INTERNATIONAL EQUITY OFFERS

CHANGES IN REGULATION SINCE APRIL, 1991

INTERNATIONAL ORGANISATION OF
SECURITIES COMMISSIONS

September, 1992

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

SEPTEMBER, 1992

ERRATUM

Page 28, line 8:

Reads:

"(...) active publicity."

Should Read:

"(...) no active publicity."

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ANNUAL SURVEY REPORT OF
IOSCO WORKING PARTY NO. 1

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APPENDICES

September, 1992

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

I. INTRODUCTION

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

> "...an annual survey be undertaken of the changes which could affect multinational offers which have been made in participating jurisdictions.
>
> ...each year, each jurisdiction represented on the Technical Committee produces a summary of such changes so that the Working Party 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.

Since the 1991 Annual Survey Report, several of the participating jurisdictions adopted enabling statutes or regulations implementing directives of the EC. Comprehensive new laws regulating offerings of securities came into effect in The Netherlands and Italy, and significant changes to securities laws were made in Hong Kong and Spain.

Regulatory changes that had become effective or that were proposed after April 1991 are described in this Report, which is comprehensive with respect to changes as of April 30, 1992. 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 placements

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

II. DETAILED CHANGES SINCE APRIL, 1991 (INCLUDING PROPOSED CHANGES)

AUSTRALIA

1. Changes in regulatory requirements for public offers

(a) Registration procedures

Since the commencement of Corporations Law on 1 January 1991, the Australian Securities Commission ("ASC") has had a statutory obligation to register a prospectus within 14 days of lodgement unless it appears that the prospectus does not comply with statutory requirements or the ASC is of the opinion that the prospectus contains a false or misleading statement or that there is an omission from the prospectus.

The ASC has announced that it will endeavor to register a prospectus in substantially less than the statutory reporting days - a three-day target has been set.

All prospectuses must be lodged with the ASC but not all must be registered by the ASC. Most importantly, a prospectus need not be registered if it offers securities quoted on the Australian Stock Exchange Limited ("ASX") or is in relation to a non-renounceable rights issue. The ASC has a discretionary power to relieve from registration in other contexts. The ASC has done so, for example, in the context of foreign employee share scheme prospectuses. Shelf prospectuses are not permitted.

(b) Listing procedures

A corporation which is obtaining the quotation of a new class of securities on the ASX is required to prepare a prospectus which must be lodged with and if applicable registered by the ASC.

The ASC will permit a corporation, which at the time of first quotation of a class of securities is not engaging in a capital raising, to prepare an information memorandum (rather than a prospectus) which complies with all prospectus requirements other than those pertaining to the offering or issuing of invitations in relation to securities. Again the information memorandum has to be lodged with and if applicable registered by the ASC.

(c) Prospectus requirements

The Corporations Law (unlike the legislation which preceded it) does not contain detailed prescriptive requirements as to the content of prospectuses. Instead the Corporations Law imposes a general disclosure test: a prospectus must 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 the assets and liabilities, financial position, profits and losses, and prospects of the corporation and the rights attaching to the securities.

A number of prospectuses have been issued which contain either unaudited financial statements or audited financial statements but no auditor's report. The ASC has not taken objection to these.

The ASC has stated as a general guideline that where accounts have been signed more than six months before the date of issue of a prospectus, half-yearly accounts should be included in a prospectus. Again these would not have to be audited.

Annual accounts must comply with local accounting standards. In view of this, prospectus accounts invariably comply with accounting standards. A prospectus, containing accounts which do not comply with accounting standards, may either be misleading or fail to meet the general disclosure test and in either event may be in breach of the Corporations Law.

Concessions given to foreign issuers

In the usual course, a foreign corporation, which extends to Australian investors an international offering of securities, a rights issue, a scrip takeover bid or a scheme of arrangement involving the offer of securities, would be required to prepare a prospectus which complies with the Corporations Law. Likewise a foreign corporation issuing securities to Australian investors upon the exercise of options would be required to prepare an Australian prospectus. Finally, a foreign corporation which lists on the ASX is required to prepare a prospectus or information memorandum at the time of such listing.

In July 1992, the ASC exercised its discretionary powers to provide a range of relief in relation to the offering of foreign securities:

(a) A prospectus which is lodged both in Australia and another country need not comply with certain procedural requirements of the Corporations Law including the registration, type size, signing and single document prospectus requirements.

(b) A rights issue (whether renounceable or non-renounceable) may now be extended to Australian shareholders without an Australian prospectus where the Australian participation in the rights issue offering is not more than 10%.

(c) A scrip takeover bid or scheme of arrangement may now be extended to Australian investors provided the content (but not the procedural) requirements of the prospectus provisions of the Corporations Law are complied with.

(d) Quoted securities may now be issued to Australian investors upon the exercise of an option without the preparation of a prospectus provided that Australian investors are provided with

- a prospectus at the time of the grant of their options; and
- monthly pricing information in relation to the relevant securities during the period in which those options may be exercised.

(e) A foreign corporation which lists on the ASX as an exempt foreign company (and hence meets certain size and other criteria) need not prepare a prospectus for the purpose of such listing but instead may put together a package of information prepared for home jurisdiction purposes including the corporation's last audited accounts and all disclosures made in its home jurisdictions since the date of those accounts.

In each case, the offer must be in respect of shares in a class quoted on the main board of an ASC designated approved foreign exchange i.e. the New York, American, London, Tokyo, Frankfurt, Paris, Toronto, Zurich, Amsterdam, Milan, Hong Kong, Singapore and New Zealand Stock Exchanges and NASDAQ National Market. Further various requirements must be met to qualify for the concessionary treatment.

In addition to the above, the ASC has exercised its discretionary powers to provide a broad range of relief in relation to prospectuses e.g. to allow incorporation of certain material within a prospectus. Such relief could be taken advantage of by a foreign issuer as much as a domestic issuer.

2. Continuing reporting obligations

Deadline for filing financial statements

The Corporations Law fixes the timing for the preparation of a company's annual accounts by reference to the date of the company's annual general meeting.

A public company is required to hold its annual general meeting within five months of the end of each financial year. The accounts must be finalised no more than 56 days before the holding of the annual general meeting.

A company is required to file its annual accounts with the ASC within 1 month of the date of the annual general meeting (i.e. within 6 months of the close of the financial year).

A public company which is listed on the ASX is required to submit the ASX its preliminary financial reports no later than 75 days after the end of the company's financial year.

A company which wishes to issue to the ASX its final accounts within the required 75-day period must bring forward the date of its annual general meeting in order to meet the 56-day rule.

Interim accounts

The Corporations Law does not impose any obligation upon companies (other than borrowing companies) to prepare interim accounts.

ASX listing rules require a listed company to lodge half-yearly accounts within 75 days of the end of the first half-yearly financial year. The ASC does not require quarterly accounts.

Requirement for insider/material change reports

The Corporations Law requires annual accounts to contain a director's report which reviews the company's operations during the financial year and the results of those operations and gives particulars of any significant change in the company's state of affairs that occurred during the financial year.

ASX listing rules require directors in the half-yearly report to comment as to material factors affecting the revenue and expenses of a group for the half year and changes in accounting policy since the last annual report.

Both the Corporations Law (annual accounts requirements) and the ASX listing rules (half-yearly accounts requirements) require the disclosure of post-balance date events.

Concessions granted to foreign issuers

A foreign company which is registered in Australia is required to lodge annual accounts in the prescribed form with the ASC.

The ASC has the power to exempt from the reporting requirement.

3. Changes in restrictions applying to private placements

The Corporations Law has since 1 January 1991 contained a number of exemptions from the prospectus requirement in relation to private placements.

(a) No prospectus is required where an offer or issue of securities to a person has value of not less than $500,000.

(b) No prospectus is required where securities are offered to a person which controls for the purposes of investment in securities not less than $10 million in funds (i.e. an institution).

(c) No prospectus is required where an offer of securities is made to an Australian licensed dealer.

In cases where one of the above exemptions is relied upon, it is entirely up to the issuer what disclosure if any is provided. The issuer is however able to be sued in the event that the issuer elects to prepare an offer document and it is false or misleading. In this regard, it should be noted that an offer document may be regarded as misleading by reason of an omission (not just a misstatement) if in the circumstances the offer document is in fact misleading.

In view of the above exemptions, it would seem that since the commencement of the Corporations Law, there has been a tendency of the part of companies to raise further capital by way of placement rather than rights issue (a rights issue even if non-renounceable now requires a prospectus).

The Corporations Law contains an anti-avoidance mechanism in order to discourage issuers from placing securities and the receiver on-selling those securities. Where securities are issued for the purpose of re-sale, the issuer is liable to the ultimate purchasers of the securities as if they were subscribers for the securities. Moreover, unless the contrary is proved, it is evidence that securities were issued for resale if in fact they are resold within 6 months.

Accordingly, where securities are placed for the purposes of resale, the issuer has to prepare an offer document for purchasers which complies with the prospectus requirements.

The Corporations Law includes an exemption in relation to an on-sale of securities which takes place through the ASX.

4. Stabilisation and other controls over dealings

The Corporations Law includes substantial shareholder notification requirements. A notice must be lodged with the ASC by a person who has control over a parcel of not less than 5% of the shares of a listed company. Any 1% change in such control must also be notified.

