INTERNATIONAL EQUITY OFFERS

CHANGES IN REGULATIONS SINCE JUNE 1989

INTERNATIONAL ORGANISATION OF SECURITIES COMMISSIONS

INTERNATIONAL EQUITY OFFERS

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ANNUAL SURVEY REPORT

OF

IOSCO WORKING PARTY NO. 1

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Order Form for 1989 Report

October 1990

INTERNATIONAL EQUITY OFFERS

ANNUAL SURVEY REPORT

OF

IOSCO WORKING PARTY NO 1

I INTRODUCTION

The Report on International Equity Offers, published by IOSCO Working Party No.1 in September 1989 ("the 1989 Report"), recommended, inter alia, that:

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

(ii) .... each year, each jurisdiction represented on the Technical Committee produces 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."

The full text of the recommendations in the 1989 Report can be found in Appendix A to this Annual Survey Report ("Annual Survey").

The changes reported by the participating jurisdictions did not necessitate significant amendment to the information in Appendix C of the 1989 Report; they did however involve material revision to two other areas of the 1989 Report, namely:

(i) Tables summarising prospectus requirements for financial information, review and clearance procedures and continuing obligation requirements; and

(ii) Appendix D summarising the characteristics of private placements.

Accordingly, the information contained in the above tables and Appendix D of the 1989 Report has been updated and is included within the Appendices of this Annual Survey.

Details of all changes implemented (and those contemplated) up to the end of May 1990 have been included in this Annual Survey, which has focused in particular on:

(i) Changes in regulatory requirements for public offers

Registration procedures
- clearance period
- shelf registration

Listing procedures
- review period

Prospectus requirements
- number of years annual audited financial statements
- maximum period since last balance sheet
- reconciliation to local auditing standards

- reconciliation to local accounting standards

Any new concessions given to foreign issuers and any new reciprocal agreements entered into with other jurisdictions have been noted.

(ii) Continuing reporting obligations

- deadline for filing financial statements
- frequency of interim statements
- deadline for filing interim statements
- requirement for insider/material change reports

Any new concessions granted to foreign issuers are included.

(iii) Changes in restrictions applying to private placements

- factors precipitating a public offer
- documentation for private placements
- restrictions on resale

(iv) Stabilisation and other controls over dealings

(v) Any other issues bearing on international equity offerings

The countries which have been included in this survey, are those covered by the 1989 Report, namely:

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

II DETAILED CHANGES SINCE JUNE 1989 (AND PROPOSED CHANGES)

The paragraphs below describe changes which have been implemented and give details of proposals which are contemplated.

AUSTRALIA – Implementation of the Corporations Act 1989 (the "Act"), due to come into force in 1991, is expected to reduce the time required to register a public offer prospectus from the present 1–3 months to less than one week.

The Act also affects the requirements relating to private placements. Under the Act there is no distinction between public and private offers; as a consequence all offers, unless specifically excluded (for example offers for parcels of securities for $500,000,000 or more, or to fewer than twenty people in one year) must be accompanied by a prospectus. Thus in practice most private placements will fall to be excluded from the prospectus requirements. The resale of privately placed securities is subject to similar requirements and exclusions.

There will also be other general changes, not specifically impacting on international equity offers, the most significant of which are summarised below:

- The Act extends the circumstances in which an offer of securities for subscription or purchase must be accompanied by a prospectus which has been lodged with and registered by the Australian Securities Commission (the "ASC", the new government authority to replace the National Companies and Securities Commission).

- The Act states a new, wider, principle of disclosure for matters to be contained in prospectuses.

- If a significant change occurs after the registration of a prospectus, the issuer is required to have a supplementary prospectus registered. In addition, the ASC has the power to make a "stop order".

- The Act significantly increases the liability of persons involved in the issue of a prospectus, especially in relation to statements and forecasts which are false or misleading.

(i) Requirement for prospectuses

Under the Companies Code which now applies in Australia, a prospectus must be registered only if securities are offered to the public for subscription or purchase. Under the Act, however, nearly all offers of securities must be accompanied by a registered prospectus, unless they come within specific exceptions, e.g. those involving subscriptions of $500,000 or more and offers to fewer than 20 persons in a year.

Offers to existing shareholders, e.g. rights issues, and offers to professional investors, are not excluded from the prospectus requirements. However, a prospectus need only be lodged – and not also registered – in the case of offers of shares and debentures which are listed on the Australian Stock Exchange.

(ii) Disclosure principle

Section 1022 of the Act introduces a broad principle of disclosure which is modelled upon that which is used in other jurisdictions, namely:

> "[A] prospectus shall ... contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of:
>
> (a) the assets and liabilities, financial position, profits and losses and prospects of the corporation; and
>
> (b) the rights attaching to the securities."

Some additional guidance is provided on the contents of prospectuses but detailed regulations have not yet been drafted.

The Act still requires that prospectuses, subject to certain exceptions, be registered by the ASC. However, it is likely that examination of prospectuses prior to registration will be streamlined to minimize delays.

(iii) Supplementary prospectuses and stop orders

Section 1024 of the Act requires a person who has lodged a prospectus in relation to an offer of securities to lodge a supplementary prospectus for registration where there is a significant change affecting any matter contained in the prospectus or a significant new matter arises which should have been included in the prospectus.

In addition, the ASC has the power under Section 1033 to direct that no further securities to which the prospectus relates may be issued in certain circumstances, particularly when the prospectus contains a statement or forecast that is misleading or deceptive.

(iv) Liability provisions

The new general disclosure requirements have resulted in an expansion of the liability of those who issue prospectuses and their advisers. In addition, there is an expansion of the class of persons who may take action.

Section 1011 of the Act introduces the defence of "due diligence" for promoters or other persons who authorised or caused the issue of a prospectus. It is a good defence to an action by a plaintiff who has suffered loss or damage by the conduct of another person who has contravened the Act if it can be proved that the misleading statement or non–disclosure complained of was due to a reasonable mistake or to reliance on information supplied by another person. It is also a defence if the act or default of another person was beyond the defendant's control and the defendant took reasonable precautions to ensure that all statements included in the prospectus were true and not misleading.

