INTERNATIONAL EQUITY OFFERS

CHANGES IN REGULATION SINCE APRIL, 1996

INTERNATIONAL ORGANISATION OF
SECURITIES COMMISSIONS

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

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September, 1997

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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 became effective or that were proposed since April 30, 1994, 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
- -reconciliation to local auditing standards
- -reconciliation to local accounting standards

In particular, details of any new concessions given to foreign issuers and any new reciprocal agreements entered into with other jurisdictions.

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 concessions 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, 1996 (INCLUDING PROPOSED CHANGES)

AUSTRALIA

There have been no regulatory changes in Australia during the period covered by this report.

BELGIUM

Continuing Reporting Obligations

The Law of 6 April 1995 on the secondary markets, the legal status and supervision of investment firms, intermediaries and investments advisers and its implementing Decrees (in particular two Royal Decrees of 3 July 1996 on the obligations with regard to periodic and occasional information) do not introduce significant changes in the continuing reporting obligations incumbent upon the issuers listed in Belgium (see annual survey dated September, 1996).

Easdaq

Easdaq ("European Association of Securities Dealers Automated Quotation") is a new pan-European Stock Market for high growth companies. The Easdaq concept is based upon Nasdaq.

Easdaq was established by a Royal Decree of June 10, 1996 as a regulated ISD stock market under Belgian law; it operates independently of the other European stock markets. Easdaq is not an official listing with the meaning of Directive 79/279/EEC of 5 March 1979.

Easdaq was launched in September 1996. It is a quote-driven market.

The supervision of the Easdaq market is entrusted to a market authority, which is an autonomous administrative body within Easdaq S.A. - a company recognized by a Royal Decree of 10 June 1996. The Banking and Finance Commission supervises the way in which the market authority carries out its legal tasks as market authority.

Membership of Easdaq is based upon the "European passport" concept and on equivalent principles for selected countries outside the European Union (ex, the USA, Switzerland).

A Ministerial Decree of 15 October 1996 has approved Easdaq's rule book and has defined, inter alia, the conditions for the admission to trade on Easdaq, the prospectus requirements and the continuing reporting obligations (annual, interim and quarterly reports).

The "Nouveau Marché"

In the framework of Euro NM, as in France, Germany and the Netherlands, the Management Committee of the Brussels Stock Exchange has organized, within the Brussels Stock Exchange, a new market - called "Nouveau Marché" - which mainly targets small and medium sized enterprises with a high potential for growth.

The Nouveau Marché within the Brussels Stock Exchange is a regulated ISD market, but is not an official listing within the meaning of Directive 79/279/EEC of 5 March 1979.

The Nouveau Marché is both an order-driven and price-driven market (dual system).

Companies whose shares are listed on the Nouveau Marché are subject to the same continuing reporting obligations as companies whose share are listed on the first market of a Belgian stock exchange (see above: Royal Decree of 3 July 1996). In addition, they must publish quarterly reports relating to the first and third quarters of each financial period.

CANADA

The Ontario Securities Commission published for comment on May 31, 1996 a proposed rule under the Ontario Securities Act entitled Prospectus Exemption for First Trade in Certain Securities Over a Market Outside Ontario. The proposed rule is derived from the Blanket Ruling In the Matter of the First Trade in Securities Acquired Pursuant to Certain Exemptions (1994), 178 OSCB 1978. The purpose of the proposed Rule is to provide relief from the prospectus requirements of the Ontario Securities Act where the first trade in certain securities acquired under a prospectus exemption occurs outside Ontario. The relief would apply to securities of issuers that are not reporting issuers in Ontario when the First trade is carried out through the facilities of a stock exchange outside Ontario, or on certain regulated markets outside Ontario, and less than 10% of the securities are held by Ontario residents. Adoption of the proposed rule would not significantly change the status quo in this area.

FRANCE

COB's rule n°88-02 regarding a public statement when an individual or a company controls 20% of the capital of a listed company has been modified by the rule n°97-01.

The COB rule n°88-02 compels any shareholder when its holding reaches 20% of the capital or voting rights to declare its intention with regard to the company for the next twelve months. It must also state whether or not it intends to acquire further shares, seek control of the company or to seek representation on the board of directors, and whether or not it is acting in concert with other persons.

The objective of the new provision is to impose the same obligation when the threshold of 10% is achieved to improve the accuracy and quality of the information.

This change will enable a company and its shareholders if and when a 20% announcement is made to verify the sincerity of the 10% statement and thus place it in a better position to evaluate the 20% statement.