In addition, the Corporations Law includes requirements as to the notification by a director of his interests to the company of which he is a director. A company's directors' register is not available for public inspection.

5. Other issues

There are a number of relevant law reform proposals likely to be taken up in legislation in the near future:

(a) It is likely that this year legislation will be enacted which obliges all companies whose securities are traded through a regulated market (for example the ASX) to lodge with the ASC half-yearly accounts and full notification when any material matter occurs. Statutory liability will be imposed in relation to such reports.

(b) It is likely that legislation will be enacted this year amending the prospectus provisions. It is possible that as part of such amendments prospectus registration will be abolished or alternatively the prospectus registration period will be reduced so that a prospectus must be registered by the close of business on the business day after lodgement.

BELGIUM

1. Shelf Registration - Doctrine of the Banking and Finance Commission

The Banking and Finance Commission has approved shelf registration for issuers of listed securities who publish regular and sufficient information.

For these companies, the approval procedure in respect of the issuance prospectus and the prospectus for admission of their securities to official listing, can be achieved in two times, i.e. :

* the approval of a basic document and, after that, of a "transaction note" ("note d'operation"), the whole giving the necessary and sufficient information to enable investors to make an informed assessment of the assets, the financial position, the results and the prospects of the issuers as well as of the rights attached to the securities offered;

* the basic document would remain valid during one year or until publication of the next annual report; it would be completed during the financial period by the half-yearly report and by any significant fact that the Banking and Finance Commission would like to be disclosed to the public;

* the transaction note would detail the transaction terms and any significant new fact concerning the activities, the financial position, the results and the prospects of the issuers which would not have been published otherwise.

The basic document would in any case be published and completed during the financial period, irrespective of whether a subsequent public call on savings would be carried out or not, in order to ensure continuing information to the public as complete as possible. In case of a public call on savings, the basic document and the related transaction note should by no means be distributed separately.

2. Public Offers

The Royal Decree of 31st October 1991 has implemented into the Belgian regulation the 89/298 EEC directive of 27th April 1989. It goes however further than the European minimum requirements. The scope of application of the Royal Decree is not limited to securities which are offered for the first time to the public. The various possibilities of exceptions or dispensations from the publication of a prospectus have not been taken over into Belgian regulation. Finally, the information to be disclosed in a public offer prospectus is more detailed than what is provided for by the directive. It is however less detailed than in case of admission to the official listing. In this respect, it should be noted that, if, at the time of the public offer, an application for admission of the securities to official listing is made, the information to be disclosed is that provided for the Royal Decree of 18th September 1989, which has implemented the 80/390 European directive into the Belgian regulation.

3. Mutual Recognition of Prospectuses

The EEC directives on mutual recognition of prospectuses in case of official listing and public offers have been implemented in Belgian regulation by the Royal Decree of 14th November 1991. All the possibilities of mutual recognition of prospectuses provided for by the directives have been taken over by the Belgian regulation, which has not used the options in which the directives authorize a limitation of the mutual recognition system.

CANADA

1. Shelf Prospectus/Post-receipt Pricing

Rules for shelf prospectus offerings and for the pricing of prospectus offerings after the issuance of a receipt were implemented in May, 1991.

The shelf prospectus system was adopted by the Canadian Securities Administrators ("CSA") as National Policy Statement No. 44 ("NP44") as part of the international effort to minimize delays that issuers face in selling securities and globally coordinating listing, review, and clearance procedures. Under the shelf system, eligible substantial issuers are able to file a single short form prospectus relating to securities to be offered continuously or on a delayed basis in one or more tranches. Thus, issuers are able to price and offer specific tranches without any additional advance filing with, or clearance by, the Canadian securities authorities. Certain variable information in respect of each tranche will be filed as a supplement to the final prospectus.

In addition, as part of NP44, the CSA have adopted post-receipt pricing ("PREP") procedures in order to reduce the time pressures associated with filing and obtaining clearance of a final prospectus. Under the PREP procedures, eligible issuers are able to obtain final approval for a prospectus that sets forth all required disclosures except pricing and related information, which will be provided after pricing is completed.

2. Multijurisdictional Disclosure System

In July 1991, the CSA implemented OS National Policy No. 5, the Multijurisdictional Disclosure System ("MJDS"), between the provinces and territories of Canada and the United States. Under the MJDS, securities regulators in the home jurisdiction set the disclosure standards for, and carry out regulatory review of, cross-border securities transactions involving, and continuous reporting filings of, qualified Canadian and U.S. issuers. The CSA worked with the SEC and the North American Securities Administrators Association to develop the MJDS.

3. Omnibus Amendments

The Ontario Securities Commission (the "OSC") implemented amendments to OSC Policies 5.1 and 5.6 relating to, among other things, (i) non-fixed price offerings of non-convertible investment grade debt securities and preferred shares, (ii) prospectus disclosure for business acquisitions and combinations, (iii) trading by issuers, underwriters and certain other parties during prospectus distributions and (iv) price reductions during the course of a distribution from the initial public offering price in the final short form prospectus.

In addition, the amendments provide that an issuer that is incorporated or organized outside Canada and that does not have an office in Canada shall appoint an agent for service of process in Canada and submit to the non-exclusive jurisdiction of the courts and administrative tribunals of Ontario and any administrative proceeding in Ontario in respect either of the distribution of securities by prospectus or the issuer's obligations as a reporting issuer under the securities law of Ontario. The amendments also impose a similar obligation on other persons or companies that are resident outside Canada or are incorporated or organized outside of Canada and do not have an office in Canada. These persons include general partners of issuers, selling security holders, promoters, managers and portfolio advisers. They also include non-resident directors and the chief executive officers and chief financial officers of such general partners, promoters and managers where such persons are not resident in Canada.

The amendments also require the inclusion in the prospectus of certain disclosure, including disclosure in respect of the appointment of an agent and the enforceability of judgments in foreign jurisdictions.

4. Derivatives

Draft National Policy Statement No. 46 - Index and Commodity Warrants was published for comment. The draft policy prescribes prospectus, continuous disclosure, trading and sales requirements based on the unique attributes of index and commodity warrants. It is an objective of the draft policy to increase the efficiency with which issuers may access public markets through standardizing prospectus disclosure requirements and providing confidential and expedited review procedures in certain circumstances.

5. Disclosure, Valuation and Minority Security Holder Approval Requirements for Certain Related Party Transaction

In July 1991, the OSC revised its Policy No. 9.1 to clarify requirements for transactions involving an issuer or its security holders and a related party.

The revisions are intended to ensure that security holders affected by these types of transactions are treated in a fair manner. The amendments, among other things, (i) mandate that (a) a valuation be prepared and disclosed, and (b) approval of the minority security holders be obtained for certain related party transactions, and (ii) recommend procedures for establishing a special committee of the board of directors comprised of the independent directors to negotiate the terms of the transaction with the related party.

6. Prompt Offering Qualification System.

In December 1991, the CSA published for comment Draft National Policy Statement No. 47 ("NP47") on the Prompt Offering Qualification System ("POP System"). The essence of the POP System is to integrate offering documents with previously published issuer-oriented information concerning eligible reporting issuers, so as to reduce the time period and streamline the

procedures by which such issuers may have access to Canadian capital markets. NP47 will create a national POP system. A POP system has been in place in Ontario through OSC Policy No. 56 and in certain other provinces.

7. Non-Resident Adviser Policy

Effective June 1, 1992, the OSC implemented OSC Policy No. 4.8 ("OSC 4.8"), which provides for the regulation of non-resident advisers.

In seeking foreign investment opportunities, the OSC considers that it may in some cases be in the interests of Ontario investors to have greater access to foreign portfolio management and other investment advisory services. OSC 4.8 attempts to take a practical approach to facilitating this access by balancing the interests of Ontario investors in taking advantage of the services of international advisers with investor protection concerns.

OSC 4.8 addresses three types of non-resident advisers.

(a) Registered international advisers -- Firms acting as advisers in Ontario without having an advisory office in Canada. OSC 4.8 sets out the requirements for these advisers and limits their clients, their advisory activities to foreign securities and the proportion of their annual advisory revenues derived from Canadian activities. International advisers are exempted from many of the requirements generally applicable to registered advisers on the basis that the regulatory burden created by these requirements on international advisers would not be commensurate with any resulting investor protection.

(b) Registered extraprovincial advisers -- Firms acting as advisers in Ontario without having an advisory office in Ontario, but having an advisory office elsewhere in Canada. Extraprovincial advisers must satisfy all requirements generally imposed on registered advisers other than the requirement to have an office in Ontario.

(c) Exempt non-resident advisers. The OSC 4.8 sets out eight limited exemptions from the general adviser registration requirement. Six of these exemptions are available only to international advisers, while the other two are available to both international and extraprovincial advisers.

8. Mutual Funds

Amendments to Section 16 of National Policy Statement No. 39 ("NP 39") regarding sales communications for mutual funds became effective August 1, 1992. The Amendment is intended to provide a complete code of conduct for mutual fund sales communications, and contains provisions regarding the use of performance data, information on fees and charges, approval of the sales communications and warnings.