CANADA – There are several new proposals presently under development, to facilitate international equity offers:

(i) Shelf registration/post–receipt pricing

In order to minimize delays issuers face in selling securities and to co–ordinate review and clearance procedures, the Canadian Securities Administrators ("CSA") has proposed a shelf registration system which is expected to be implemented in January, 1991.

Under draft National Policy Statement No. 44 eligible substantial issuers will be able to file a single short form prospectus relating to securities offered continuously or on a delayed basis in one or more tranches. Thus issuers would be able to price and offer specific tranches without any additional advance filing with, or clearance by, securities regulatory authorities. Certain variable information in respect of the tranches must be filed as a supplement to the final prospectus.

In addition, as part of draft National Policy Statement No.44, the CSA has proposed Post–receipt Pricing ("PREP") rules in order to reduce the time pressures associated with filing and obtaining clearance of a final prospectus. Under the PREP procedures, issuers eligible to use the short form prospectus system may obtain final approval for a prospectus that sets forth all required disclosures except certain pricing and related information, which is later provided after pricing is complete.

(ii) Multi–jurisdictional disclosure system

In July 1989, the Ontario Securities Commission, the Commission des Valeurs Mobilieres du Quebec ("CVMQ") and US Securities and Exchange Commission ("SEC") approved and released for comment a proposal for a Multi–jurisdictional Disclosure System (the "MJDS"). The comment letters were considered and a MJDS reproposal was released for comment in October 1990. The MJDS would enable issuers to prepare both prospectus and continuous disclosure documents according to their home jurisdiction rules and use those same documents in other participating jurisdictions. No review of the disclosure documents other than that customary in its home jurisdiction would take place, and the regulatory authorities of the home jurisdiction would be solely responsible (with certain limited exceptions) for establishing disclosure standards. Although issuers would not be required to comply with the disclosure requirements of any other jurisdiction, they would nonetheless be liable under such jurisdiction's civil liability provisions for any misrepresentation in the disclosure documents.

The CSA and SEC are also working with U.S. state securities administrators and stock exchanges in the U.S. and Canada to develop procedures for them to implement and to reflect the MJDS. It is expected that the MJDS will be implemented in early 1991.

(iii) Continuous disclosure exemptions for foreign issuers

The CSA is preparing draft National Policy Statement No. 46 in order to grant certain exemptions from continuing disclosure requirements to foreign issuers. The draft policy will balance a number of considerations including expanding opportunities for Canadian residents to purchase securities of foreign issuers in public offerings made in Canada or on Canadian stock exchanges and ensuring that Canadian investors have adequate information for making informed investment decisions. The draft policy should reduce costs for foreign issuers of complying with multiple regulatory regimes and foster greater consistency. The draft policy statement is expected to be published for comment during 1991.

FRANCE – France has implemented the Directive on Mutual Recognition of Listing Particulars and admitted warrants into the Official List during the period under review.

(i) Directive on Mutual Recognition of Listing Particulars

The Directive on Mutual Recognition of Listing Particulars, adopted by the Commission des Operations de Bourse ("COB") in January 1990 and approved by the Minister of Finance in February 1990, lists a number of conditions which must be fulfilled for the Directive to apply:

– The origin of the issuer:

The benefits of mutual recognition are limited to those issuers whose statutory headquarters are based in a member state.

– The first member state:

The first member state approving the listing particulars must have adopted the following directives into its own legislation:

– the Directive on Mutual Recognition of Listing Particulars;

– the Listing Particulars Directive; and

– the directives on company law and accountancy. (The second, fourth, seventh and eighth Directives).

Only a prospectus that has been approved by the competent authority in the member state where the issuer has its statutory headquarters can benefit from the mutual recognition procedure.

The listing particulars:

- the listing particulars must be drawn up in conformity with the Listing Particulars Directive which implies, in particular, that accounts are in conformity with Council directives;

- they must have been approved less than one month earlier by the competent authority in the member state. When approval is given less than six months earlier, the competent authority can, however, upon notice from the authorities who have already admitted the securities, exempt the issuer from drawing up new listing particulars, subject to an update; and

- in certain cases, the listing particulars can be drawn up during the issue and distribution of the securities by public offering.

French legislation then describes the procedure for registering requests and their appraisal. It specifies that listing particulars aimed at the French public must be drafted in French or translated into French, except when the request for admission concerns the international section of the official listing, in which case the listing particulars can be drawn up in an official EEC language usually used in the financial sector.

The COB then has eight days to handle the request, and eventually request further information, in particular on the fiscal system governing reserve funds and the institutions that handle the issuer's financial activities.

(ii) Warrants

The past year (1989) saw the admission of the first warrants to the official List. As the warrants were initially issued on foreign markets, the COB accepted prospectuses drafted in English at the time of issue. In conjunction with the CBV (the Stock Exchange Board), the COB drew up the general principles to be adhered to by those coming to the list in this way, due to the specific risks inherent with these securities by comparison to other transferable listed securities:

- "Warrants" here refer to securities that represent for the holder the right either to acquire or sell an underlying asset or to receive the difference between the price of the underlying asset and the price of exercising the warrant.

- The Warrants must be issued by credit institutions who are independent of the issuer of the underlying shares and who cannot exercise control over the underlying shares. The issuer of the underlying shares is not obliged to give his formal agreement either to the issue of the warrants or the listing of these warrants.

- Warrants attached to bonds can be issued by any company as long as its ordinary general assembly has expressly authorized the issue.

- Minimum sales units set at a high unit price are encouraged.

- The underlying security must have adequate liquidity.

- The issuer must always be allowed to meet his commitment by repurchasing the warrants.

- When the issuer of the underlying shares purchases or sells the warrants, it is obliged to respect the same rules as those applied to a company buying or selling its own stocks on the market.

GERMANY – The only change has been to adopt the Directive on Mutual Recognition of Listing Particulars. (See France for the conditions which must be fulfilled for the Directive to apply).