The French Ministry of economy and finances approved this rule in March 1997.

GERMANY

There have been no regulatory changes in Germany during the period covered by this report.

HONG KONG

No report was received.

ITALY

AUDITING

On April 1996 the Commission (CONSOB) issued a recommendation to auditing firms dealing with the proposal for professional audit services to listed (and other regulated) companies.

The recommendation is consistent with the International Standard on Auditing on Engagement Letters.

The document is aimed at providing a list of information that should be given to potential clients (and CONSOB) in order to allow an informed decision about the choice of auditors.

One of the main disclosures required is a general description of the main procedures that the auditor plans to perform.

JAPAN

1. Regulatory requirements for public offers.

   - lowering the money amount requirements of the shelf registration (50 billion yen → 25 billion yen)
   - registered OTC companies can apply the shelf registration
   - simplification of the reporting documents required for listing
   - regarding the issuing program, approve the change of application period
   - order of items in the prospectus used in global offerings can be accepted with the reference table.

2. Continuing reporting obligations

N.A.

3. Restrictions applying to private placements

- deregulation of some rules applying to large-scale private placements (amounts per issue, amounts per year, number of times per year)
- abolition of the restrictions in public offering (earnings per share, dividend, amount)
- abolish the price examination when issuing at the market price.

4. Stabilization and other controls on dealing

N.A.

5. Any other issues bearing on international equity offers

- regarding the CP issued abroad, deregulate the domestic transactions rules of it.
  - ease the required rating level to at least A-3 (minimum level required to qualify)
  - extended the redemption period of the CP to within one year.
- abolish the criteria required to issue Euro yen CP by a nonresident.

LUXEMBOURG

There have been no regulatory changes in Luxembourg during the period covered by this report.

THE NETHERLANDS

Over the past year the four recognized securities exchanges in the Netherlands have merged into the Amsterdam Exchanges nv (AEX). The AEX accommodates the trade in and clearing of shares, debentures, derivatives and commodities. A recognition according to the Securities Supervision Act 1995 was granted by the Minister of Finance.

In March 1997, the AEX initiated the Amsterdam New Market (NMAX). NMAX has been set up for young, fast-growing companies in need of risk capital. The requirements for admission to NMAX have been embodied in the new rules concerning the Amsterdam New Market Special Listing Requirements (NMAX Rules). The requirements laid down in the NMAX Rules comply with the relevant European directives. The Securities Board of the Netherlands exercises supervision over both the traditional markets of AEX and the NMAX.

Furthermore, the AEX has issued Listing and Procedure Rules which apply to admitted institutions of the AEX who act as sponsor with regard to new listings on the traditional

markets and the NMAX. The aforementioned rules contain, among other items, guidelines for a due diligence examination.

The legislation applicable to public offerings has not changed significantly over the past year.

SPAIN

No report was received.

SWEDEN

There have been no regulatory changes in Sweden during the period covered by this report.

SWITZERLAND

International Equity Offers: Changes in the Regulation since September 1996

LEGISLATION

Since the last report (September 1996), the major part of the Federal Act on Stock Exchanges and Securities Trading (the Stock Exchange Act), which was described at that time, has come into effect. All its chapters except those on takeovers and the disclosure of major shareholdings came into effect on February 1, 1997. But preparation of the detailed rules regarding takeovers and disclosure of major shareholdings took more time than expected. However, the ordinances containing the detailed rules on these subjects have now been finalized by the competent bodies (the Federal Banking Commission and the independent Takeover Board) and will be published in September 1997. The remaining chapters of the Swiss Stock Exchange Act will then come into effect on January 1, 1998.

The Swiss Exchange will now play a major role in implementing the new rules regarding the disclosure of major shareholdings. In accordance with the Swiss "framework law" concept and the large scope allowed for self-regulation by stock exchanges, decisions on exceptions and preliminary decisions about whether shareholdings must be disclosed will be taken by the Swiss Exchange.

LISTING RULES

The new Listing Rules of the Swiss Exchange which entered into force on October 1, 1996 were described in the recent up-date report. Initial experience in working with these new rules is positive. Applicants have so far had no difficulties in complying with the new regulations, although some important issues of interpretation remain to be dealt with.

A. ACCOUNTING RULES

1. Additional accounting principles

The Admissions Board has decided, after the mostly favourable response to its proposal during the consultation procedure, to add the following new Swiss Accounting and Reporting Recommendations (ARR) as accounting principles to Art. 67 of the Listing Rules.