Amendments to NP 39 permitting expanded use of derivatives by mutual funds both for hedging purposes and, subject to restrictions, non-hedging purposes were published for comment on May 29, 1992.

FRANCE

I - Regulations Introduced by the COB

The *Commission des Opérations de Bourse* (or "COB" or "Commission") adopted six regulations in 1991. These represent updates and revisions of previous rulings with a view to relaxing and adapting existing rules to developments in the market.

The Commission also had to give an opinion on the amendments to the regulations of the market authorities, the *Conseil du Marché à Terme* (or "CMT"), the *Conseil des Bourses de Valeurs*, which amendments are linked to the internationalization of the markets.

Furthermore, concerned with encouraging international issues and the opening-up of the French markets to foreign issuers, the Commission has relaxed certain of the existing rules which could have served to impede international issues.

The procedures relating to negotiable debt instruments have also been relaxed.

In the same spirit, and in cooperation with the other market authorities, new general principles have been drawn up to permit the issue, both in France and on the international market, and the listing of warrants and complex bonds.

A. Regulations Introduced by the Commission

Of the six regulations adopted, none includes any specifically new requirement: they serve to integrate the European Directives, to adapt the requirements with regard to information to the international dimension of the French market and to the modernization of dissemination techniques.

a) Two Regulations are Concerned with Transposing European Directives

On information prospectuses (n° 91-02), in order to facilitate the drawing-up of such documents by the issuers and to make them easier to use by French or foreign investors thanks to a standardized presentation. This encourages incorporation of recent documentation and broadens the scope of mutual recognition within the European Community.

On the rules governing public offering (n° 92-02). This deals with the information that must be supplied on the occasion of a public offer of securities not scheduled for listing on a regulated market. The information document is a simplified prospectus for dissemination, either when new securities are issued, or when securities already issued are placed.

b) One regulation (n° 90-10) adapts the Commission's requirements to the internationalization of markets by defining the contents and the quality of the information to be supplied to investors canvassed by intermediaries concerning foreign products, i.e. concerning any offer or recommendation of securities, futures or financial products traded on foreign markets. This system is based on the mutual recognition of French and foreign rules which are considered equivalent. Application is limited to those foreign markets recognized by the Minister for Economic Affairs.

c) The fourth regulation (n° 91-04) aims to encourage issuers to use telematic transmission for public dissemination of their disclosures, provided they use a centralized system equipped with a memory. Management of the system is by a technical operator under the terms of a convention negotiated with the representative organizations of the technical press. This system should permit full dissemination of the companies' disclosures to the widest possible public in that they can be accessed by Minitel (the French version of Prestel) as soon as they are issued.

d) Lastly, two other regulations have amended previous regulations: one (n° 91-03) relates to the drawing-up and dissemination of a prospectus concerning the futures market. To make sure that the client is properly informed as to the risks involved in these transactions, intermediaries who are not members of the *Marché à Terme Instruments Financiers* ("MATIF") and who do not fulfil the necessary conditions, must ask their client to state he has been warned that the MATIF 5A guarantee will not be applicable. The other regulation (n° 92-01) concerns the MONEP : under this regulation a non-professional client of an intermediary on the *Marché des Options Negociables de Paris* (or "MONEP") has seven days as of delivery of the prospectus in which to reconsider before undertaking an initial transaction on this market.

B. Opinions on Regulations Adopted by Market Authorities

The Commission approved the new provisions introduced with a view to fostering the international development of the MATIF. To enable the MATIF to participate in the Globex electronic trading system, the *Conseil du Marché a Terme* has amended its general regulations. The new provisions stipulate that members of the MATIF who trade in contracts listed on other markets are obliged to observe the regulations incorporated by mutual recognition into those of the CMT.

Generally speaking, the trading rules on the US market are consistent with French rules. However, where they are less protective towards clients than the French regulations, the Commission has stated that the latter will continue to apply to members of the MATIF.

Aside from minor amendments to the general regulations of the *Conseil des Bourses de Valeurs* to permit the introduction of long-maturity MONEP options, the Commission endorsed the amendments to the system of public offerings in order to relax the conditions under which such offers may be made and to allow public offerings of registered shares already listed or traded over-the-counter. These procedures enhance the liquidity and transparency of the market and ensure a fairer balance between investors.

C. Provisions Concerning the Issue of Negotiable Debt Instruments (NDIs)

Non-resident issuers have been able to make use of the prospectuses for commercial paper. Within the framework of existing regulations in 1991 (Decree n° 91-79 of January 22, 1991), 131 visas were granted, of which 118 to issuers already operating on the market, and 13 to new issuers, of which 4 to non-residents.

New regulations, introduced by the decree of February 13, 1992, extended the possibilities for issuing NDIs and relaxed the procedures for issuing commercial paper.

To deposit certificates, financial institution bonds and commercial paper are now added negotiable medium-term bonds, with an initial life of more than one year issued by all the issuers authorized to issue NDIs, irrespective of their status and nationality.

So as to facilitate placing of the issue, the issuers of medium-term negotiable bonds must, prior to issuance, have made public a rating of their issuing schedule obtained from a specialized agency included on a list established by the Minister for Economic Affairs.

All issuers of NDIs must draw up a financial report, the contents of which are laid down in an Order signed by the Minister for Economic Affairs, concerning their activities, their financial position and their issuing schedule.

Only those issuers of commercial paper whose issuing schedule does not have a rating from a specialized agency are compelled to submit their financial report for prior approval by the Commission. The other issuers must file their report with the *Banque de France* and are the subject of monitoring after the fact by the Commission as to the observance of their obligations to disclose information.

D. The New Principles Governing Warrants and Complex Bonds

The year 1991 showed that there was keen interest in the issue of warrants on the Euro-franc market and in that of complex bonds. The latter are a source of financing for companies, while warrants provide an additional liquidity seemingly appreciated by financial institutions. Such issues are followed by requests for quotation on what is known as the official international list. To adapt to this development, new general principles have been adopted by the Commission and the *Conseil des Bourses de Valeurs* to allow the issue in France and on the international market, together with official listing of warrants and complex bonds.

Warrants

There have been few modifications in the general principles defined by the COB and the CBV for stock exchange listing of warrants. These permit listing of warrants issued on the French market while adding to the range of underlying assets previously listed (securities and index of security prices) interest rates and currencies, negotiable debt instruments, financial or commodity futures (excluding those involving gold) and all the derivative instruments traded on the organized markets.

The prudential provisions have been strengthened:

- the need for warrant issuers to be officially classified as credit institutions is reaffirmed:

- the requirements under the terms of which the underlying assets must be negotiated on a broad and liquid market, and those according to which the quotations and prices set must be established under conditions deemed satisfactory by the market authorities, are reiterated:

* the determining of issue, exercise or settlement prices must, as far as possible, result from a number of market observations, and not from a reference to a spot recording of prices:

* the issuer of a listed share must be informed and is entitled, in the event, to oppose the issue of warrants which use his share as underlying asset.

Trading by lots of 100 or 1000 warrants depending on the nature of the underlying asset is recommended.

The COB will add a warning to the issue prospectus drawing the public's attention to the specific features of these products.

Complex Bonds

Complex bonds are defined as products of a bond nature, whose rules are not expressly defined by statutory provisions and whose terms and conditions of redemption and remuneration (more or less complex indexation, power of option at the initiative of the lender or the borrower...) are specific.

Complex bonds can furthermore include references to the same underlying assets as warrants, subject to the statutory provisions concerning indexation (particularly article 79.3 of the Ordinance of December 30, 1958).

Credit institutions can issue complex bonds referring to all the aforementioned underlying assets except, on the one hand, the capital shares of another company and, on the other, raw material or commodity futures; however, reference to the latter may be authorized in the case of institutions able to prove they are active on the market of the underlying asset in question.

The other companies may issue complex bonds referring to their own capital shares and to the securities or goods directly linked to their activities.

In all cases, bonds issued in France must guarantee the investor a redemption at least equal to the amount of the loan.

E. The COB Meets with the Players on the Financial Market

The image assessment carried out in 1990 emphasized the need of the Commission's talking partners to have access to higher-quality information on its work, and the spirit in which it applied the regulations. To satisfy this request, the Commission initiated a series of annual discussions with the various market players and devoted an entire day to information and the small investor, on November 28 1991.

Four reports presented on this occasion gave panels of experts the opportunity to discuss the following topics:

- UCITS (Units in collective investment in transferable securities) and information to small investors
- Auditors and surveillance of information
- Insider information
- The new regulations of the COB

The spontaneous nature of the discussions helped to flesh out the exchanges on the contents and presentation of the information to the market. It was the wish of the Commission that all participants should give their opinion on how they would develop their efforts to inform small investors and the way they planned to modify the tools of their trade (prospectuses, company disclosures) so as to make the information on listed companies more readily available and easier to understand. Speakers were also asked to state their views on the classification of UCITS and the prospectuses circulated to investors as well as on the ongoing activities of the auditors in supervising the reliability of the accounts, and lastly on the conduct to be adopted to strengthen the integrity of the market.

