spain.

The provisions of the preceding paragraph shall also be applied to the recognition of prospectuses relating applications for admission to official Stock Exchange listing in Spain when the corresponding prospectuses have been approved by competent authorities of other Member States of the European Union. The relating prospectuses, or equivalent documents, shall be translated into the Spanish language and supplemented with information about the placement distribution of the securities in Spain and other related matters relevant for Spanish investors.

*No other changes apart from those reported above*

#### **b. Listing Procedures**

From the beginning of the present year of 1994, a special rule is in force establishing that if an issuer, having previously placed new securities in the primary market with a registered prospectus of public offer stating its intention to get subsequently the admission of the said securities on a Spanish organized Secondary Market, fails with no strong justification to fulfill or comply with the requirements and procedures for the said admission within the period of time stated in that prospectus, such failure or non-compliance shall be considered a very severe fault under the Spanish Market legislation, and, as such, brings about a very severe penalty.

Also, the Ministerial Order of July 12, 1993, includes a provision under which the procedure for the listing of securities on a Spanish Stock Exchange is simplified when the issuers achieve or fulfill the listing process within a period of time not exceeding three months from the closing date (disbursement date) of the public issue or placement in the primary market of their securities.

*No other changes apart from those reported above*

#### **c. Prospectus Requirements**

last companies intra-annual financial statements (provisional or final, audited or non-audited) that must be included in any type of prospectuses, may not refer to a date over six months prior to the submission of the related prospectus (for its public filing) to the Spanish CNMV.

ii. reconciliation to local auditing standard and reconciliation to local accounting standards

The Spanish rules for mutual recognition of prospectuses validated by a competent authority of another Member States of the European Union includes also the recognition of the audit reports included in these prospectuses if these audit reports comply with the rules of the European Union countries where the issuers or offerors have their headquarters.

If the issuers or offerors are not registered in a Member State of the European Union, the audit must state, under the auditors' liabilities, the differences in the principles used in the same and those generally accepted in Spain. They must also state the modifications which would be made and the impacts on the financial statements in question and the related audit report.

*No other changes apart from those reported above.*

2. Continuing Reporting obligations

When the audit report of the last recent annual account of a company with securities listed on a Spanish Stock Exchange includes in the audit opinion any type of exception, the interim financial statements to be made public in the second quarter of the year must be accompanied with a special limited review audit report disclosing the possible evolutions, effects or impacts of said exceptions in those interim financial statements.

*No other changes apart from those reported above.*

3. Changes in Restrictions Applying to Private Placements:

*No changes.*

4. Stabilization and Other Controls Over Dealings: No changes.

5. Any Other Issues Bearing on International Equity Offerings:

*No other changes apart from those reported above.*

## SWEDEN

### *1. Regulatory requirements*

A new law on stock exchange and clearing (1992:543) was brought into force January 1, 1993. A general feature of this legislation is its character of being a frame within which the Swedish Financial Supervisory Authority (SFSA) is authorized by the government to detail the necessary provisions and guidelines.

#### Registration procedures

SFSA has the statutory obligation to register prospectuses concerning securities not officially listed at a stock exchange. The directive 89/298/EEC has been implemented into Swedish financial law by the amendments (1992:558 and later 1992:1713) to The Financial Instruments Act (1991:980).

There is not decided any length of its clearance period. This registration is at present done by means of a special ledger.

#### Listing procedures

New listing requirements of the stock exchange act were substantially adopted to the minimum rules of the EEC directive 79/279/EEC. SFSA has to provide for the further listing requirements. They are found as FFFS 1992:24. The review period is the latest three financial years.

#### Prospectus requirements

The new requirements were also adopted to the minimum rules of the relevant EEC directive 80/390/EEC. SFSA is authorized to provide for exceptions from the obligation of issuing prospectus if the information will be available in another way. At the implementation of the directive 80/390/EEC the amendments (87/345/EEC) and (90/211/EEC) have as well been regarded.