HONG KONG – The new Listing Rules which came into effect on 1st December 1989 made a number of changes to the detailed listing procedures; the following changes are of direct relevance to this survey:

(i) Financial information

The previous requirement of one year's financial information has been increased to five for the profit and loss account, but remain at the latest year for the balance sheet.

(ii) Continuing reporting obligations

Annual financial statements now have to be filed not less than 21 days before the annual meeting nor more than 6 months after the end of the financial year (the previous requirement was within 270 days).

Interim statements must be filed not later than 4 months after the end of the six month period; the previous requirement was as soon as possible.

In the case of an overseas issuer whose primary listing is on another regulated, regularly operating, open stock market recognised by the Exchange, the Exchange may, subject to the consent of the Commission, accept a Listing Agreement which incorporates equivalent continuing obligations to those imposed by that other stock market.

ITALY – During the period under review, the Commissione Nazionale per le Societa e la Borsa ("CONSOB") has adopted the Directive on Mutual Recognition of Listing Particulars (See France for the conditions which must be fulfilled for the Directive to apply) and issued two other new pieces of legislation, one concerning the admission of securities to Official Listing and the other relating to filing and review procedures for public offers.

(i) Review procedures

CONSOB must review for completeness an application for listing within 20 days of filing date; the application is usually given the same date. If the application is incomplete, the date of filing becomes the date on which the further information is received. The CONSOB then has 6 months to approve or reject the application.

(ii) Prospectus requirements

The maximum acceptable age of the financial data to be disclosed in listing particulars and public offer prospectuses has been increased from 6 to 9 months.

(iii) Material changes

Any material changes not disclosed to the public, concerning the information disclosed in listing particulars or a public offer prospectus, which occur between the date of authorisation and the date of publication or closing of the offer, as appropriate, must be advised to the CONSOB, and to the public when listing particulars are involved.

(iv) Private Placements

The following transactions are not deemed to be public offers and therefore fall outside the jurisdiction of the CONSOB:

- offers of securities to institutional investors only;
- auction sales due to bankruptcy and similar judicial proceedings; and
- offers to one person of all or a controlling interest in the share capital of a company.

(v) Foreign issues

Applicants established under foreign law are required to demonstrate that they comply with Italian listing requirements concerning the information to be provided to the general public and to CONSOB; they must also guarantee the rights of the securities to be traded on the Italian market. Provision is made for a legal opinion to be submitted with the application.

CONSOB has the authority to:–

(a) establish special procedures and filing deadlines for certain documents for foreign issues;

(b) recognise overseas auditors providing they meet criteria regarding their independence and the auditing standards adopted are satisfactory; and

(c) adjudge the adequacy of distribution of the securities.

Settlement problems associated with foreign securities have been mitigated for certain types of foreign security by the utilisation of a centralised depositary (Monte Titoli S.p.A.).

JAPAN – There have been no changes affecting international equity offers.

LUXEMBOURG – In Luxembourg a bill to extend and strengthen the supervisory powers of the competent authorities has been approved by Parliament in July 1990. The new law, which will come into force on January 1, 1991 has already been described in detail in Appendix C of the 1989 Report.

The Directive on Mutual Recognition of Listing Particulars (See France for the conditions which must be fulfilled for the Directive to apply) and the Public Offers Directive will be imple-

mented in January 1991; a bill implementing the Directive on Insider Trading has been laid before Parliament.

THE NETHERLANDS – The Netherlands have implemented the Directive on Mutual Recognition of Listing Particulars (See France for the conditions which must be fulfilled for the Directive to apply).

SPAIN – The following changes have been made:

(i) Reconciliation to local standards

Foreign issuers applying for listing must have the financial information in the listing particulars translated into Spanish; if there are differences between Spanish accounting standards and those adopted by the issuer, an auditor registered with the ROAC (the Spanish Registrar for auditors) must express their opinion on these differences, quantifying them if material.

(ii) Deadline for filing financial statements

Annual financial statements must be filed within 1 month of their approval at the Annual General Meeting; for interim statements, they must be filed within two calendar months of the accounting reference date.

(iii) Interim statements

There is currently a proposal to replace the present requirement for a quarterly balance sheet and summarised profit and loss account with a summary of results and turnover.

(iv) Investment in foreign securities

Foreign issuers must nominate a recognised Spanish financial institution approved by the Comision Nacional del Mercado de Valores to act as "Security Trustee" for Spanish residents wishing to invest in their securities, unless the shares are deposited with a recognised institution in the country of origin of the foreign issuer.

SWEDEN – There have been no changes.

SWITZERLAND – There have been no changes affecting International Equity Offers.

UNITED KINGDOM – The changes necessary to implement EC regulation on Mutual Recognition and the proposed changes in requirements for initial public offers by UK companies, are described below.

(i) Mutual Recognition

The Directive on Mutual Recognition of Listing Particulars was implemented in January 1990. (See France for conditions which must be fulfilled for the Directive to apply).

The requirement for the length of trading record was reduced from 5 to 3 years for the Official List and from 3 to 2 years for the Unlisted Securities Market; simplified continuing obligations for foreign issuers were also published in February 1990.

(ii) Initial Public Offers

The Stock Exchange has published, for purposes of public consultation, its detailed proposals for giving effect to the strategic recommendations of the Report's published in February 1990 of a Special Committee, established in 1989, to review UK requirements and practices in making Initial Public Offers ("IPOs"). That Report specifically mentions the influence which the IOSCO Report had had in formulating its own recommendations.

The broad thrust of the detailed changes proposed by the Stock Exchange is to bring UK practice in regard to the marketing and distribution of IPOs by UK companies raising up to £25 million, more closely into line with US practice. In the case of larger IPOs, the proposed changes will, if implemented, facilitate UK issuers making either a multijurisdictional offer or a euro–equity offer as part of the IPO. Specifically, it is proposed that the lead manager(s) of an IPO by a UK company should be permitted to place, or underwrite "firm", up to 50% of an issue raising in excess of £25 million. The method of making such an IPO remains by way of offer for sale.