The discussions made it possible to assess the importance of the relays used by the COB with a view to a proper regulation of the system, particularly the professional organizations or market authorities. The agreement with the *Compagnie Nationale des Commissaires aux Comptes* is a good example of

cooperation between the Commission and a professional organization. Further illustrations of such cooperation could be seen in the efforts of the ASFFI *(Association des sociétés et Fonds français d'Investissement)* to improve the ethical standards governing portfolio management, in the more general efforts of the market authorities, the CMT and CBV, or in the assistance given by the *Banque de France*.

The discussions also provided an opportunity to mention the part played by the press and journalists in general to circulate reliable and regular information on listed companies.

II The COB and Information

1991	
Prospectus visas	508
of which:	
New listings	18
Newly listed capital shares or equity-linked securities	3
Newly listed debt instruments and warrants issued in other countries	136
Capital shares or equity-linked securities issues	96
Debt instrument issues	199
Takeover bids	51
Other operations	5
Registration of reference documents	13
Examination of prospectuses (admissions on second market)	13
Examination of mergers and partial investment documents	41
Disclosures as part of share-price guarantees and withdrawal offers (Article 20 of regulation n° 89-03)	81

Whether the information concerned is dispensed on the occasion of an event affecting the company or whether it be periodical, or again circulated prior to a financial operation, the Commission is mindful of the object of such information, in other words, the contents should correspond to the situation of the issuer and to current circumstances; it also ensures the quality of the accounting information and the due care shown by the auditors in the inspection of such information, particularly where forecasts are concerned.

A. Permanent Information

The Commission emphasized that the management of listed companies is responsible for organizing and handling the process of drawing up and circulating accounting data together with the disclosure process for financial operations.

Regulation n° 90-02 indeed specifies that "the issuer must, as soon as possible, bring to the knowledge of the public any important fact, which, were it known, would be likely to have a significant impact on the price of the share concerned" but that it can defer such dissemination when this information is liable adversely to affect his interests and if it is able to ensure confidentiality.

Implementation of this provision has met with difficulties, since the issuers were either unable internally to control the process of dissemination, or because they were unable to control dissemination by the partners with whom they were in negotiation, or again because the successful outcome of their operations depended on a public authority in another country.

When disposal of assets or financial information results are announced to the staff committee or to executive personnel prior to a meeting of the Board of Directors, such information must be published forthwith. Furthermore, this information must be circulated by means of an official company disclosure and not through interviews with the press resulting in more or less accurate newspaper articles.

The schedule of financial operations must take into consideration the availability of accounting information. Care must be taken to avoid a public share issue on the basis of accounting data which will need to be updated shortly after this operation, particularly if such updating reveals a trend contrary to the figures announced previously. Similarly, for merger operations, the indebtedness of the new group should not be disclosed until the proposed parity of exchange has been announced.

Lastly, when disclosure is dependent on the position adopted by a public authority in another country, the issuer must consult sufficiently early on with the stock exchange authorities to enable the timeliness of a disclosure to be assessed whenever necessary and, in the event, whether listings should be suspended.

Similarly, the Commission reminded foreign companies which do not ensure complete and effective publication of their disclosures of their obligations in respect to information. It recommended that they entrust the intermediary responsible for the financial servicing of their shares to take charge of such publication by putting the necessary resources at his disposal.

As regards the circulation of information by Minitel (the French telematic system similar to the U.K. Prestel), the Commission noted that while stock market information was circulated in accordance with its recommendations, the other information communicated by the issuers was not always equally satisfactory. It emphasized, in this connection, that incomplete or obsolete data can be misleading and that, when a company uses Minitel for communication purposes, it must regularly update the server and mention the date of the most recent amendments.

B. Periodic Information

While due credit should be paid to the efforts on the part of companies to shorten the time needed to draw up their accounts and to publish the most important items in the press, there is still a certain lack of rigor in the way the figures are presented. These are not always uniform and the data used are not compared with those of the previous year; certain concepts employed are not strictly defined in accounting terms and cannot therefore be compared with others. Moreover, the annual reports do not contain all the necessary information, particularly as regards the accounts.

As far as budget information is concerned, companies are urged to limit themselves to data on the near future and to publish comments relating to trends by product and by market, to the development of orders, competition and margins.

Regarding the periodic information published by foreign companies, the Commission emphasizes that they must publish their summary accounts in French accompanied by the explanations necessary to assess the impact of the difference between the accounting standards they themselves use and French accounting standards. They are required to publish, in one or more French economic and financial papers, a disclosure comprising the most significant items in their annual and half-yearly accounts, consolidated as the case may be, together with the address in France from which a complete document may be obtained, which, while not necessarily written in French, must be written in one of the principal languages used in the financial sphere within the European Community.

C. Preliminary Information On Financial Operations

Responsible for ensuring that investors possess all the data they require to make a choice when participating in a financial operation, the Commission has various ways of ensuring that all the necessary information is available to them. This can, depending on the instance, be the prospectus visa presenting the issue or official listing of a share, or a takeover bid, public exchange, sale or

withdrawal offer; the registration of a document submitted for verification in order to serve as a reference for future operations or to present a merger or investment; or again a *nihil obstat* to the disclosure regarding a price maintenance guarantee or to the document drawn up by a company to be listed on the second market.

GERMANY

No changes affecting public equity offerings to report.

HONG KONG

1. Changes and Proposed Changes in Regulatory Requirements for Public Offers

Registration Procedure

During the year the Securities and Futures Commission (the "Commission"), the Stock Exchange of Hong Kong Limited (the "Exchange"), the Monetary Affairs Branch of the Government and the Registrar General's office reached agreement whereby the Registrar General's prospectus vetting responsibilities under the Companies Ordinance would be transferred to the Commission, which would subsequently transfer its newly acquired vetting responsibilities in relation to the prospectuses issued by listed companies and companies applying for a listing to the Exchange by way of a transfer order under section 47 of the Securities & Futures Commission Ordinance. Following the transfer, the Commission will retain responsibility for vetting prospectus for unlisted companies. Draft legislation has been progressed with a view of its being adopted by the Legislative Council before the end of 1992.

Listing Procedures

On 25 November 1991, the Commission and the Exchange announced the signing of a Memorandum of Understanding (the "MOU") which provides for the devolution of day-to-day administration of all listing matters to the Exchange, subject to systematic checks and balances within the Exchange and measures to reinforce effective oversight by the Commission of the Exchange in the performance of its listing-related responsibilities.

The MOU also contemplated the introduction of the Securities (Stock Exchange Listing) (Amendment) Rules 1991 which came into force on 31 December 1991. These rules amended the statutory Securities (Stock Exchange Listing) Rules (the "Statutory Rules") to remove the areas of regulatory duplication between the Exchange and the Commission in relation to listing matters.

Although the Commission is no longer involved in the day-to-day administration of listing matters, the Commission's approval will still be required for all changes to the Rules Governing the Listing of Securities on the Exchange (the "Listing Rules") (including practice notes) and blanket waivers of the Listing Rules. The Commission also retains its power to suspend the trading of shares under the Statutory Rules and will continue to be involved in the aspects of listed company regulation which go beyond the scope of the Listing Rules, for example, administration of the Codes on Takeovers and Mergers and Share Repurchases and statutory requirements such as the Securities (Disclosure of Interests) Ordinance.

Prospectus Requirements

The track record requirement under the Listing Rules has been reduced from five years to three years. A new applicant is now required to lodge with the Exchange at the time of application the annual report and accounts for each of the three (instead of five) completed financial years of the issuer or group immediately preceding the issue of the listing document or such shorter period as may be acceptable to the Exchange.

For China B shares, see section 6.

Listing Requirements

Since April 1991, the following major amendments were made to the Listing Rules:

- new rules dealing with the composition, powers, functions and procedures of the Listing Committee and the Listing Division;

- a reduction of the general requirement for a 5-year track record to a 3-year trading record. In exceptional circumstances a 2-year record may be acceptable;

- previously, the listing requirements for a new applicant included an initial market capitalization of HK$100 million and a 25% public float. These requirements have now been consolidated into a two-part test which requires a new applicant to have securities held by the public with an expected initial market value of not less than the higher of: (i) HK$24.5 million; or (ii) 25% of the company's expected initial market value at the time of listing.

- new rules (15.07-15.23) governing the listing of "derivative" or "synthetic" third-party warrants;

- new provisions governing voluntary delistings;

- a reduction in the minimum offer period for rights issues and open offers from 21 to 14 days;

- significant amendments to, and restructuring of, the provisions (Chapter 14 of Listing Rules) relating to connected transactions, with certain exemptions added to facilitate the normal commercial activities of listed companies;

- the recognition of the Cook Islands, in addition to Bermuda and the Cayman Islands, as an acceptable overseas jurisdiction for Hong Kong "redomiciling" companies. As part of the process of recognition, the Cook Islands entered into a memorandum of understanding with the Commission and the Exchange whereby the parties agreed to cooperate and assist each other in the regulation and, where appropriate, investigation of listed companies in order to secure compliance with respective securities requirements; and

- new rules governing secondary listings, particularly where the majority of the trading in the companies securities is likely to be on the Exchange.

Since April 1992, a number of practice notes were issued by the Exchange and include:

- Practice Note 3 which requires that the accountants' report on the results of a new applicant for listing should not normally contain any qualifications in respect of the latest two financial periods which relate to a matter of significance to investors;

- Practice Note 4 which imposes certain requirements on an issuer proposing to issue new warrants to existing warrantholders or to alter terms of existing warrants;

- Practice Note 5 which deals with the presentation by an issuer in listing documents, interim and annual reporting of the shareholding interests of directors and chief executives disclosed under the Securities (Disclosure of Interest) Ordinance.