If there is provided for a prospectus to be written according to the following requirements the securities must not be listed until the prospectus has been accepted by the stock exchange and disclosed by the issuer.

Relevant SFSA provisions are gathered in the FFFS 1993:26. The

about any criticism reported by the auditors is taken into the prospectus. The auditors also have to inform whether they have scrutinized other parts of the prospectus.

A prospectus serving as listing particulars must inform on about 17 key points according to FFFS 1993:26. These points shall for a business cycle cover matters such as turn-over, profits, balance sheets, profitability, indebtedness, number of employees and investments. There could be added that the fundamental rules concerning equity capital prospectuses are to be found in the Companies Act (1975:1385).

Regarding the Financial Instruments Act there may be mentioned that the minimum rules of the directive 88/627/EEC have been implemented into this act, too.

## 2. Continuing and interim reporting obligations

Following the directive 82/121/EEC there have been implemented into the Stock Exchange and Clearing Act two paragraphs on reporting obligations. One of them deals with the half-yearly report and the other one with the continuing and interim information to the stock exchange about the activities of the listed company.

Deadline for publishing this half-yearly report is shortened from four months after the end of this period, as stated in the directive, to two months in the Stock Exchange Act and to immediate publishing when completed, as it is stipulated in the FFFS 1992:24.

In this FFFS 1992:24 there are provided for interim statements such as:

- prognosis and advance reports
- changes of articles of association, etc.
- communiqué of the closed accounts
- remarks or criticism by the auditor
- any information completing the picture of the issuer of a public offer.

Referring to the Financial Instruments Act in respect of prospectuses for public offer and to the Insider Act (1990:1342) the FFFS 1992:24 states certain obligations to inform the stock exchange or the market place.

## 3. Private placements

In the FFFS 1992:24 there is provided for, when a public offer has been decided, immediate disclosure and information to the stock exchange about the decision, the reasons behind the offer, its terms and to whom.



In case of a private placement these same provisions are valid according to a special Act on Certain Private Placements (1987:464). This act is connected to the Insider Act.

Resale of shares issued as private placement is subject to restrictions provided for in the 1987:464 act. These restrictions have not been changed by the regulatory measures during the 24 months period now in focus.

#### *4. Stabilization, ect.*

To a certain extent stabilization exists in the Swedish market. In such cases there will usually be noticed in the announcement of the public offer that a bank, e.g., will support the price of the offered security.

#### *5. Ministerial pm 1994:78 on how some new EC-directives are proposed to be implemented into Swedish legislation.*

At present SFSA as well as some governmental agencies and certain institutions have this promemoria, transmitted by the Ministry of Finance for observation and comments. It concerns the directive 93/6/EC on capital adequacy for securities companies and credit institutions and the directive 93/22/EC on investment services within the securities business.

### **SWITZERLAND**

*No regulatory changes in Switzerland were reported in the period.*

### **UNITED KINGDOM**

#### **New Listing Rules**

In September 1993, the London Stock Exchange published its new Listing Rules which became effective on December 1, 1993.

New rules have been introduced for listing companies which do not meet the normal trading or financial record requirements. Two new chapters give detailed rules for listing scientific research based companies and companies undertaking major capital projects. These

listing. Under the previous rules, only a member of the Stock Exchange could be appointed as sponsor.

- \* the Model Code on directors' dealings has been redrafted more clearly, and includes a new definition of the 'close period', which can be shorter than previously, and gives detailed guidance on which dealings are covered by the Code.
- \* the monetary thresholds which determine the method for bringing shares to listing have been increased. Shares with a value of not more than £25 million (previously £15 million) may in the future be placed entirely with clients of the sponsor involved. Equity shares with a value of more than £50 million (previously £30 million) must be marketed by an offer for sale or subscription. Between these limits, shares may be marketed partly by a placing, and partly by an offer for sale or intermediaries offer. These rules do not apply to an overseas company with, or seeking, a secondary listing on the Exchange, or to any UK subsidiary undertaking of that overseas company, in respect of securities which are convertible into equity shares of that overseas company.