To help reduce the costs of an IPO, it has also been proposed that, for offers for sale of listed securities, the current requirements for reproducing the full listing particulars in at least one national daily newspaper, should be replaced by a simple advertisement of the availability of those listing particulars.

The proposed changes will not, if implemented, change the wide choice currently available to non–UK companies contemplating a multijurisdictional or euro–equity offer involving a listing in London, provided that such companies either have, or are simultaneously obtaining, a listing on their home exchange. Such companies are normally permitted to market securities in the UK in accordance with the practices of their home market.

UNITED STATES – The effects of the new Rule 144A and Regulation S are described below:

(i) Rule 144A

The exemption provided by Rule 144A is available for offers and sales to "qualified institutional buyers". With the exception of registered broker–dealers, a qualified institutional buyer must in the aggregate own and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with that qualified institutional buyer. A lower threshold, $10 million in securities of issuers that are not affiliated with that qualified institutional buyer, applies to registered broker–dealers. A registered broker–dealer may also purchase as riskless principal for an institution that is itself eligible to purchase under the Rule, or act as agent on a non–discretionary basis in a sale to such an institution. In addition to meeting the $100 million in securities requirement, banks and savings and loan associations must have a net worth of at least $25 million to be qualified institutional buyers. The Commission solicited further public comment on this net worth test.

Any restricted securities that, at the time of issuance, were not of a class listed on a U.S. national securities exchange or quoted in the National Association of Securities Dealers Automated Quotation system ("NASDAQ") are eligible for resale under Rule 144A. Convertible securities or warrants that may be exercised for securities so listed or quoted are considered to be the same class as the listed or quoted securities unless additional requirements relating to exercise premium and, in the case of warrants, expiration, are satisfied.

Additionally, where the issuer of the securities to be resold under the Rule is neither a reporting company under the Securities Exchange Act of 1934, nor a foreign private issuer that is exempt from reporting pursuant to Rule 12g3–2(b) under the Exchange Act, nor a foreign government, availability of the Rule is conditioned on the holder of the security, and a prospective purchaser from the holder, having the right to obtain from the issuer specified limited information about the issuer, and on the purchaser having received such information from the issuer, the seller, or a person acting on either of their behalf, upon request.

Rule 144A is expected to enhance market liquidity and efficiency for investors in the U.S. private placement market, and thus lower costs of capital.

(ii) Regulation S

The Commission historically has recognised that registration under the Securities Act of offering with only incidental jurisdictional contacts should not be required. Regulation S clarifies the extraterritorial application of registration provisions which otherwise literally apply to any non–exempt offer or sale of a security involving interstate commerce or use of the U.S. mails. The Regulation consists of a general statement of applicability of the registration provisions (the "General Statement") and two non–exclusive safe–harbor rules. The General Statement provides that Section 5 of the Securities Act does not apply to offers or sales of securities that occur outside the United States. An offering that satisfies all of the conditions of the applicable safe harbor is deemed to be outside the United States within the meaning of the General Statement. The safe harbor for primary distributions applies to issuers, securities professionals involved in the distribution process pursuant to contract ("distributors"), their respective affiliates (except certain officers and directors), and persons acting on behalf of any of the foregoing. The safe harbor for resale transactions applies to all other persons.

Two general conditions apply to both safe–harbor rules. First, the offer and sale must be made in an "offshore transaction" relative to the U.S. In order to satisfy the offshore transaction condition, no offers may be made in the United States and either the buyer must be outside the U.S. (or the seller reasonably believes the buyer is) at the time the buy order is originated or the transaction must be executed through the facilities of certain offshore markets. Second, there may be no "directed selling efforts" within the U.S. Directed selling efforts are defined as activities undertaken for the purpose of (or reasonably expected to have the effect of) conditioning the market in the U.S. for the offered securities, although certain types of offering activities are excluded from such definition.

The safe–harbor rule for primary distributions includes three categories of offerings based upon such factors as the location and manner of the offering, the degree of U.S. market interest for the securities sold, the issuer's reporting status in the United States, and the nationality of the issuer. For example, the first category includes: foreign issuers with no substantial U.S. market interest in their securities, certain offerings by a foreign or U.S. issuer directed at a single foreign country, offerings pursuant to certain employee benefit plans, and securities backed by the full faith and credit of a foreign government. Offerings within the first category may be made with no restrictions other than the two general conditions. Offerings within the second category of the primary distribution safe–harbor rule, such as offerings of a reporting U.S. issuer's securities and debt securities of foreign issuers with substantial U.S. market interest, are subject to additional restrictions, including

a forty–day restricted period on offers and sales to U.S. persons. Offerings within the third, residual category are subject to the most restrictions.

The resale safe–harbor rule is available for resales of securities outside the United States. That safe harbor applies restrictions other than the general conditions only to dealers, other persons receiving remuneration in respect of the offered securities, and certain affiliated officers and directors of an issuer or distributor.

October 1990

APPENDIX A

RECOMMENDATIONS OF THE 1989 REPORT

1. Disclosure/harmonisation

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. The appear to be several options to reaching that goal:

- Standards could be harmonised 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 harmonisation 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 harmonised 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 globalisation 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 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.

APPENDIX A cont.

3. Co–ordination 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 minimising 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 US, could be explored.

It is also recommended that regulators should examine their review and clearance procedures to determine the potential for co–ordination with other regulatory organisations 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 harmonised.

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. Stabilisation & other control over dealings

Study of stablisation 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 stabilisation) 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 extra–territorial application of domestic statutory and regulatory provisions in order to accommodate market structures and authorised market practices in foreign jurisdictions relating to these topics.

APPENDIX A cont.

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 standardisation 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 standardisation 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 foregoing 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 produces 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 (ie. to the 1989 Report).

APPENDIX B

SUMMARY TABLES

TABLE A – Prospectus Requirements for Financial Statements

The undermentioned table, summarising the different requirements of the relevant jurisdictions in regard to financial statements contained in prospectuses, replaces Table A on page 42 of the 1989 Report.