- Practice Note 6 which seeks to introduce certainty with respect to offer periods set out in listing documents issued in support of an offer of securities. It provides for the closing date of the subscription period in a new issue not to be extended or revised unless the right to do is reserved and for such right be exercised only in certain restricted circumstances; and

- Practice Note 7 which details certain additional requirements for the listing of derivative warrants on the Exchange and sets out the qualification requirements of issuers of derivative warrants.

- Practice Note 8, which makes certain provisions for the introduction of CCASS (see 4. below).

2. Continuing Reporting Obligations

Securities (Disclosure of Interests) Ordinance ("SDI Ordinance")

The SDI Ordinance, which came into effect on 1 September 1991, requires that substantial shareholders (with 10% or more of the voting interests of a listed company) disclose their interests and certain dealings publicly and that directors and the chief executive of such a company also disclose all their dealings in the issued share capital and debentures of the company and its associates. The Exchange's Listing Rules were amended to make them consistent with the provisions of the SDI Ordinance.

The Commission issued guidelines for exemption of certain listed companies, their directors, chief executives, and substantial shareholders from complying with all or part of the SDI Ordinance. Complete exemptions may be applicable to companies which have less than 1% of their worldwide share trading turnover taking place on the Exchange. Alternatively a listed company that has less than 20% of its worldwide turnover traded on the Exchange may be eligible for a partial exemption from the requirements of the SDI Ordinance. The Commission will take into consideration whether the applicants are subject to comparable disclosure requirements in another jurisdiction. Pursuant to these guidelines the Commission has granted a number of complete exemptions to multinational companies with secondary listings in Hong Kong.

Exemptions have also been granted to companies that have issued covered derivative warrants on the shares of other listed companies and currency warrants.

3. Changes in Restrictions Applying to Private Placements

No significant changes.

4. Stabilization and Other Controls over Dealings

Central Clearing and Settlement System ("CCASS")

CCASS has been implemented and launched in Hong Kong on 24 June 1992. The first phase will see clearing and settlement introduced on a trade-for-trade basis. Legislation has been proposed to isolate and protect the Hong Kong Securities Clearing Company Limited from outside interference. Once the proposed legislation is passed, clearing and settlement on a continuous net settlement basis will be introduced, probably before the end of the year.

The Revision of the Hong Kong Code on Takeovers and Mergers and its Consolidation with the Hong Kong Code on Share Repurchases

On 17 February 1992 the Commission approved the Codes on Takeovers and Mergers and Share Repurchases (the "Revised Codes"), consisting of a revised Hong Kong Code on Takeovers and Mergers (the "Revised Takeovers Code") and a revised Hong Kong Code on Share Repurchases. The Commission also approved the consolidation of the Revised Codes into a single looseleaf service. The Revised Codes supersede the Hong Kong Code on Takeovers and Mergers reprinted on 1 October 1987, and the Hong Kong Code on Share Repurchases (the "Share Repurchases Code") dated March 1991. The Revised Codes became effective on 1 April 1992 and apply to all takeovers, mergers and share repurchases announced on or after such date.

The Revised Codes do not constitute a major departure from the previous regulatory regime. Changes which have taken place include the assumption of responsibility for day-to-day decision-making in relation to takeovers, mergers and share repurchases by an Executive, comprising a Commission Director and staff, and the setting up of a newly constituted Takeovers and Mergers Panel which, if necessary, will make first instance decisions or consider appeals from rulings of the Executive. The possibility of changes to the mandatory offer and creeper thresholds will be considered during 1992/93.

Share Repurchases

The Share Repurchase Code came into effect in April 1991 and is non-statutory in nature. Under the Share Repurchase Code, repurchases by way of general offer must be made on the same terms to all holders of the class of shares (or securities which carry a right to subscribe or purchase shares) that is the subject of the general offer. Share repurchases are also permissible under other circumstances under prescribed exemptions from the general offer requirement. The most important of these exemptions permits a listed company to purchase its shares "on market" through the facilities of the Exchange or through the facilities of another stock exchange in accordance with the rules of the relevant exchange.

The Exchange's Listing Rules were amended with effect from May 1991 permitting companies to make repurchases at market price of up to 25% of the total volume of its shares traded on the Exchange in the immediately preceding month, subject to an annual repurchases limit of 10% of the relevant company's issued share capital. The Companies Ordinance (Amendment) No. 2 Bill permitting Hong Kong incorporated companies to repurchase their shares was passed on 3 July 1991 with an implementation date of 1 September 1991. The Commission also issued guidelines on the exemption of companies from the provisions of the Companies Ordinance on repurchases.

Securities (Insider Dealing) Ordinance ("SID Ordinance")

The SID Ordinance, which came into effect on 1 September 1991, relates to dealings in securities on the Exchange. It imposes obligations on officers of corporations to take "all such measures as may from time to time be reasonable in all circumstances for the purpose of ensuring that proper safeguards exist to prevent the corporation from perpetrating any act which would cause it to be identified by the Insider Dealing Tribunal as an insider dealer".

Insider dealing may be considered to take place if (a) a relevant person deals or (b) he counsels or procures another to deal knowing or having reasonable cause to believe that such a person would deal or (c) he passes the information to another person when he knows or has reasonable cause for believing that the other person will make use of the information for the purpose of dealing or counseling or procuring another to deal or (d) he receives information from a relevant person and deals or counsels or procures another to deal or (e) a person who is knowingly in possession of relevant information in any of the above circumstances counsels or procures another to deal in the knowledge or with reasonable cause to believe that person would deal on an exchange outside Hong Kong, or discloses that information to any other person in the knowledge or with reasonable cause to believe that person would deal or counsel or procure another person to deal outside Hong Kong.

5. Any Other Issues Bearing on International Equity Offerings - Offer of Securities

One aspect of the law that has received particular attention during the year is that relating to the regulation of public offerings of securities and other investments. This subject is governed in part by primary legislation (the Companies Ordinance, the Protection of Investors Ordinance, the Securities Ordinance and, in the case of futures contracts, the Commodities Trading Ordinance) but also by the Listing Rules, and by some non-statutory codes on investment promulgated by the Commission. The concept of an "offer to the public" is essential to the present provisions in the Companies Ordinance and the Protection of Investors Ordinance.

The law has been reviewed by a working group whose members included persons working in the securities industry and in the legal professions, as well as representatives of the Commission. The working group's report was published in December 1991. It concluded that the crucial question of what constitutes an "offer to the public" is not satisfactorily answered by the present law, and recommended that offers should instead be regulated in all cases where they are not expressly excluded or exempted from regulation; the present statutory test of whether an offer is made to the public should thus be abandoned. The types of offer that would not be regulated were considered in some detail by the Working Group; they would include offers made to a maximum of 50 persons in any 12 months; offers with a minimum specified subscription or purchase price of HK$2,500,000; certain offers by registered and exempt dealers; offers to persons whose business involved the acquisition, disposal or holding of securities; offers of securities by a company to its directors or employees; and offers of authorized unit trusts or mutual funds.

The working group also considered whether the law should refrain from prescribing in detail the information that should be included in a prospectus or other offering document, but concluded that such a reform would be too radical a departure from the current system in Hong Kong. It therefore recommended that the content of such documents should continue to be prescribed, and that they should be registered with the Registrar of Companies.

6. China Shares - Registration of China B Shares Prospectus in Hong Kong

A working party, comprising members from the Exchange, the Commission, the Hong Kong Society of Accountants and the Registrar General's Department, was formed in the middle of March 1992 with the aim of making recommendations on how best to address problems arising from the differences in the accounting standards from China and Hong Kong in so far as those impinge on the quality of information disclosed in the companies' prospectuses.

A China Study Group, comprising regulators and practitioners in Hong Kong who have been involved in China-related capital market matters, was formed under the auspices of the Exchange in June 1991 with the specific objective of examining methods of bringing together Chinese issuers and foreign investors in Hong Kong. It was assigned the task of examining the potential for listing securities of companies with PRC interests (whether joint venture companies or wholly PRC enterprises) on the Exchange and the potential role for the Exchange of promoting capital formation in Hong Kong and the PRC. The Group's research has focussed on key issues and differences between China and Hong Kong in a number of important areas such as the legal and accounting system.