#### Material change reports

In February 1994, the Exchange published its guidance for companies on the dissemination of price sensitive information. The Guidance is designed to help companies communicate with the market as fully as possible within the constraints of the changing legal and regulatory framework in the UK and the European Union.

The Guidance sets out a framework for investor communications in a range of situations, but it is not a manual of detailed rules.

The main recommendations include:

- \* Companies should carefully plan a consistent investor communications programme, with responsibility for dealing with analysts, investors and the press clearly defined.
- \* Companies, with the help of their advisers if necessary, need to understand market expectations and are expected to make their own judgements as to whether information is potentially price sensitive. Price sensitive information cannot be mechanistically defined by price movements.
- \* Companies can choose to use their internal management information to provide regular, but not necessarily detailed or complex, updates on their trading position.
- \* If information is inadvertently disclosed selectively, companies should make a formal announcement through the

Exchange as soon as practicable to ensure all market users have access to the same information.

- \* No one should be made insider without his or her consent nor for longer than necessary.

#### Amendment to the Listing Particular Directive

The Exchange proposes to implement in July 1994, an amendment to the Listing Particulars Directive which will allow companies already listed on another EU exchange for at least three years to be able to gain an additional listing in London via an Exempt Listing Document, rather than producing full listing particulars. This amendment will enable such companies to list their securities in London at a minimum cost.

#### Characteristics of private placements

In Appendix D of the 1989 Report, it was anticipated that the Prospectus Directive would be implemented by means of enacting Part V of the Financial Services Act 1986 (the "FSA") which would contain certain exemptions for private placements.

The approach now proposed, involves completing the repeal of Part III of the Companies Act 1985 of most purposes, but not bringing Part V of the FSA into force. Instead, the Prospectus Directive would be brought in under section 2(2) of the European Communities Act 1972, which would cover all offers of unlisted securities falling within the scope of the Prospectus Directive (other than those offers where mutual recognition was sought in other Member States, which would be regulated under an amended Part IV of the FSA). In addition, amendments would be made to part IV of the FSA to provide for offers of listed securities falling within the scope of the Prospectus Directive.

This is unlikely to occur before 1995.

### UNITED STATES

#### REGULATORY REQUIREMENTS FOR PUBLIC OFFERS

##### REGISTRATION PROCEDURES

Short form and shelf registration Amendments to Form F-3, the

that an eligible company may include debt and equity securities on a single shelf registration statement without specifying the amount of each class to be offered. The amendments also permit non-convertible investment grade securities of all types to be registered on Form F-2 or F-3 without regard to the public float of the issuer's voting securities. The revisions clarified that offerings of securities other than traditional debt securities may be registered on Form F-3 by majority-owned subsidiaries of issuers eligible Form F-3 if the securities are investment grade or the parent guarantees payment obligations.

Secondary offerings, certain rights offerings, dividend or interest reinvestment plans, conversions of convertible securities, and exercises of warrants may be made on Form F-3 without regard to the public float of the issuer's voting securities.

**Multijurisdictional Disclosure System** Effective July 1, 1991, the Commission adopted a multijurisdictional disclosure system ("MJDS") for Canadian issuers in coordination with Canada's adoption of a parallel system for U.S. issuers. Under MJDS, eligible Canadian issuers may satisfy U.S. disclosure requirements with documents prepared largely in accordance with Canadian requirements. Civil liability and antifraud provisions of U.S. laws apply to all MJDS transactions.

In November, 1993, the Commission amended the eligibility requirements for Forms MJDS, F-9, F-10, and 40-F in order to remove a market capitalization test, change the public float requirement to US\$75 million, and reduce the reporting history requirement to 12 months. In December, 1993, Form F-9 was amended to recognize investment ratings made by Canadian rating organizations approved by the Canadian Securities Administrators.