- Rule No. 9 Intangible Assets
- Rule No. 11 Taxes in the Consolidated Financial Statements
- Rule No. 13 Accounting for Finance Leases by the Lessee

The new accounting principles will be legally binding for the first time for the business year starting on or after January 1, 1998. The rules respecting comparative figures for the preceding year will apply in the following financial year.

2. Recognition of other accounting standards pursuant to Art. 70 of the Listing Rules

A list of accounting standards which are recognized pursuant to Art. 70 of the Listing Rules has now been established. US-GAAP and IAS have been recognized as internationally accepted standards and the national standards for listed companies of the following countries have been recognized as equivalent to Swiss Exchange standards: al EU and EEA countries, Australia, Japan, Canada, New Zealand and South Africa. This list will be up-dated regularly.

B. IMPLEMENTING REGULATIONS

Unless expressly cancelled, all directives issued before the entry into force of the new Listing Rules remain valid. In view of the present situation, however, a major revision of the directives and other implementing regulations has been undertaken by the Admissions Board. During the period since the last report, the following directives and implementing regulations are either new or have been revised:

1. Directive on lodging a Listing Application pursuant to Art. 50 of the Listing Rules

The issuer itself is the formal applicant and therefore one of the parties to the listing procedures. If the issuer does not possess the necessary knowledge, the Admissions Board may require that it should be represented by a recognized expert. This new directive defines the knowledge requirements for the issuer or the representative and the procedure for admission. The fact that the issuer possesses the required knowledge must be established prior to initial lodging of an application. Experience shows that, although the provisions concerning company publicity aimed at informing investors are certainly a very important component, in lodging an application correctly

the technical aspects of certification, safekeeping and guaranteeing the settlement of market transactions also play an important role.

2. Directive on Debt Securities subject to Foreign Law

The existing principle that debt securities and derivatives must be subject to Swiss law and a Swiss place of jurisdiction is maintained for the time being. The main changes are easier conditions for listing debt securities issued under foreign law (in particular, exemptions for CHF-Tranches of EMTN-Programmes and Asset-Backed Transactions).

3. Directive on Guarantee Commitments

The principle of subjecting guarantee commitments to Swiss law and a Swiss place of jurisdiction has been further liberalised. In addition, this directive will apply not only to those commitments which are required for listing purposes but also to those which are given for financial reasons only. The provisions regarding the scope of a guarantee commitment are now more detailed. As previously, Keep Well Agreements may be given only between companies consolidated in the same group. However, in such cases it is no longer required that the guarantor is necessarily the parent company of the group.

4. Directive on Certification of Securities

Several previous directives are brought together in one new directive on the certification of securities. The most important change is the fact that bearer shares may now be certificated in the form of a permanent global certificate.

5. Directive on the Transferability of Payments with respect to Foreign Debt Securities

Although at the time of the revision no bilateral transfer restrictions on payments under foreign debt securities denominated in Swiss francs were known, it was finally decided not to cancel this directive since such cancellation might have the effect of shifting any transfer risk from the borrower to the investor.

6. Creation of an Appeals Court

Article 9 of the Stock Exchange Act requires that any stock exchange in Switzerland must set up an independent appeals court to which appeals may be made if a security is refused admission, if admission of a security is discontinued, if admission to membership is refused, or if a member is excluded. Following a consultation procedure, the board of directors approved the regulations for the Swiss Exchange's Appeals Court on October 31, 1996. A minor change to Article 83 of the Listing Rules was also approved. At the same time the members of the Appeals Court were nominated. They must be experts in at least the administration of justice, securities trading or capital market law.

7. List of Charges

With the entry into force of the new Listing Rules, a new List of Charges has been issued which came into force on January 1, 1997. A fundamental distinction has been drawn between the various market segments (equity securities, debt securities and derivatives).

8. Circular on Reporting Obligations

The new Listing Rules require increasingly direct contact between issuers and the Swiss Exchange. The circular is intended both to give these contracts institutional underpinning and to ensure that the exchange has the fullest possible overview of the information flow relating to a listed company in view of the market supervisory duties for which the act provides.

A checklist is also provided for issuers of debt securities and derivatives, as well as for lead institutions; this is intended to be a user-friendly working tool. The checklist will be revised in due course in the light of initial experience with its use.

C. CONSULTATION PROCEDURE FOR NEW LISTING RULES FOR INVESTMENT COMPANIES

A proposal for new Listing Rules for Investment Companies was submitted for public consultation at the end of May 1997. Comments must be made by the end of August, and it is expected that the new rules will come into force on January 1, 1998.