Country	No. of years annual audited financial statements	Max. period since last balance sheet date	Reconciliation to local standards	
			Auditing	Accounting
Australia	5	6 months	NO (1)	NO (1)
Canada	5 (2)	120 days	NO	YES
France	3	9 months	NO (3)	NO (3)
Germany	3	18 months	NO	NO
Hong Kong	5 (11)	6 months	NO (1)	NO (1)
Italy	3	9 months	NO (4)	YES (4)
Japan	2 (5)	6 months	NO	NO
Luxembourg	3	9 months	NO (1)	NO (1)
Netherlands	3	9 months	NO	NO
Spain	3	6 months	NO	NO (6)
Sweden	5	6 months	NO	NO
Switzerland	1	12 months	NO	NO
UK	3 (7)	6 months (7)	NO (1)	NO (1)
US	3 (8)	6 months (9)	– (10)	YES

Notes:

(1) Must be prepared and audited to internationally acceptable standards.

(2) Waiver to permit 3 years normally granted.

(3) Where the format and content of financial statements of a foreign issuer differ materially from those of a French issuer, the COB may require explanatory comments and a translation into French; the statements and comments must then be reviewed by a French auditor.

(4) Explanation required for practices which, unless exemption granted, are not equivalent to local standards. Local auditor must declare equivalence of auditing standards with those adopted in Italy; if foreign accounting principles deemed by CONSOB to differ from internationally accepted standards, explanations are required.

(5) 3 prior years (unaudited) required for registration statement in the case of initial public offerings.

(6) Important accounting figures might have to be reconciled with Spanish accounting standards or explanation and evaluation of discrepancies given.

(7) 12 months in the case of certain foreign issuers with a primary listing outside the UK.

(8) Must include 5 year trend information for certain financial items.

(9) 6 months applies only to foreign issuers.

(10) Accounts must be audited in compliance with US auditing standards.

(11) 5 years for the results, but only the latest year for the balance sheet.

APPENDIX B cont.

TABLE B – Review and Clearance Procedures

The undermentioned table, summarising procedures for review and clearance of prospectus documents in the relevant jurisdictions, replaces Table B on page 56 of the 1989 Report.

Country	Filing of prospectus	Period: Clearance	Period: Listing review
Australia	YES	1 –3 months (1)	2–4 weeks
Canada	YES	10 days– 1 month+ (1) (2)	2–4 months
France	YES	25 days (COB) 2 months (Ministry of Finance) (3)	Covered within registration review period
Germany	NO	N/A	2–4 weeks (4)
Hong Kong	YES	21–40 days	1–3 months
Italy	YES	Average 40 days (1)	Up to 6 months
Japan	YES	Up to 15 days	Up to 6 months (5)
Luxembourg	YES	Generally 2–6 weeks	Generally 2–6 weeks
Netherlands	YES	(No review – filing only)	1–2 weeks
Spain	YES	Average 30 days	1–2 weeks
Sweden	NO	N/A	1–2 months
Switzerland	NO	N/A	4–6 weeks
UK	YES	(No review– filing only)	2–4 weeks
US	YES	Average 30 days (6)	4–6 weeks

Notes:

(1) Review process will usually be quicker for issuers who have securities already registered.

(2) Shorter period applies to prospectus filed with only one provincial securities commission.

(3) The French Ministry of Finance must approve initial offers by foreign issuers who are not domiciled in the EC or the OECD; further offers of the same class of security do not need further approval.

(4) This process has taken 3–6 months in the experience of the Task Force. Indeed, in one reported case a lead time of 6 months precluded an offer in Germany.

(5) Includes preparation of prospectus and translation into Japanese.

(6) This relates to the period to the issue of a "no comment" letter. Repeat issuers may not be reviewed, in which case, "no comment" letter issued and registration statement becomes effective in less than 10 days. Shelf registration statements not subject to prior review in connection with each tranche.

APPENDIX B cont.

TABLE C – Continuing Obligations

The undermentioned table, summarising continuing disclosure and other reporting obligations of companies listed or reporting in the relevant jurisdictions, replaces Table C on page 65 of the 1989 Report.

Country	Filing deadline (1) for annual financial statements	Interim statements Frequency	Interim statements Deadline	Insider reports	Material change reports
Australia	120	S	90	No	Yes
Canada	140	Q	60	Yes	Yes
France	180 (2)	S	120	Yes	Yes
Germany	N/A (3)	S	120	Yes	No
Hong Kong	180 (4)	S	120	No	Yes
Italy	– (5)	S	120	No	Yes
Japan	6 mths (6)	S	3 mths	No	Yes
Luxembourg	– (7)	S	120	No	Yes
Netherlands	270	S	120	No	Yes
Spain	210	Q	60	Yes	Yes
Sweden	180	S	60	Yes	Yes
Switzerland	170	N/A	N/A	No	Yes
UK	180	S	120	Yes	Yes
US	90–120 (8)	Q(9)	45	Yes(10)	Yes(10)

Notes:

(1) In days after close of fiscal year.

(2) An unaudited provisional version must be published within 120 days.

(3) Timing not set by law.

(4) Not less than 21 days before annual meeting nor more than 6 months after the year end.

(5) Not more than 30 days after annual meeting.

(6) 3 months for domestic companies.

(7) For foreign listed companies as soon as possible following publication. Luxembourg companies must file within 1 month of annual report being approved by the annual meeting.

(8) 180 days for foreign private issuers.

(9) Not required for foreign companies; but US exchanges require semi–annual statements.

(10) Not required for foreign private issuers eligible to use the Exchange Act annual report Form 20–F.

APPENDIX C

CHARACTERISTICS OF PRIVATE PLACEMENTS IN MAJOR CAPITAL MARKETS

This Appendix, which replaces Appendix D of the 1989 Report, is a summary of the key characteristics that can be used to establish the demarcation between public offers and private placements of equity securities in the capital markets of the countries listed below. The Appendix describes the restrictions which apply in some of those countries to securities which have been offered by way of private placement. The countries are:

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

AUSTRALIA

Private offers need not be accompanied by a registered prospectus in Australia. Rights offers to existing shareholders are private offers. However, offers to a "section of the public," as well as to the public at large, are deemed public, as are public invitations not constituting an "offer" under contract law.