Two rules have been adopted in connection with MJDS debt offerings. One rule permits Canadian institutional trustees regulated by Canadian federal authorities to act as sole trustees in MJDS offerings. The other provides an exemption from specified provisions of the Trust Indenture Act for indentures governing debt securities sold under the MJDS where the indentures are subject to similar substantive provisions under Canadian federal, Ontario or British Columbia law.

#### **PROSPECTUS REQUIREMENTS**

**Accommodation of Foreign Interim Reporting Practices** The Commission amended its rules on the age of offering statement financial statements of foreign companies to permit updating principally on a semi-annual basis. The amended rules require audited financial statements within 6 months following the fiscal year end and unaudited interim financial statements as of a date within 10

months of registration statement effectiveness if the audited statements are older than 10 months.

**Streamlined reconciliation requirements** Significant changes to the Commission's requirements for reconciliation to U.S. GAAP have been adopted.

The amendments permit foreign issuers to provide cash flow statements prepared in accordance with International Accounting Standard No. 7, as amended, without reconciliation to U.S. GAAP.

To ease entry into the U.S. disclosure system, the requirement for reconciliation of five years of financial information was reduced. First-time foreign registrants now need only reconcile financial statements and selected financial data for the two most recently completed fiscal years and any required interim periods.

The amendments permit registration of investment grade securities using the simpler reconciliation requirements of Item 17 of Form 20-F, rather than Item 18 reconciliation.

The requirement that foreign issuers furnish audited financial statements for significant acquisitions was streamlined. Financial statements of an acquiree or investee must be reconciled only if the acquiree exceeds the 30% significance level, based on the size of the registrant's investment in the business, the total assets of the business and the acquiree's pre-tax income relative to amounts reported in the registrant's most recent audit, calculated under U.S. GAAP. Reconciliation was streamlined for foreign issuers using pro rata consolidation for certain joint ventures accounted for under the equity method under U.S. GAAP. Such issuers may provide summarized financial information of the current assets and liabilities, noncurrent assets/liabilities, net sales, gross profit and net income relating to its pro rata interest in the joint venture. Separate financial statements of such a joint venture are not required.

**Elimination of six supplemental financial schedule** The Commission eliminated financial schedules on marketable securities and other investments; amounts receivable from related parties, underwriters, promoters, and employees; related party indebtedness that is not current; property, plant and equipment; accumulated depreciation, depletion and amortization of property, plant and equipment; and guarantees of other issuers' securities.

provided. More current financial information need not be reconciled if any material variation in accounting not previously disclosed is described with its quantified effects.

#### Pending proposals

On April 19, 1994, the Commission proposed further amendments to Form 20-F of the Exchange Act and Regulation S-X to streamline the financial information and reconciliation requirements for both foreign and domestic companies. If adopted, the proposals will generally cover both prospectus requirements and continuous reporting obligations. Securities Act Release Nos. 7054, 7055 and 7056.

Reporting Currency and Hyperinflation Accounting Proposed amendments to accounting regulations include revisions allowing foreign issuers to state their primary financial statements in the currency reported to a majority of shareholders. Current rules require a foreign issuer to present financial statements in the currency of either its country of incorporation or its primary economic environment. The proposals would eliminate the reconciliation requirement for foreign issuers accounting for their operations in hyperinflationary environments in accordance with International Accounting Standard No. 21, "The Effects of Changes in Foreign Exchange Rates."

Business Combinations Proposed amendments to Form 20-F would eliminate the requirement that foreign issuers reconcile differences attributable to the determination of the method of accounting for business combinations or for amortization periods of goodwill or negative goodwill if the method used regarding these items conforms with International Accounting Standard No. 22, "Business Combinations."

Equity Investees Amendments proposed to Rule 3-09 of Regulation S-X would modify the asset size test for determining whether financial statements of an equity investee must be provided. The significance thresholds would be measured solely in terms of the size of a company's investment in the investee and the investee's pre-tax income.

Financial Schedules Financial schedules relating to short-term borrowings and supplementary income statement information would be rescinded by the proposals.