In material terms the new rules should provide an orderly basis for trading, and in particular they should guarantee ongoing compliance with the supplementary provisions. Specific disclosure requirements take into account the characteristics of investment companies. The principle is confirmed that a listing decision does not represent a quality or value judgement about an issuer and any risks which may be associated with the security in question.

UNITED KINGDOM

Alternative Investment Market ("AIM")

AIM was set up in June 1995 to cater for young dynamic companies with good growth prospects.

By the end of March 1997, the market boasted 269 companies (of which 18 were incorporated outside the UK) with a total market capitalisation of nearly £6 billion.

The entry requirement is generally a prospectus drawn upon in accordance with the Public Offers of Securities Regulations. Over £1 billion has so far been raised on this market and a number of companies have made offers in more than one country.

Amendments to the Listing Rules

Asset-backed debt securities

The requirements relating to asset-backed debt securities were updated in July 1996 to make them applicable to all types of issues and structures rather than just loan and mortgage related issues.

Investment entities

New rules were introduced in November 1996 to provide for the listing of property investment companies without a three year record and authorised unit trusts subject to certain specified criteria.

UNITED STATES

REGULATORY REQUIREMENTS FOR PUBLIC OFFERS

Registration Procedures

Elimination of Required Financial Statements for Pending Acquisitions On October 8, 1996, the Commission adopted a rule change that eliminates the requirement to provide audited financial statements for pending business acquisitions in Securities Act registration statements if such audited financial statements are filed within 75 days of consummation of the acquisition, unless the acquiree exceeds the 50% level of significance compared to the issuer. The rule change automatically waives the required financial statements for significant acquisitions completed within 75 days of a registered offering, if such audited financial statements are not readily available at the time the offer commences, and automatically waives the earliest year of required audited financial statements if those financial statements are not readily available. The rule change also eliminates the requirement to provide financial statements for businesses falling below the 20% significance level and revises the other thresholds for determining the financial statements of acquired businesses that must be provided under both the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). Securities Act Release No. 7355.

Expansion of Short Form Registration to Include Companies with Non-Voting Common Equity On May 8, 1997, the Commission adopted amendments to the eligibility requirements for its short-form registration statements, Forms S-3 and F-3, to include non-voting as well as voting common equity in the computation of the required $75 million aggregate market value of common equity held by non-affiliate of the registrant. Conforming changes were made in the calculation of the required public float for use of Form F-2, for qualification as a "small business issuer" and for providing public float information required on the cover of the Commission's annual report forms for domestic issuers.

Disclosures About Derivatives and Risk Management Activities On January 28, 1997, the Commission adopted rule amendments that supplement disclosures previously required by generally accepted accounting principles and Commission rules and that make information

about derivative financial instruments, other financial instruments, and certain derivative commodity instruments more useful to readers assessing the market risk associated with these instruments. The new rules, which generally apply to both prospectus requirements and continuous reporting obligations, clarify and expand the previous requirements for financial statement footnote disclosures about the company's accounting policies for derivative financial instruments and derivative commodity instruments and require disclosure outside the financial statements of qualitative and quantitative information about market risk inherent in such instruments. The Commission clarified that the safe harbors for forward looking information provided in Section 27A of the Securities Act and Section 21E of the Exchange Act apply to quantitative information about market risk and information about market risk in future reporting periods. Securities Act Release No. 7386.

Pending Proposals

Securities Act Concept Release On July 25, 1996, the Commission issued a concept release to solicit comments on the best means of improving the regulation of the capital formation process while maintaining or enhancing investor protection. The Commission is engaged in a broad reexamination of the regulatory framework for the offer and sale of securities under the Securities Act. Comment was requested on different approaches, such as: the recommendations of the Advisory Committee on the Capital Formation and Regulatory Processes that a "company registration" approach be adopted; modifications to the existing shelf registration system; reforms that would liberalize the treatment of unregistered securities; and an approach that would involve the deregulation of offers. Comment was also requested with regard to any other approaches that should be considered. The comment period ended October 31, 1996. Securities Act Release No. 7314.

Plain English Initiative On January 14, 1997, the Commission proposed Rule 421(d) which would require public companies to use plain English principles in the organization, language and structure of the cover pages, summary, and risk factors sections of the prospectus in order to improve the readability of the prospectus and communicate the information in these sections clearly to investors. The Commission also proposed to expand Rule 421(b) to codify prior interpretations on the clarity of required in the rest of the prospectus. At the same time, the Commission's Office of Investor Education and Assistance released a draft of A Plain English Handbook: How to Create Clear SEC Disclosure Documents. The comment period for the release and the handbook ended on March 24, 1997. Securities Act Release No. 7389.