Case law indicates that the question of whether an offer is public or private is one which depends on the facts and circumstances of each case, not on any mechanical formula. The central test is the relationship between the offeror and offerees. The High Court of Australia has stated that where there is a pre–existing "special relationship between offeror and members of a group or some rational connection between the common characteristics of members of a group and the offer made to them," the central test has been satisfied. In such a case, however, courts proceed to consider factors such as the number of persons in the offeree group, the nature of the relationship between the offeror and offerees, "the nature and content of the offer, the significance of any peculiar characteristic which identifies the members of the group and any connection between that characteristic and the offer."

Other exemptions exist for offers to shareholders and persons whose ordinary business is to buy and sell securities. An issuer with few employees may have the kind of relationship with them that would allow a private placement. However, even where that relationship does not exist, the NCSC ordinarily exempts offers to employees, from the requirement to publish a full prospectus on condition that a simplified offer document is delivered.

Australian Companies Codes also regulate secondary sales of securities to the public and require a prescribed statement to accompany secondary offers to the public. However, secondary offers on the stock exchange are exempt from this requirement.

APPENDIX C cont.

CANADA

Ontario law does not expressly recognize a distinction between public and private offers, the registration requirements apply to both public and private distributions. Various exemptions from registration are available, however, depending on such factors as a small number of purchasers, sophistication of the purchaser, and a high aggregate cost to the purchaser of the securities. Other relevant factors to be considered are the nature of the relationship between the offerees and the issuer, the type of securities distributed, and the manner of the distribution. Sales to institutional investors and to individuals who purchase at least $150,000 of securities are exempt. Exemptions also exist for sales to employees and distributions to shareholders of stock dividends. An offering memorandum which sets out prospectus level disclosure regarding the issuer and the offer is used when making sales pursuant to the "seed capital" or "government incentive security" exemption. Unless an exemption is available, a take–over bid circular containing prospectus disclosure regarding the securities of the offeror must be delivered in connection with a share exchange take–over bid. In other exemptions, there are no formal disclosure requirements.

When a tranche of securities is offered privately in Canada as part of an international equity offer, a wrapper is generally placed around the foreign prospectus which is used as the offer memorandum. In any case where an offer memorandum is used, purchasers must be given contractual rights of action for rescission and damages arising out of any misrepresentation contained in the offer memorandum. Sales pursuant to exemptions, analogous to a private placement exemption, generally result in restrictions on further sales; usually a six to eighteen month holding period and the establishment of a reporting history for the issuer. Transfers pursuant to an exemption are allowed, but the securities retain any restrictions, with any applicable holding period beginning anew. Restricted securities may be distributed pursuant to a prospectus and thereby shed any restrictions. Listing the securities may result in a shortening of the applicable holding period.

FRANCE

France recognizes a distinction between public offer and private placements. Article 6 of Ordonnance 67–833 of 28 September 1967, described in Appendix C above, applies only to public offers. Criteria set out in the Company Act of 1966 to determine whether an offer is public or private include admission to the official list or the second market, employment of intermediaries or canvassing to place the securities, or advertising or other publicity to promote the offer. The presence of any of the foregoing will conclusively indicate a public offer. The list is not exhaustive, however, and the COB will deem any offer to be public if it results in a direct or indirect distribution to 300 or more members of the public. Issuers may seek advice from the COB as to whether a particular offer would be public or private. Private placements need not be registered, though foreign issuers must secure the approval of the Minister of France for any offer.

Offers to 500 or fewer employees, banks who do not redistribute the securities, and secondary offers by non–affiliates are also exempt from the registration requirements. There is no exemption for sales to sophisticated investors.

APPENDIX C cont.

Approximately 25 to 45% of all offers of securities in France are registered public offers, while the remainder are unregistered private offers. In 1987, due to privatisations, 75% of all equity offers in France were public. All offers of debt securities in France are also public offers.

The regulatory system of France does not place any restrictions on the resale of securities by persons not affiliated with the issuer.

GERMANY

Germany does not recognize a legal distinction between public offers and private placements, or the concept of restricted securities. Offshore offers are not subject to any regulation.

HONG KONG

Offers of securities that are deemed not to be made to the public (or any section of the public) are not regulated by the prospectus rules or any other provision of the Companies Ordinance. However, such offers are regulated by the anti–fraud provisions of the Protection of Investors Ordinance, which applies to a very broad range of offers. The matter of whether an offer is made to the public is subject to interpretation depending on the facts and circumstances of each case. While offers to existing share or debenture holders of a company may be deemed to be made to the public, there exists a blanket exemption for offers not calculated to become available to the public. Thus a private company may offer further shares to its shareholders without registration.

Registered dealers may undertake resale of unregistered securities only on a one–to–one basis in the market. Otherwise, they must provide a short form prospectus. There are no resale restrictions for other sellers of unregistered securities.

ITALY

There is an unrestricted market for privately placed, unlisted securities in Italy. These offers are not subject to regulation by CONSOB or any other regulatory authority. Private placements include those involving no "solicitation of the investing public". "Solicitation of the investing public" includes any public announcement of an issue; any purchase or sale by means of a public offer; any offer for public subscription, any public exchange offer; any form of public offer or placement whether door–to–door, through circulars, through the media, or any advertisement offering information or advising the investing public regarding any kind of security to be issued or as to which there is no prospectus, except for listed securities. Specifically exempt are offers:

– to institutional investors only;
– of all or a controlling interest in the share capital of a company to one person; and
– made at auction sales due to bankruptcy and similar judicial proceedings.

There are no restrictions on resale of securities other than those mentioned above in connection with a solicitation of the investing public.

APPENDIX C cont.