#### RESTRICTIONS APPLING TO PRIVATE PLACEMENTS

Rule 144A Rule 144A, adopted in 1990, provides a safe harbor exemption from Securities Act registration for resales of certain securities to qualified institutional buyers. Except for

registered broker-dealers and banks and savings and loan institutions, a "qualified institutional buyer" (QIB) under the Rule owns or invests on a discretionary basis at least \$100 million in securities of unaffiliated issuers. The eligibility threshold for Exchange Act registered broker-dealers is \$10 million. Banks, foreign or domestic, and savings and loan associations must also have a net worth of at least \$25 million. Securities may be resold under Rule 144A if, when issued, they were not of the same class as securities listed on a U.S. securities exchange or quoted on NASDAQ.

The definition of QIB was expanded on October 22, 1992. Collective and master trusts, legal forms commonly used for the investment of pension funds, were added to the definition. A new note to the rule allows 144A sales to include an insurance company's purchase for certain separate accounts. The new provisions also permit institutions to include U.S. government securities in the QIB calculation of investments. Securities Act Release No. 6963.

#### **STABILIZATION AND OTHER CONTROLS ON DEALING**

**Exemptions for multinational offerings** Trading rules under the Exchange Act applicable to securities distributions in the United States are designed to prevent market manipulation. Rule 10b-6 prohibits persons from bidding for or purchasing, or inducing other persons to bid for or purchase, securities that are the subject of the distribution (or any security of the same class or any right to purchase any such security) until their participation in the distribution is complete. Exceptions to Rule 10b-6's general prohibition include stabilizing transactions permitted by Rule 10b-7 and transactions in rights permitted by Rule 10b-8.

The principal trading markets for foreign securities generally are outside the United States. Fraudulent and manipulative conduct undertaken in these markets could affect distributions in the United States. Since 1955, the Commission has held that, in distributions of foreign securities in the United States, the trading rules apply to all distribution participants and their affiliates, wherever they are located or effect transactions. As multinational offerings have become more common, application of the trading rules to overseas transactions has often conflicted with customs and market practices of other jurisdictions. The rules may impose compliance burdens and costs on foreign issuers.

practices where the risk of manipulative effects in the United States from activities abroad is reduced and the Commission has access to information about overseas transactions.

Pursuant to delegated authority, the Division of Market Regulation has issued class exemptions from Rules 10b-6, 10b-7 and 10b-8 for distributions in the United States of actively traded equity securities of certain highly capitalized German issuers. Distribution participants and their affiliates are permitted to effect otherwise prohibited transactions in Germany, subject to certain disclosure, record keeping, record production and notice requirements. Distributions of Certain German Securities (October 6, 1993) (Exchange Act Release No. 33022).

A Commission Statement of Policy, dated November 3, 1993, announced that, on proper written request, class exemptions from Rules 10b-6, 10b-7, and 10b-8 would be granted for distributions in the United States by issuers in other jurisdictions, subject to the same conditions for distributions of certain German securities. Securities Act Release No. 7027.

On April 5, 1994, the Division of Market Regulation granted an exemption from the cooling-off periods in Rule 10b-6 during distributions of foreign securities in the United States. The exemption permits distribution participants and their affiliates to bid for and purchase such securities or related securities in solicited brokerage and principal transactions until two or nine business days before the commencement of offers and sales in the United States, subject to certain conditions. Notification of Modification of Class Exemption Letter Regarding Application of Cooling-Off Periods Under Rule 10b-6 to Distributions of Foreign Securities (Exchange Act Release No. 33862).

On April 19, 1994, the Commission issued a concept release seeking comment on the trading rules in general, including their application to multinational distributions. Exchange Act Release No. 33924.

Trading rules exemption for Rule 144A Sales On November 3, 1993, the Commission adopted amendments to Rules 10b-6, 10b-7, and 10b-8 to create exceptions for distributions of securities of foreign issuers eligible for sale pursuant to Rule 144A made exclusively to qualified institutional buyers. The exceptions permit otherwise prohibited transactions and should facilitate distributions in the United States of foreign securities to institutional investors. Securities Act Release No. 7028.