Delayed Pricing for Small Issuers On February 20, 1997, the Commission issued a release proposing an amendment to Rule 430A to permit certain smaller companies, including "small business issuers," to delay pricing of securities offerings after registration in order to provide them flexibility in the marketplace. Delayed pricing currently is not available to these smaller companies. This increased flexibility should result in smaller issuers raising more capital through the public markets rather than through exempt offerings conducted in the domestic and offshore markets. The proposed procedure would be limited to companies with a 12 month reporting history and contains other safeguards designed to ensure that investors have adequate and current disclosure. The comment period ended on April 29, 1997. Securities Act Release No. 7393.

Safe Harbor for Offshore Press Activities The Commission is aware that U.S. journalists and journalists for publications with a significant U.S. circulation have had difficulty obtaining direct access to offshore press activities of foreign companies that are offering securities or conducting a tender offer, due to uncertainty whether allowing such access would violate the U.S. federal securities laws. On October 10, 1996, the Commission proposed two safe harbors under the Securities Act and the Williams Act that are intended to eliminate perceived grounds for the exclusion of any journalists from offshore press activities and reflect existing offering practices that are common in foreign countries. The comment period ended on December 17, 1996. Securities Act Release No. 7356.

CONTINUING REPORTING OBLIGATIONS

Reporting of Unregistered Equity Sales On October 10, 1996, the Commission amended its annual, quarterly and current report forms for domestic reporting companies to require disclosure of unregistered sales of equity securities. Sales made offshore in reliance on Regulation S must be disclosed within 15 days of their occurrence on a current report on Form 8-K. If certain proposed changes to Regulation S are adopted as proposed, Regulation S sales would be reported on a quarterly basis, as is the case now for other unregistered sales of equity securities. Exchange Act Release No. 37801.

RESTRICTIONS APPLYING TO PRIVATE PLACEMENTS

Revision of Holding Periods Under Rule 144 On February 20, 1997, the Commission adopted amendments to shorten the holding period requirements of Rule 144 under the Securities Act. The rule provides a safe harbor for resale of securities by persons who hold either "restricted" securities, or securities of a company of which they are affiliates. Under the new rule, limited sales of "restricted" securities may be made one year after the securities had been sold by the issuer or an affiliate, and the securities may be sold without limitation upon the expiration of two years from the issuer or affiliate sale. The prior holding periods under Rule 144 were two years and three years, respectively. Securities Act Release No. 7390. On the same date, the Commission issued a companion release proposing changes to make Rule 144 easier to understand and apply. The comment period for these proposals ended on April 29, 1997. Securities Act Release No. 7391.

STABILIZATION AND OTHER CONTROLS ON DEALING

Activities by Issuers, Underwriters, and Others During a Distribution

The principal trading markets for foreign securities generally are outside the United States. Nonetheless, fraudulent and manipulative conduct undertaken in these markets could affect distributions of those securities in the United States. Since 1955, the Commission has held that, in distributions of foreign securities in the United States, its anti-manipulation rules (former Rules 10b-6, 10b-7 and 10b-8) applied to all distribution participants and their affiliated purchasers, wherever they are located or effect transactions. As multinational offerings became more common, application of those rules to overseas transactions often conflicted with customs and market practices of other jurisdictions, and were considered to impose compliance burdens and costs on foreign issuers, foreign underwriters, and their

affiliates. In the past, the Commission eased these effects with exemptions for individual, and classes of, transactions.1/ The increasing globalization of securities markets and other revolutionary changes in the contemporary capital marketplace, however, made it impracticable for the Commission to continue to regulate manipulative activity during securities offerings in the manner prescribed by the rules as they then existed.

Regulation M. On December 18, 1997, the Commission adopted Regulation M to replace Rules 10b-6, 10b-6A, 10b-7, 10b-8, and 10b-21 under the Exchange Act. Exchange Act Release No. 38067 (January 3, 1997), 62 FR 520 (the "Adopting Release"). The adoption of Regulation M follows the Commission's publication of both a concept release and a proposing release soliciting comment on potential revisions to Rules 10b-6, 10b-6A, 10b-7, 10b-8, and 10b-21 under the Exchange Act. Exchange Act Release No. 33924 (April 19, 1994), 59 FR 21681; Exchange Act Release No. 37094 (April 11, 1996), 61 FR 17108. Regulation M, which became effective March 4, 1997, represents the most sweeping changes in the way the Commission seeks to prevent the manipulation of securities offerings since it adopted Rules 10b-6, 10b-7, and 10b-8 over 40 years ago.