JAPAN

Japan recognizes a distinction between public offers and private placements. Generally, the practical consequence of an offer being deemed "public" is that it must be registered prior to sale of the subject securities, while a "private" offer need not be registered. An offer is generally deemed public if the number of offerees is around 50 or more, including employees and existing shareholders, or the size of the offer amounts to Yen 500 million or more. There is no concept of exempt sales to sophisticated or wealthy investors.

Resales by the original holder of unregistered securities (i.e., privately placed securities) are not generally restricted in Japan. Restrictions may arise in connection with the sale of privately placed securities issued by non–residents, in which case resales may not occur without limitation until the passage of a holding period, which is normally two years.

Depending on whether the private placement is on a 'primary' or 'secondary' market basis, different regulations apply. The placement of a new issue of securities is treated as on a primary basis whereas placement of securities already in issue is treated on a secondary basis.

In primary market placements the number of offerees is limited to less than 50 institutional investors such as financial institutions and insurance companies and less than Yen 100 million. These institutions, upon subscription, are required to submit an investment letter to the Ministry of Finance representing that their purchase is for investment purposes.

The issuer is required to file prior notification with the Bank of Japan pursuant to Foreign Exchange and Trade Control Law. Such notification is not burdensome in that the principal items to be disclosed are details of the issuer and the final terms and pricing of the issue. Similarly, the required investment letter is a simple statement of investment intention and undertaking on resale.

Secondary market placements, however, do not require any prior notification and the securities may be placed with a much broader customer base comprising a wider category of institution, employees and existing shareholders. Again, offerees are limited to 49 in number if uniform terms of purchase (i.e. fixed selling price) are set.

If more than 49 offerees are contacted, the offer is deemed to constitute a public offer requiring compliance with Japanese Securities and Exchange Law. There is no concept of exempt sales to sophisticated or wealthy investors.

In addition, since Japanese non–financial institutions and individuals are prohibited from transacting directly with foreign securities firms, sales by foreign issuers must be channelled through Japanese securities firms. These include foreign owned firms registered in Japan.

APPENDIX C cont.

LUXEMBOURG

The registration and prospectus requirements in Luxembourg apply only to public offers and listing applications. As a result, private placements are exempt from the registration and prospectus requirements. As there is no legal definition of the term "public offer", the public or private character of an offer must be determined pragmatically. Administrative interpretation holds that, with limited exception, publication of announcements in the press or on radio or television constitute prima facie evidence that the offer is public. An offer will conclusively be deemed public if an advertisement refers to characteristics of the proposed transaction, such as the amount of securities offered, their selling price, the period during which the offer is valid, and refers to establishments which will provide further information. One exception to the rule against advertising private placements is the release of information to the press or publication of a tombstone advertisement after the transaction has been consummated.

Other factors that may indicate whether an offer is public do not necessarily constitute determining evidence. If a prospectus or other offer document is made available publicly or mailed to a large number of persons, a public offer may result. However, private communications between a bank and its pre–existing portfolio management clients will not imply the presence of a public offer. Because the registration and prospectus requirements apply to all offers to the public, resales of privately placed securities or the sale of shares in a privately held company may not be advertised without registration.

THE NETHERLANDS

The Netherlands recognizes a distinction between public offers regulated by the rules of the exchange or the provisions of the Securities Trading Decree, on the one hand, and private placements, which are wholly unregulated to the extent that the offer is for less than ten percent of the company's capitalization. In the event that the offer is for ten percent or more of the company's capitalisation, a prospectus must be published.

The Act prohibits, the making of a primary or secondary offer of unlisted securities to individuals or to companies not engaged in the business of dealing or investing in securities, except within a "limited group". A "limited group" is defined on a case by case basis through administrative interpretation of the Ministry of Finance. To qualify as a limited group, the following criteria should be met. The group must be limited in size and clearly defined, there must be more than merely a financial relationship between the offeror and offerees (e.g., an employee option plan would qualify as a limited group). Furthermore the purchase of securities must be available only to members of the limited group. Other factors relevant to the determination would include the number of units offered and whether public advertising is used (which would indicate the group of offerees was not limited). There is no concept of sales to a sophisticated or wealthy investor being exempt from the procedures described above.

The restrictions on the sale of unregistered securities in the Netherlands are described above. Resale of unregistered or unlisted securities is not restricted insofar as no public offer has taken place.

SPAIN

The registration and prospectus requirements apply only for public offers and listing particulars. The distinction between public and private offers depend on the number of persons to whom an offer is directed and on the amount in Pesetas of the offer. Although there is not yet a legal regulation (although this is in process) for distinguishing between private and public offers, the practical criteria actually applied for determining that an offer is private are the following:

- It must be directed to less than 100 individual persons;
- It must be directed to less than 50 professional or institutional investors;
- The total amount offered must be less than 1000 million Pesetas;
- The minimum price of each security unit offered must not be over 25 million Pesetas; and
- No public advertisements nor any kind of publicity through newspapers, radio, TV, telephone or any type of direct marketing is allowed.

SWEDEN

Under the Companies Act, an offer to the public of a value less than one million kroner is exempt from the requirement to publish a prospectus. Offers of more than one million kroner also are exempt from prospectus requirements if made to fewer than 200 persons.

SWITZERLAND

Most offers of securities in Switzerland take the form of private placements of corporate debt. Private placements include those involving no listing on any of the stock exchanges. A significant market exists in foreign notes (governmental and private), which generally have maturities of 18 months to eight years (as distinct from eight to twelve years for listed bonds).

Prior to April 9, 1987, private placements were not subject to the regulations concerning prospectuses for public offers. Since that date, by agreement among members of the Swiss Bankers Association (Convention XIX), offers by foreign debtors of unlisted notes in denominations of S.Fr. 50,000 or more must be the subject of a prospectus complying with the requirements set out in Convention XIX. The requirements are about the same as those concerning the prospectus for a public offer. In addition, disclosure beyond that set forth in the Code is required regarding such matters as the terms of the offer, any applicable credit ratings and the recent financial performance of the issuer. The prospectus is available for delivery upon request to prospective investors, but is not published in the media.