**OTHER ISSUES BEARING ON INTERNATIONAL EQUITY OFFERS**

**Safe Harbor for Broker-Dealer Research Reports** Literally applied, the registration and prospectus requirements of the Securities Act could cover broker-dealer research reports. Rule 139 provides safe-harbor protection from these requirements for broker-dealers who distribute information, opinions or recommendations concerning reporting companies making registered offerings. The conditions are least restrictive for issuers eligible to make primary offerings on Form F-3. The reporting history requirement under Form F-3, however, prevents broker-dealers publishing research reports on certain sizeable foreign issuers who do not file reports from relying on the less restrictive conditions of the rule. The revisions to Rule 139 expanded the eligibility requirement for use of the Rule by broker-dealers. The research reports covered by the revised rule are those made with reasonable regularity in the normal course of business.

**Public Announcements of Unregistered Offerings** Growing numbers of international offerings under Regulation S and private placements under Rule 144A resulted in repeated requests for guidance with respect to reconciling a company's need to keep investors informed of material developments, including securities offerings, and strictures in the U.S. against advertisements of such offerings. Responding to these concerns, the Commission adopted a new safe harbor for announcements of exempt offerings under the Securities Act. Parallel to an existing rule for announcements of registered offerings, new Rule 135c is available to all reporting issuers and to foreign companies exempt from Exchange Act reporting requirements through Rule 12g3-2(b).

The new rule limits information in the announcement and requires a statement that the securities are not registered and may not be sold in the United States unless registered or exempt from registration. Announcements used to condition the market in the United States for the securities are not protected by the rule. Reporting companies relying on the rule must file the announcement with the Commission. Eligible non-reporting issuers relying on the rule must also submit the announcement to the Commission.

APPENDIX A

RECOMMENDATIONS OF THE 1989 REPORT

1. Disclosure/Harmonization

(a) Efficiency of the capital raising process would be greatly enhanced by permitting issuers to prepare one disclosure document for use in each jurisdiction in which it chooses to sell securities. There appear to be several options to reaching that goal:

- \* Standards could be harmonized among jurisdictions.
- \* Jurisdictions could accept the disclosure document prepared in accordance with the home country (predominant market) requirements. This may prove more feasible for jurisdictions whose requirements, while not the same, are sufficiently based on the same model with the same regulatory purpose to be deemed to provide investors with adequate disclosure.

*It is recommended that regulators be encouraged, where consistent with their legal mandate and the goal of investor protection, to facilitate the use of single disclosure documents, whether by harmonization of standards, reciprocity or otherwise.*

(b) A critical factor in the evolution of reliance on a single disclosure document is the acceptability of financial statements in multiple jurisdictions. Development, or recognition, of adequate internationally acceptable accounting, auditing and independence standards would greatly facilitate the development of the use of a single disclosure document. The recommendations of IOSCO Working Party No. 2 will be an important contribution to the development of these standards.

*It is recommended that timeliness and the period of financial reporting should either be harmonized or accommodations made to foreign issuers.*

2. Continuing Obligations

The Working Party acknowledges the importance of providing information to investors (including all existing shareholders) on a continuing basis. There are major differences in continuing obligations imposed on companies by regulatory authorities in the major capital markets. These differences have developed out of local legal and regulatory practices, markets trading systems and attitudes towards disclosure, although they are being eroded to

some extent by the pressures of globalization of securities markets.

*It is recommended that a study be made of the annual information which could be accepted by regulatory authorities as a reference document for a prospectus when listed or reporting issuers proposed to issue and market, on a multinational basis, new securities. This study will complement the efforts of Working Party No. 2 and will promote the adequacy of information given to shareholders on an annual basis by the companies listed or reporting in more than one jurisdiction.*

### 3. Coordination of Timetables

An optimum level of efficiency in the capital raising process would be for issuers to be able to access the market on-demand. Listing procedures, registration requirements and other clearance processes together with differing offering and underwriting procedures, are all factors that affect the timing of selling securities.