Regulation M reorganized the structure of the anti-manipulation rules, reduced their complexity, and eliminated or relaxed existing restrictions in those circumstances where either the risk of manipulation appears small, or the costs of the restrictions are disproportionate to the purposes that they serve. Regulation M differs from the former anti-manipulation rules by:

- focusing the restrictions on securities that are more susceptible to manipulation;
- using better measures for manipulative potential;
- recognizing the global nature of securities markets;
- assimilating changes in market transparency and surveillance; and

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1/ See, e.g., Letter regarding Distributions of Certain German Securities, Securities Exchange Act Release No. 33022 (October 6, 1993), 58 FR 53220; Application of Rules 10b-6, 10b-7, and 10b-8 during Distributions of Certain Foreign Issuers, Securities Exchange Act Release No. 33137 (November 3, 1993), 58 FR 60324; Letter regarding Distributions of Certain French Securities, Securities Exchange Act Release No. 34176 (June 7, 1994), 59 FR 31274; Letter regarding Distributions of Certain Dutch Securities, Securities Exchange Act Release No. 36412 (October 19, 1995), 60 FR 55391; and Letter regarding Distributions of Certain United Kingdom Securities and of Certain Securities Traded on SEAQ International, Securities Exchange Act Release No. 35234 (January 10, 1995), 60 FR 4644. See also Letter regarding Application of Cooling-Off Periods under Rule 10b-6 to Distributions of Foreign Securities, Securities Exchange Act Release No. 33862 (April 4, 1994), 59 FR 17125; Letter regarding Regulation S Transactions during Distributions of Foreign Securities to Qualified Institutional Buyers [1993-1994] Fed. Sec. L. Rep. (CCH) ¶ 76,851 (February 22, 1994); Letter regarding Regulation S Transactions during Distributions of Foreign Securities to Qualified Institutional Buyers (March 9, 1995); and Letter regarding CS Holding [1995] Fed. Sec. L. Rep. (CCH) ¶ 77,018 (March 31, 1995).

- codifying a variety of earlier actions taken by the Commission to adapt the former rules to current market conditions, including many of the individual and class exemptions that had been granted over the years.

To address the concern that persons with a stake in a securities offering (such as issuers, selling securityholders and underwriters) might artificially influence the market price of the security in distribution and thereby boost its offering price, Regulation M restricts their activities by requiring them to cease their market activities (such as proprietary trading) during a restricted period that begins one or five business days prior to the offering's pricing and ends when the offering is over. However, in a notable change from the former anti-manipulation rules, which reflects the more focused approach of Regulation M, underwriters of an actively-traded security of a larger issuer would not be subject to trading restrictions.

Regulation M consists of five substantive rules (Rules 101, 102, 103, 104, and 105) plus a definitional rule (Rule 100). Rule 101 applies to "covered securities," which include the security in distribution (a "subject security") and any security into which a subject security may be converted, exchanged, or exercised, or which, under the terms of the subject security, may in whole or in significant part determine the value of the subject security (a "reference security"). Rule 101 generally prohibits distribution participants (i.e., underwriters and other broker-dealer participants, but not issuers and selling security holders) and their affiliated purchasers from bidding for, purchasing, or attempting to induce bids or purchases of covered securities during a "restricted period" that commences prior to the pricing of the subject security and continues until the distribution is over. For subject securities with an average daily trading volume ("ADTV") value of at least $100,000 and whose issuer has a public float of at least $25 million, the restricted period begins one business day prior to the time the subject security is priced. For subject securities of smaller issuers with lower ADTV values, the restricted period begins five business days prior to the time the subject security is priced. The restricted period continues for underwriters until the entire distribution is completed. For other distribution participants (i.e., selling group members), trading restrictions continue until their respective participation in the distribution is completed.

Rule 101 excepts actively-traded securities of large issuers (i.e., securities with a published ADTV value of $1 million or more and whose issuers have a public float of at least $150 million) from trading restrictions. Bids for and purchases of nonconvertible debt securities that are not rated investment grade are restricted only when the security is identical in all of its terms to the subject security. Transactions in derivative securities, such as options, warrants, rights, convertible securities, or equity-linked securities, are not restricted during a distribution of the related common stock, but are restricted if such derivative securities are being distributed. Rule 101 applies to common stock underlying an exercisable, exchangeable, or convertible security. Rule 10b-8, which governed rights offerings, has been rescinded. Accordingly, the former restrictions on transactions in rights have been eliminated.