ITALY

Numerous legislative and administrative measures were adopted during 1991 and the first half of this year, radically modifying the regulatory framework of securities business and markets:

(a) Law no. 149 of 18 February 1992 on public offers for the sale, subscription, purchase and exchange of securities, which lays down the cases in which a public offer is obligatory. Law 149/1992 also lays down the procedures for making public offers for the sale of securities;

(b) Legislative Decree no. 90 of 27 January 1992, "Implementing Directive 88/627/EEC on the information to be made public at the time of the purchase or disposal of a significant interest in a listed company", which, among other things, requires interests of more than 2% of a company's capital to be notified to the *Commissione Nazionale per la Società e la Borsa* (or "Consob") within 48 hours of such limit being exceeded and the announcement to the public, by way of advertisements in two national newspapers (one of which shall be a business paper), of interests exceeding 10%, 20%, 33%, 50% and 75% of the capital of a company within four days of the signature of the relevant contact;

(c) Legislative Decree no. 85 of 25 January 1992, "Implementing Directive 89/298/EEC coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public", which, among other things, regulates the mutual recognition of public offer prospectuses;

(d) Legislative Decree no. 87 of 27 January 1992 "Implementation of Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and Directive 89/117/EEC on the requirements concerning the publication of annual accounting documents of branches established in a member state of credit institutions and other financial institutions having their head offices outside that member state";

(e) Regulations governing the minimum initial capital of securities firms, adopted by the Bank of Italy,in agreement with the Consob, on 2 July 1991, which, among other things, lays down the layout of the balance sheet and income statement and contains provisions on the single items thereof;

(f) Regulations implementing Articles 6 and 7 of Law no. 157 of 17 May 1991 on insider trading, adopted in Consob Resolution no. 5553 of 14.11.1991;

(g) Amendments to the general provisions concerning the drawing-up and publication of prospectuses regarding operations involving the raising of funds from the public carried out pursuant to Article 1/18 of Law no. 216 of 7 June 1974, adopted in Consob Resolution no. 6243 of 3.6.1992;

(h) General provisions regarding public offers for purchase, exchange, purchase and exchange of securities, adopted in Consob Resolution no. 6243 of 3.6.1992.

1. Changes in regulatory requirements for public offers

New cases have been laid down in which the provisions on raising funds from the public, including the requirement to publish a prospectus, are waived:

- establishment of a company by way of public subscription;
- offers of securities restricted to the managers of the issuing company and the managers of companies that control or are controlled by the issuing company;
- offers of securities restricted to the individually identified employees of the issuing company, provided the amount to be allotted to each employee is predetermined and reserved exclusively thereto.

(a) **Registration Procedure**

- Prior to the publication of the prospectus no public announcement may be made in any form -- including programmes or advertising on the radio or television and articles and advertising in daily newspapers or periodicals -- concerning operations involving the raising of funds from the public. The texts of announcements, drawn up in accordance with the provisions of the relevant Consob Regulations must be submitted in advance to the Consob, which scrutinizes their content. Failure to comply with this rule is a penal offence. In addition, the Consob may forbid the release of advertising material that does not conform with the Regulations or may mislead the public.

- A provision has been introduced requiring a public offer to be carried out, on pain of the authorization to publish the prospectus expiring, within ninety days of the prospectus being deposited in the Consob's Prospectus Archive.

- Provision has been made for the prior submission to the Consob of the text of all announcements and communiques to be released during the offer period and the Consob has been empowered to give its opinion on the contents of such announcements and communiques and on the manner and timing of their release.

(b) **Listing Procedures**

No change.

(c) **Prospectus Requirements**

- An important change has been made in the regulations governing the information requirements applicable to issuers of securities listed on regulated markets. The issuers of shares are now required, when giving effect to resolutions regarding rights issues, to provide the public with information on the features of the operation and the securities in question by way of the deposit of an information document with the competent market authority instead of the publication of a prospectus.

- The provisions of Article 6 of Directive 89/298/EEC have been implemented by allowing issuers who intend to raise funds from the public during the twelve months following a public offer of their securities by issuing securities different from those previously offered to draw up a prospectus that contains only information on the features of the securities to be issued, updates the data and information previously published and described and describes any events that have occurred since the publication of the previous prospectus, likely to influence the value of the securities to be offered. The "simplified" prospectus has to be distributed

together with the "complete" prospectus published previously or at least must mention the latter and indicate the places where it is available to the public.

- In order to give effect to Article 18 of Directive 89/298/EEC, it has been made compulsory for issuers to draw up and make available to the public a supplementary information document whenever a new factor or significant inaccuracy arises or is noted in the prospectus between the date on which the prospectus was published and the closing date of an operation involving the raising of funds from the public that is likely to influence the value of the securities.

- The provisions of Articles 20, 21 and 24 of Directive 89/298/EEC concerning the mutual recognition of prospectuses have been implemented. Provision has been made for a prospectus drawn up for a public offer of securities and submitted to the prior scrutiny of the competent authority of another member state of the Community or of a third country that has concluded an agreement in this field with the EEC to be recognized by the Consob as a prospectus for the raising of funds from the public provided it is translated into Italian and that the offer is made in Italy simultaneously with, or within a short time of, the offer in the country of the authority responsible for the prior scrutiny of the prospectus. The Consob may, however, require the insertion in the prospectus of information specific to the Italian market concerning, in particular, the taxation of the income deriving from the securities and the persons, if any, engaged to place or distribute the securities or appointed to perform the tasks associated with the exercise of the rights of the holders of the securities. For the purposes of the mutual recognition of a prospectus, it is irrelevant whether the issuer's registered office is located in a member state of the Community. The Consob may decline to recognize a prospectus scrutinized by another EC competant authority if the prospectus provides for exemptions or partial derogations that are not justified the exemption or partial derogation granted by the authority that originally scrutinized the prospectus do not exist in Italy.

- Provision has been made for the latest financial statements approved by the issuer of securities subject to a public offer for sale, subscription or exchange to be audited by a firm of auditors.

- As regards the auditor's report on the financial statements in the event that the issuer is a foreign company, the Consob must be sent a special declaration by a firm of auditors on the special register kept by the Consob certifying that the independence criteria and auditing principles in force in the country of origin of the issuer are equivalent to those in force in Italy.

- In the event that the offer is withdrawn or the offer period extended, a special advertisement must be published, at least in the daily newspaper chosen to publish the announcement of the deposit of the prospectus. Provision has also been made, when the securities offered are listed on a stock exchange or traded on the second market, for the announcement to be submitted to the stockbrokers' executive committees and list committees, or the second market committees, for them to publicize it by displaying it in the stock exchange notice board. The results of an offer must be communicated to the Consob and the public using the same procedures.

2. Continuing reporting obligations

As regards the information to be supplied to the market on a continuing basis, the Consob Regulations implementing Articles 6 and 7 of Law no.157 of 17 May 1991 on insider trading require issuers of securities to inform the public, by means of a communique, the competent market authority and at least two press agencies of facts regarding the company's sphere of activity that are not publicly known and that, if made public, are likely to have a significant effect on the price of the company's securities.

In particular, they must make public the decisions adopted by the competent organ concerning: operations involving the company's capital or the issue of bonds; mergers, divisions, purchases and disposal of equity interests, important activities or branches of the business; company restructuring and reorganization plans; authorizations to engage in operations involving the company's own shares; changes in the rights attaching to a category of the company's listed securities; applications for admission to bankruptcy; dissolution or ascertainment of a cause of dissolution; resolutions adopted

by the board of directors approving the financial statements to be submitted to the shareholders' meeting.

In addition, issuers of securities must inform the public of any change compared with the situation previously publicized in the persons who in any way exercise control over the company, specifying the identity or corporate name of such persons.

Furthermore, the issuers of listed securities must make available to the public their financial statements, together with the report of the board of directors and that of the board of internal auditors, the annexes to the report and the minutes of the shareholders' meeting that approved these documents as well as the report of the auditors, if any, the consolidated financial statements, if prepared, and the half-yearly report in the following manner:

(a) by depositing the documents at the company's head office or, if the company's head office is in a foreign country, with the entities appointed and the competent market authority with the obligation to deliver a copy to any person on demand;

(b) publishing an announcement in at least one national daily newspaper informing the public that the deposit has been made.

Finally, the issuers of listed securities must provide the public, by publishing an announcement in at least one national daily newspaper, the information needed by the holders of their listed securities to exercise their rights. In particular: issuers of shares must inform the public of decisions regarding dividends and their payment; issuers of bonds must inform the public of decisions regarding the payment of interest, the redemption of securities, as well as the exercise of any conversion rights or warrants; and the issuers of warrants must inform the public of decisions regarding the exercise of the related purchase or subscription rights.

The holding companies of a group to which issuers of listed securities belong must inform the Consob of operations involving such securities undertaken by companies belonging to the group or by persons specifically engaged by such companies.

* * *

As regards accounting information requirements, Presidential Decree no. 87 of 27 January 1992 incorporated into Italian law the provisions of Directives 86/635/EEC and 89/117/EEC regarding, respectively, the annual accounts and consolidated accounts of banks and other financial institutions and the publication of annual accounting documents of branches established in a member state of credit institutions and other financial institutions having their head offices outside that member state.

Attention is drawn to the provisions of Article 26 on the drawing up of the consolidated accounts of several companies credit and financial institutions between which there are no equity links shall be considered to operate in accordance with a single strategy when there is a special contract or a clause in their bylaws to this effect or the majority of their directors are the same. When such companies are not controlled by a single person required to draw up consolidated accounts in accordance with the provisions of the Decree; the consolidated accounts shall be drawn up only by the larger of the two companies in question and shall include in the consolidation the other credit institution and the companies this controls (so-called horizontal consolidation). If one or more of the credit institutions is listed on a stock exchange, the Consob may required consolidated accounts also to be drawn up for the companies controlled by the listed company.