Neither Swiss federal or cantonal law nor exchange regulations provide for any resale restrictions on privately placed or unlisted securities. Any such restrictions arise only as a matter of contract.

Privately placed notes with a minimum denomination of SFr. 50,000 are accorded identical treatment to bonds in all respects with the exception that the prospectus for a private placement may not be published and the note may not be listed on a Swiss Exchange. Privately placed notes with a denomination of less than SFr. 50,000 are treated like bonds.

APPENDIX C cont.

UNITED KINGDOM

In the case of foreign issuers, the Companies Act 1985 contains an exemption from its prospectus provisions for offers made in the United Kingdom to persons whose business it is to buy and sell securities, whether as principal or as agent. This is the manner in which most eurobond offers are made. Resales of privately placed securities must be made within similar limitations, for example, to professional investors, otherwise the disclosure requirements of the Companies Act 1985 would become applicable. There are no other restrictions on the resale of such securities.

There is no such exemption for offers by United Kingdom issuers. When Part V of the Financial Services Act 1986 ("the 1986 Act") comes into effect, it is anticipated that rules made by the Secretary of State will contain appropriate exemptions for private placements both by United Kingdom issuers and overseas issuers.

In the case of securities which have been admitted to listing on the ISE, there are no restrictions on resale by existing holders other than regulation of advertisements inviting persons to enter into an agreement relating to an investment. Any such advertisement must be approved by a person authorized under the 1986 Act to carry on investment business and must comply with the rules of the organization by which that person has been authorised. Such rules contain general requirements as to disclosure of material facts, compliance with which must be checked by the authorised person.

In the case of securities which are not to be admitted to listing on the ISE or any other approved exchange, a person who has acquired the securities from the issuer, or the controller of such person, with a view to issuing such an advertisement in respect of them, must comply with the requirements of rules made under Part V of the 1986 Act There is a presumption that a person acquires securities in these circumstances if an advertisement is issued within 6 months after the issue of the securities. If these provisions are not applicable, then the legal provisions governing "investment advertisements" referred to above may apply.

UNITED STATES

The Federal securities laws recognise a distinction between public offers and private placements. The registration provisions do not apply to transactions by an issuer not involving a public offer, though the anti–fraud provisions of the Federal securities laws do apply to private offers. Factors which will tend to indicate whether an offer is private include the number of purchasers, the sophistication of the purchasers, the absence of advertising or general solicitation activities, the purchasers' access to the kind of information which registration would disclose about the issuer and the securities, and the absence of an unregistered redistribution of the securities.

The Federal securities laws recognise the concept of an accredited investor. Certain institutional investors, insiders of the issuer, and individuals whose net worth is more than $1 million or whose annual income is more than $200,000 are accredited investors. The requirements to supply information to offerees are relaxed when an issuer sells securities to accredited investors in an offer exempt from registration under Regulation D.

APPENDIX C cont.

Rule 506 of Regulation D provides a non–exclusive "safe harbor" exemption from registration for private placements. Under the Rule, an offer of an unlimited dollar amount of securities to an unlimited number of accredited investors plus up to 35 other sophisticated investors will be deemed to be a private placement if several conditions are met. The conditions include limitations on the manner of offer and on resale, and, where the offer is made to persons other than accredited investors, the furnishing of specified financial and other information about the issuer to purchasers. Regulation D also contains Rules 504 and 505, which exempt from registration offers not exceeding $1 million and $5 million respectively if specified conditions on the manner of the offering, nature of the purchasers, the imposition of resale restrictions and the furnishing of specified information are satisfied. An exemption for certain offers and sales of securities to employees and consultants is provided by Rule 701.

The Federal securities laws contain several other exemptions from the registration requirements. Some of the exemptions are for particular securities, such as securities issued or guaranteed by the United States government or a US bank. Other exemptions apply to particular transactions, such as those not involving the issuer, and underwriter or a dealer, broker–dealer transactions, and certain exchanges of securities by an issuer with its existing holders of securities.

Securities acquired directly or indirectly from the issuer or an affiliate of the issuer in a transaction or series of transaction not involving a public offer are restricted and may not be resold without registration or an exemption from registration. Rule 144 is a non–exclusive "safe harbor" exemptive rule that sets out procedures which may be followed to ensure that the seller will not be deemed to be an underwriter and that the exemption from registration for transactions not involving an issuer, underwriter or dealer is therefore available. Restrictions on resale generally last three years for persons not affiliated with the issuer.

Recently adopted Rule 144A affords another safe–harbor exemption from registration for resales of restricted securities. The Rule is available for the resale of unregistered securities to "qualified institutional buyers" (QIBs) provided that such securities are not, at the time of issuance, listed on a US stock exchange or quoted on the National Associations of Securities Dealers Automated Quotation System ("NASDAQ"). In most cases, QIBS are institutions that own or manage at least $100 million in securities. Registered broker–dealers qualify as QIBs if they own or invest on a discretionary basis at least $10 million of securities of unaffiliated issuers or act in riskless principal transactions on behalf of QIBs. Banks and savings and loan associations, in addition to meeting the $100 million test, must also have a net worth of $25 million to be eligible for QIB status. Sellers must notify buyers that they may rely on the exemption provided by the rule. Sellers and offerees must have the right to obtain information concerning the issuer if the issuer is not subject to periodic reporting requirements in the US, is not exempt pursuant to Rule 12g3–2(b) and is not a foreign government issuer.

APPENDIX C cont.

Newly–adopted Regulation S codifies the position that the registration requirements of the Securities Act of 1933 do not apply to offerings outside the United States. The new regulation contains a general statement to this effect and two safe–harbor provisions, one for issuer offerings and one for resales, for demonstrating that an offer and sale are outside the US. Both provisions, which are non–exclusive, require an "offshore transaction" relative to the US and forbid directed selling efforts in the US. Additional requirements may apply to primary offerings depending on market interest in the US, the status of the issuer under US periodic reporting requirements, and the manner of offering, and to resales by specified persons.

APPENDIX D

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