The Adopting Release provides guidance on the application of Rule 101 to shelf offerings by eliminating the "single distribution" theory as it relates to the participation of issuers, selling security holders, and broker-dealers in shelf offerings, and by revising the definition of "prospective underwriter" to reflect current practices in connection with shelf distributions.

The following activities, among others, are excepted from Rule 101:

- Dissemination of research reports that satisfy Securities Act Rules 138 or 139.
- Purchases made in connection with bona fide basket transactions as long as the aggregated dollar value of any bids or purchases of the covered security constitute 5% or less of the total dollar value of the basket and the basket contains at least 20 stocks.
- All exercises of options, warrants, rights, and convertible securities.
- De minimis violations involving a bid that is not accepted or purchases aggregating less than 2% of the security's ADTV or unaccepted bids, provided that the person making such bids or purchases has and enforces written policies and procedures reasonably designed to achieve compliance with other provisions of this section.
- Distributions, in transactions exempt from the Securities Act of 1933, of both domestic and non-U.S. issuers' Rule 144A-eligible securities.

Rule 102 prohibits issuers, selling security holders, and their affiliated purchasers from bidding for, purchasing, or attempting to induce any person to bid for or purchase any covered security during the applicable restricted period. There are fewer exceptions because issuers generally do not have the same trading needs as underwriters. For example, there is no blanket exception for actively-traded securities, although there is a limited exception for actively-traded reference securities that are not issued by the issuer of the subject security, or by any affiliate of the issuer. The following activities, among others, are also excepted from Rule 102:

- Transactions in odd lots, including transactions made to offset odd-lots in connection with odd-lot tender offers.
- Periodic tender offers and similar transactions by closed-end investment companies.
- All exercises of options, warrants, rights and convertible securities.
- Distributions, in transactions exempt from the Securities Act of 1933, of both domestic and non-U.S. issuers' Rule 144A-eligible securities.
- Distributions made pursuant to a plan (such as an employee benefit plan, open market plan, or dividend reinvestment plan) if the plan meets the conditions in Rule 102(c).

Rule 103 governs Nasdaq "passive market making." Specifically, Rule 103 permits distribution participants to engage in limited passive market making activities in connection with a firm commitment distribution of a Nasdaq security during the restricted period of Rule 101, when such activities would otherwise be prohibited. Rule 103 does not extend to "at-the-market"

or best efforts distributions, and does not permit passive market making if the distribution participants are engaged in stabilization activities.

Rule 104 governs the prices at which underwriters are permitted to stabilize the price of a security to facilitate an offering. Specifically, Rule 104 permits stabilizing bids: to reference the price in a security's principal market, wherever located; to follow the independent market upward and downward, capped by the offering price; and to be adjusted to reflect exchange rate fluctuations. Rule 104 eliminates distinctions between exchange-traded and over-the-counter securities, and does not apply to certain transactions in Rule 144A-eligible securities if sold to domestic or non-U.S. qualified institutional buyers. Finally, Rule 104 contains requirements that underwriters notify the self-regulatory organizations of syndicate covering transactions and penalty bids. Although Rule 104's price restrictions are not extended to aftermarket activities, Rule 104 requires more specific disclosure of stabilization, syndicate covering transactions, and penalty bid activities.

Rule 105 prevents manipulative short sales in anticipation of a public offering by prohibiting the covering of such short sales with securities obtained from an underwriter, broker, or dealer who is participating in the offering. These short sales are prohibited during the period commencing five business days prior to the pricing of an offering and ending with such pricing.

Amendments to Rule 10b-18. In connection with its adoption of Regulation M, the Commission also adopted amendments to Rule 10b-18 (the issuer safe harbor for stock repurchases) under the Exchange Act. These amendments preclude reliance on the safe harbor during the Rule 102 restricted period when the issuer or any affiliated purchaser is distributing the issuer's common stock or any other security for which the common stock is a reference security.

Amendments to Rule 17a-2. In connection with its adoption of Regulation M, the Commission also adopted amendments to Rule 17a-2 under the Exchange Act, which require managing underwriters to keep records of syndicate covering transactions and penalty bids, in addition to stabilizing information. The information is to be kept in a separate file or in a separately retrievable format for a period of three years. The information is required for any offering registered under the Securities Act, conducted pursuant to Regulation A thereunder, or where the aggregate proceeds exceed $5 million.