On 25 February 1992 the supervisory authority for the insurance industry (ISVAP) issued circular no. 171 in accordance with Article 7 of Law no. 20 of 9 January 1991. The circular sets out the criteria and methods to be adopted in connection with the requirements for insurance companies to draw up consolidated accounts. The provisions of the circular regarding the drawing up of consolidated accounts in the case of companies subject to a single strategy are similar to those mentioned above with reference to credit and financial institutions.

JAPAN

Revisions of Auditing Standards and Working Rules

On 26th December, 1991, The Business Accounting Deliberation Council announced revisions of Auditing Standards, Working Rules of Audit Procedures of Field Work, Working Rules of Audit Procedures in Reporting, and Auditing Standards for Interim Financial Statements.

This revision represents the first major revision since 1965 and 1966 and is considered to be a result of vast efforts for international harmonization of the standards by considering significant changes in business environments and revisions of the Auditing Standards in the U.S.

The basic provisions for the revisions of Standards and Rules are as follows:
(1) to set forth basic requirements responsive to advancements of audit practices and increasing social responsibilities of professional accountants,
(2) to delegate to JICPA (The Japanese Institute of Certified Public Accountants) the responsibility to formulate concrete and practical audit rules,
(3) to assure effectiveness of audit practices and enhance audit efficiency by harmonizing audit procedures internationally and introducing a risk approach and requiring an organized audit approach.

LUXEMBOURG

No changes to report.

THE NETHERLANDS

Several important changes were implemented in the legal framework regulating the issue, brokerage and portfolio management of securities in the Netherlands. Please note that the below report is a condensed summary which does not discuss the rules pertaining to public offers in detail.

On June 15, 1992, the Securities Trade Supervision Act (*'Wet toezicht effectenverkeer'*; the "Act") which replaced the 1914 Exchange Act (*'Beurswet* 1914') and the Securities Trade of 1985 (*'Wet effectenhandel'*), took effect. Through the Act EC Directives 89/298/EEC on OTC offerings and 89/592/EEC on Insider Trading are implemented in the Dutch legislation. The Act, *inter alia*, includes major changes for the issue of securities on the OTC market and introduces continuing reporting requirements for the issuers thereon, Furthermore, the Securities Board of the Netherlands (*'Stichting Toezicht Effectenverkeer'*; the "STE") has succeeded the Ministry of Finance as the competent authority for the execution and enforcement of the Act.

Although less relevant for multinational issuers, on February 1, 1992, the Major Holdings in Listed Companies Act (*'Wet melding zeggenschap in ter beurze genoteerde effecten'*), which implements EC Directive 88/727/EEC, entered into force. It requires the notification and disclosure of holdings of 5%, 10%, 25%, 50% and 66 2/3% in Dutch public companies having its (depositary receipts of) shares officially listed on a stock exchange within the EC.

The Dutch Central Bank (*'De Nederlands Bank N.V.'*) which supervises credit and investment institutions in the Netherlands issued a new policy with regard to 'special financial institutions' on September 27, 1991. The change might affect finance subsidiaries of non-Dutuch companies which issue their debt securities through such finance vehicles.

1. Public offers

In general, the Act prohibits the offering of securities in or from the Netherlands outside a restricted circle of persons. The restricted circle criteria, which in other words constitute a 'private placement' under Dutch securities law, have not changed under the Act and are based on case law.

Unless an exception or general exemption applies to the offer, a prospectus has to be drafted in accordance with the provisions of the Securities Trade Supervision Decree (the "Decree"). The STE recognizes prospectuses which have been approved by a competent authority of another EC Member State as referred to in article 20(1) or 21(2) of EC Directive 89/298/EEC up to six months after such approval. The mutual recognition applies to EC and non-EC issuers. The STE may require additional information considered relevant to Dutch investors (e.g. specific tax related information) or translation into another language (e.g. Dutch, English, etc.) if such is deemed necessary for the adequate informing of the investors; English prospectuses rarely have to be translated into Dutch. Finally, the STE may, on a case-to-case basis, grant full or partial dispensations of such prospectus requirement.

Exceptions

a) If the securities are or will be listed on the only recognized stock exchange of The Netherlands, the Amsterdam Stock Exchange ("ASE"), the Rules (*'Fondsenreglement'*) of the ASE, a 'Self Regulating Organization' under the supervision of the STE, are applicable to the offer. Save for the extended disclosure of major holdings such Rules have not materially changed for multinational issuers.

b) If the securities are issued by Investment Institutions (i.e. investment companies and mutual funds) registered under article 18 of the Investment Institution Supervision Act (*'Wet toezicht beleggingsinstellingen'*).

General exemptions

a) The issue is exempt if the offer is only addressed to individuals or legal entities who or which, in the conduct of their profession or trade, invest or trade in securities (which includes, but is not limited to, banks, brokers, dealers, institutional investors, and undertakings with a treasury department) and a selling restriction limiting the offer to the above group is included in all offering documents.

b) The securities have a denomination of at least NLG 100,000.

c) The securities are 'Euro Securities', as defined in article 1 of the Exemption Regulation under the Act, which are not the subject of a generalized campaign of advertising or canvassing.

d) The securities are debt securities or similar instruments issued by Credit Institutions registered under article 13 or 30(3) of the Credit Institution Supervision Act (*'Wet toezicht kredietwezen'*) with an original maturity of one year or less.

e) The securities are issued by a Member State of the EC or (joint) public entities thereof.

f) If the securities are offered for free.

g) If the securities are or will be offered only to persons established or residing, or having their usual residence, outside the Netherlands. Such provided that the issuer, states to the STE that with regard to the offer, the offering circular, the advertisements and other documents wherein an offer of the securities is made in prospect, complies or will comply with all the applicable laws and (administrative) rules and regulations of each jurisdiction wherein the offer of these securities is made and a selling restriction is included in all offering documents in accordance with the first sentence hereof.

Dispensations

Dispensations of the requirement to draw up a prospectus in conformity with the Decree and the rules of the STE thereunder, can be requested from the STE. The request will only be processed if a fee is paid in advance (current fee: NLG 3000). Usually, dispensations are only granted if information

of at least an equivalent level is furnished; such could be a prospectus drawn up in accordance with the laws of non-EC jurisdictions. In general, the discretion of the STE to grant dispensations is limited by the minimum standard of the applicable EC Law (i.e. Directive 89/298/EEC).

2. The Prospectus and the Registration thereof

Article 2 of the Decree provides the general scope of the information to be included in the prospectus: 'The prospectus must contain the information which, considering the nature of the issuer and the offered securities, can reasonably be deemed relevant for the assessment of the capital, the financial position, the profits and losses and the prospects of the issuer and the rights and obligations attached to the securities. The items which are at least to be satisfied in the prospectus are set forth in the Annex to the Decree and the Rules of the STE. All facts that occur after the prospectus is published and fall within the herebefore mentioned general scope are to amended or supplemented during the offer. Without prejudice to the foregoing the validity of a prospectus is limited to 12 months. Such period might be relevant for certain multinational debt issuance programmes.

Before any legitimate offer can be made, a prospectus fulfilling all the requirements of the Act has to be filed with the STE. Whereas one of the items to be satisfied in the prospectus is the inclusion of a statement of a registered accountant under Dutch law, stating that the prospectus is drawn up in accordance with all the requirements of the Act, prior approval of the STE is not necessary. Obviously, dispensations have to be granted before the securities are offered and conditions to exemptions are, if necessary, also to be complied with in advance.

3. Financial information

The prospectus requirements under the new Act are basically the same as under the old legislation: three years of audited financial statements and a maximum period of 18 months since the last balance sheet was drawn up. The financial statements of issuers with registered offices in the EC have to be prepared in accordance with 4th and 7th EC directive on company law and are accepted in the English, French or German languages. Non-EC issuers may use accounting and auditing standards which are deemed to be at least equivalent to the latter EC Directives or reconcile to such standards. The International Accounting Standards of the IASC and International Standards on Auditing of the IFAC are deemed to be equivalent. Auditor's reports of auditors qualified in the issuer's home jurisdiction will be accepted. The above applies also to the annual and semi-annual accounts discussed herebelow.

4. Continuing Reporting Requirements

A significant innovation of the Act is the introduction of continuing reporting requirements for (foreign) issuers of securities on the Dutch OTC market. The Act subjects all issuers, whether they have issued debt or equity to the same obligations. Moreover, it subjects also all the issuers which have issued securities in the Netherlands in the past (i.e. before June 15, 1992) to the new requirements. Issuers of securities with a denomination exceeding NLG 100,000, EC States (See: 1(2)-b and e hereabove) or issuers of securities issued outside the Netherlands (see: 1(e)-g hereabove) are exempt from the obligation. The STE may grant full or partial dispensations (processing fee: NLG 1,500) from the reporting requirements.

All foreign issuers are required to prepare audited annual accounts within six months after the end of the financial year. The semi-annual accounts have to be prepared within 4 months after the reporting period ended and should state whether they are audited or not. Within 8 days after the (semi) annual accounts have been prepared or, if necessary, approved, the accounts have to be disclosed by filing them with the Trade Register of the Chamber of Commerce in Amsterdam and, have to be send to the STE.

Finally, the issuer is under the obligation to disclose any material new fact with regard to its business which may have a significant influence on the price of its securities as soon as possible, and send a copy thereof to the STE accordingly.