*It is recommended that listing, registration and other clearance procedures be reviewed with a view to minimizing the delay in sales of securities where consistent with regulatory goals. For example, shelf registration that makes use of periodic reporting such as exists in Japan, France and the United States, could be explored.*

*It is also recommended that regulators should examine their review and clearance procedures to determine the potential for coordination with other regulatory organizations to facilitate the processing of multi-jurisdictional offers.*

*It is further recommended that fuller study be carried out to determine how issue and underwriting timetables and practices can be harmonized.*

*It is recommended that a study be made of the annual information which could be accepted by regulatory authorities as a reference document for a prospectus when listed or reporting issuers propose to issue and market, on a multinational basis, new securities. This study will complement the efforts of Working Party No. 2 and will promote*

4. Stabilization and Other Control Over Dealings

Study of stabilization and other controls over dealings and similar areas of activity within the framework of the primary international capital markets has shown significant differences between jurisdictions. In addition, the extra-territorial application of certain domestic statutory provisions (for example, stabilization) has given rise to considerable concern and confusion.

*It is recommended that further study is undertaken to determine whether practice relating to these topics in the primary markets can be more closely aligned in order to eliminate uncertainties where possible.*

*It is further recommended that regulators codify the principles they have developed in individual circumstances to limit the extraterritorial application of domestic statutory and regulatory provisions in order to accommodate market structures and authorized market prices in foreign jurisdictions relating to these topics.*

5. Private Placements and Restrictions on Resale

In view of the multitude of concepts and broad definitions of those issues that constitute a public offer and those that are viewed as non-public or private placements, the Working Party has not attempted to put forward any recommendation as to the standardization of the definition of what constitutes a private or public offer. The definition raises fundamental jurisdictional issues. Additionally, significant difference exist in the capital markets in the restrictions on resales of privately placed securities.

*It is recommended that further study be made of the potential for a greater degree of standardization between the major capital markets on the restrictions on resale applied to securities which have been sold as part of a private or unregistered offer.*

6. Annual Survey

For future study of multinational offers by IOSCO, two recommendations are made:

*It is recommended that, in addition to the foreign studies, an annual survey be undertaken of the changes which could affect multinational offers which have been made in each participating jurisdiction.*

*It is recommended that, by May of each year, each jurisdiction represented on the Technical Committee produce a summary of such changes so that the Working Party can prepare its annual report for distribution at the next annual conference of IOSCO. This is intended to be an annual update of information in Appendix C (i.e., to the 1989 report).*

MEMBERS OF WORKING PARTY NO. 1

APPENDIX B

Mr. Peter Clark  
Australian Securities Commission

Mr. Claude Lempereur  
Commission Bancaire et Financière, Belgium

Ms. Pamela Hughes  
Ontario Securities Commission

Mr. Pierre Chaput  
Commission des Operations de Bourse

Mr. Jürgen Oberfrank  
Deutsche Börse AG

Mr. Herbert Biener  
Ministry of Justice - Germany

Ms. Laura M. Cha  
Securities and Futures Commission, Hong Kong

Mr. Carlo Biancheri  
Commissione Nazionale per le Società e la Borsa

Mr. Yoshiake Shinbara  
Ministry of Finance, Japan

Mr. Charles Kieffer  
Ministère du Trésor, Luxembourg

Mr. Jorge Familiar Calderon  
Comision Nacional de Valores - Mexico

Mr. Cor-Jan Dasselaar  
Securities Board of the Netherlands

Mr. Rafael Sánchez de la Peña  
Comisión Nacional del Mercado de Valores, Spain

Mr. Michel Y. Dérobert  
Association des Bourses Suisses

Mr. Patrick Morton  
The London Stock Exchange

Mr. John Barass  
Securities and Investments Board

Ms. Linda C. Quinn (Chairman)  
U.S. Securities and Exchange Commission

**APPENDIX B**

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