OTHER ISSUES BEARING ON INTERNATIONAL EQUITY OFFERS

Disclosure Simplification On March 5, 1996, the Commission's Task Force on Disclosure Simplification completed its review of the rules and forms relating to capital raising transactions, periodic reporting pursuant to the Exchange Act, proxy solicitations, and tender offers and beneficial ownership reporting under the Williams Act, and issued a report summarizing its recommendations. Concurrently with the publication of this report, the Commission began implementation of the recommendations by publishing a release proposing the elimination of 45 rules and four forms that were viewed as redundant or otherwise no longer necessary. Most of these changes were adopted as proposed on May 31, 1996. Securities Act Release No. 7300. Also on May 31, 1996, the Commission proposed a second round of proposals to implement additional recommendations made by the Task Force. These

proposals, which eliminated and amended certain forms and rules to further simplify the disclosure process, were adopted on July 18, 1997. Securities Act Release No. 33-7431.

Auditor Reporting Requirements Effective April 17, 1997, the Commission adopted rule amendments to implement the reporting requirements in Section 10A of the Exchange Act, which was added as part of the Private Securities Litigation Reform Act of 1995. Section 10A codifies certain professional auditing standards and imposes expanded obligations on auditors to report in a timely manner certain uncorrected illegal acts to a registrant's board of directors. It further requires the registrant, or the auditor if the registrant fails to do so, to provide information regarding the illegal act to the Commission. Among other things, the implementing rules adopted by the Commission designate the Commission's Office of Chief Accountant as the office to receive Section 10A reports. Exchange Act Release No. 38387.

Electronic Delivery of Information On May 9, 1996 the Commission adopted a number of technical amendments to its rules and forms to codify prior interpretations regarding the use of electronic media to deliver or transmit information under the federal securities laws. Generally speaking, information distributed through electronic means may be viewed as satisfying the delivery requirements of the federal securities laws if it results in the delivery to the intended recipients of substantially equivalent information as they would have had if the information were delivered in paper form. Securities Act Release No. 7289.

Proposed Amendments to Regulation S On February 20, 1997, the Commission proposed amendments to Regulation S, which is a series of rules clarifying how the Securities Act registration requirements apply to offshore transactions. The proposed changes are intended to eliminate a number of abusive practices that have developed involving unregistered sales of equity securities by U.S. reporting companies purportedly in reliance on Regulation S, while still preserving the benefits of Regulation S for capital formation. The amendments would level the playing field for U.S. investors by subjecting resales of unregistered offshore Regulation S offerings of equity securities by U.S.companies to the same requirements as unregistered onshore private placements. The proposed changes also would apply to offerings by foreign companies where the principal market (more than 50% of worldwide trading) for their equity securities is in the United States. The comment period for the proposals ended on April 29, 1997. Securities Act Release No. 7392.

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 the adequacy of information given to shareholders on an annual basis by the companies listed or reporting in more than one jurisdiction.

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).

APPENDIX B

MEMBERS OF WORKING PARTY NO. 1

Mr. Peter Clark and Mr. Stuart Grant	Australian Securities Commission
Mr. Claude Lempereur and Ms. Francoise Herbay	Commission Bancaire et Financière, Belgium
Mr. John Carchrae	Ontario Securities Commission
Ms. Diane Joly	Quebec Securities Commission
Mr. Hervé Phillipe, Ms. Isabelle Kyberd and Mr. Francis Desmarchelier	Commission des Operations de Bourse, France
Mr. Herbert Biener	Ministry of Justice, Germany
Mr. Philipp Sudeck	Federal Securities Supervisory Office, Germany
Mr. Charles Grieve	Securities and Futures Commission, Hong Kong
Mr. Carlo Biancheri and Mr. Angelo Apponi	Commissione Nazionale per le Società e la Borsa
Mr. Mikio Nakaune	Ministry of Finance, Japan
Mr. Charles Kieffer	Commissariat aux Bourses, Luxembourg
Mr. Jorge Familiar Calderon	Comision Nacional Bancaria y de Valores, Mexico
Mr. Hans van Nijnattan and Mr. Gys G.M. Bak	Securities Board of the Netherlands
Mr. Rafael Sánchez de la Peña	Comisión Nacional del Mercado de Valores, Spain
Mr. Urs Brügger	Swiss Stock Exchange
Mr. Patrick Morton	The London Stock Exchange
Mr. John Barrass and Mr. Richard Thorpe	U.K. Securities and Investments Board
Mr. Paul Leder (Chairman)	U.S. Securities and Exchange Commission

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