5. Misrepresentation and Sanctions

Art. 31(b) of the Act sets out punishment of: intentional misrepresentation, omission or alteration of true or delusion of false facts or circumstances, by the issuer, underwriters or other participants in the distribution process, for the purpose of selling securities to the public.

Violation of the above prohibition, prospectus or continuing reporting requirements constitutes an Economic Offence under the Economic Offence Act (*'Wet Economische Delicten'*) with prison sentences of up to 2 years and fines of up to and NGL 100,000. The Act does not provide for administrative sanctions by the STE or explicit civil liability.

As of January 1, 1992, article 6:194 of the Civil Code has replaced article 1416(a) of the old Civil Code. It provides for a civil action based on tort, which includes civil remedies such as money damages, if a person, due to misleading information related to advertised goods (e.g. securities in a prospectus) or services, incurs actual damages.

SPAIN

1. Changes in Regulatory Requirements for Public Offers

On April 2nd, 1992 the Royal Decree 29/1992 on "Public issuing and offers of securities" was published in the Spanish Official Gazette. This Royal Decree develops certain articles of Title III - Primary Markets - of the Spanish Security Law dated July 1988.

(a) **Registration Procedures**

Any public offer is subject to the following Registration Procedure:

1. Prior Notice from the issuer to the *Comisión Nacional del Mercado de Valores* (or "CNMV") disclosing the principal characteristics of the offer.

2. Production and submission to the CNMV of the legal supporting documents and the authorization by the Board of Directors and General shareholders meeting.

3. Registration of the prospectus.

4. Registration of the Audited Annual Accounts.

-Clearance Period

Maximum: 45 working days
Average: 30 working days

-Shelf Registration

Once the documents referred to in 1 - 4 have been produced, and approved by the CNMV, and only then, the starting period of the Placement can take place.

(b) **Listing Procedures**

Same procedures and methodology as in Registration procedures.

(c) **Prospectus Requirements**

- Number of years annual audited financial statements: 3 years (unchanged).

- Maximum period since last balance sheet: 6 months.

- Reconciliation to Local auditing standards: No, if the auditing work has been performed under general accepted auditing practices and standards.

- Reconciliation to local accounting standards: No, but differences arising from application of different accounting standards must be reported in the prospectus.

2. Continuing Reporting Obligations

1. Deadline for filing financial statements: 15 days before the annual shareholders meeting, which has to take place no later than 6 months from the date of closing of accounts.

2. Quarterly, with full financial statements as of 30 June and 31 December, and more general information the other quarters.

3. No more than two months from last day of month corresponding to end of quarter.

4. Obligation of immediate full disclosure of any material event occurred which may affect the market price or the investor's rights.

* Upon approval of the CNMV's Board, reports from an EC Country other than Spain can be produced with the same timing as in their home country.

3. Changes in Restrictions Applying to Private Placements

- Factors precipitating a public offer.

According with the Spanish Security Law and with the Royal Decree on "Public issuing and offers of securities," procedures for public offers in Spain are as follows:

Definition of Public offers and issuing:

- Any offer of securities from an issuer which already has securities of the same type of the securities being now offered previously listed in an organized Spanish secondary securities market. Partial exemptions from registration procedures cannot be applied to these type of securities.

- Any offer of securities in Spain involving any kind of active publicity or active promotional activities regardless if such publicity or promotional activities is carried through mass media directed to the general public, or through direct marketing directed to individuals.

- Any offer of securities in Spain when the placement activities are to be carried out by or through a professional financial intermediary firm or organization recognized (security dealers, brokers, banks, etc.), except if the intermediary firm acts as a mere passive collector of purchase orders from investors, without playing any active role in the placement process.

- **Documentation for private placements**

Exceptions to the Public Offering Requirements

General Exceptions

a) Offers from the Spanish Government and regional governments, and Bank of Spain.

b) Securities issued by Bank and S&Ls with a maturity below 12 months only when they are traded exclusively between banks and S&Ls and their permanent clients.

c) Securities with maturity below 12 months issued by credit institutions directed to professional investors.

d) Any kind of securities issued on a non-recurrent basis and with special characteristics.

These above are not subject to any of the registration procedures 1-4 described previously in point 1.a Registration Procedures.

Partial Exceptions (Private Placements)

e) Offers of securities not previously listed in Spain not included in the proceedings a-d, and directed to professional investors.

f) Offers of securities not previously listed in Spain directed to less than 50 investors, with active publicity.

g) Offers of securities not previously listed in Spain amounting less than 5 million dollars with no active publicity.

The above offers (e-g) are subject to procedures 1 and 2 (Prior Notice and supporting legal documents) as described previously in point 1.a Registration Procedures.

- **Restrictions on resale:**

If the issue has been qualified as private due to its being addressed to professional investors it can only be resold to other professional investors.

4. Stabilization and Other Controls Over Dealings

Only disclosure of information dealings. No prior approval is needed.

5. Any Other Issues Bearing on International Equity Offers

No remarks.

SWITZERLAND

During the period under review two main developments at the legislative level should be mentioned: a long-awaited revision of the Swiss company law was passed by the Federal Parliament on October 4, 1991, and a preliminary draft of a new Federal law on stock exchanges and securities trading was circulated for comments to the cantons, political parties and interested organizations. At international level, the Swiss Government took part in the negotiations between the European Community and EFTA (European Free Trade Association) Member States, in order to create a "European Economic Area". The Swiss Admission Board (i.e. the centralized listing body of Swiss stock exchanges) put forward proposals for certain minor amendments of the Swiss stock exchanges' listing requirements.

1. New Swiss company law

The new company law took effect on July 1, 1992. The revision, which was debated during many years, aims at strengthening shareholder and creditor protection, increasing transparency, redefining the duties of company directors, facilitating capital procurement for companies and preventing fraudulent conduct.

1.1 Transferability of registered shares

Most important for multinational offers is the new regulation regarding restriction on transferability of registered shares. It is still possible under the new law to restrict the transferability of such shares, albeit in a very limited manner and subject to certain time restrictions concerning the

acceptance or refusal of transfers. Companies can refuse to allow the transfer if the purchaser does not expressly declare that he has acquired them in his own name and for his own account.

The regulation applying for quoted registered shares allows the company to refuse approval of a purchaser of a limit (expressed in percent of issued registered shares) specified in the articles of incorporation is exceeded. In addition, provided the articles of incorporation contain such a clause, the possibility of refusal exits if a company might otherwise be prevented from supplying the proofs required by law concerning the composition of its shareholder (e.g. Federal law restricting the acquisition of real estate property in Switzerland by foreign residents). A purchaser not yet recognized by the company nevertheless has - with the notable exception of voting rights - all the rights attaching to shareholders' status. The company must register him or her as a "shareholder without voting rights".

According to the transition regulations, amendments of companies' articles of incorporation will have to be implemented before June 30, 1997.

1.2 Participation certificates

The participation certificate is defined in the new law. It is issued against a capital contribution and confers only financial and ownership rights. In these respects however, the holder of such certificates must not be disadvantaged compared to a shareholder. The capital issued in the form of participation certificates may not exceed twice the amount of share capital.

1.3 Dividend right certificates

Under the new law, the dividend right certificate may have no nominal value. The number of such certificates and the rights they confer must be stated in the articles of incorporation.

1.4 Acquisition of its own shares by the company

Under the new law, the company is allowed to acquire its own shares through in a limited proportion of the share capital and strictly in the cases defined by law.

1.5 Capital increases

The new law provides three different ways to increase the capital of a company:

a) Ordinary capital increase

The decision to increase the capital is taken by a general shareholders' meeting, which determines the details of the operation. The board of directors implements the capital increase and prepares a report which has to be certified by the company auditors. The capital increase must then be entered in the Commercial register within 3 months of the general meeting's resolution.

b) Authorized capital increase

By amending the articles of incorporation, a general shareholders' meeting may authorize the board of directors to increase the share capital. The articles must mention, inter alia, the maximum nominal amount by which the board is allowed to raise the share capital. The authorized increase must not exceed half the company's existing share capital and must be implemented within 2 years.

c) Conditional capital increase

A general meeting may decide on a conditional capital increase by granting, in the articles of incorporation, rights to purchase new shares (conversion or option rights) to employees or subscribers of new bonds or similar debt. The nominal amount by which the share capital may be increased must not exceed half the existing share capital. As rights are exercised, the share capital increases throughout subscription payments, which can only be made in cash or by offset. At the end of each financial period, a specially qualified auditor examines whether the issue of the new shares is in conformity with the law, the articles of incorporation and the terms of the prospectus. After approval by the auditors, the board of directors records the amount of the share capital and amends the

articles of incorporation accordingly. The capital increase must be notified to the Office of commercial register within 3 months of the close of the financial period in which it is implemented.

1.5 Nominal value of shares

The nominal value of a share is at least SFr 10, (versus SFr. 100. under the old regime). This reform encourages stock splits and aims at improving the liquidity of the Swiss stock market.

1.6 Accounting and financial statements

For greater transparency, the annual financial statements must be drawn up in accordance with recognized accounting principles. They must present a picture that is as reliable as possible of net worth and earnings and must show the figures for the previous year.

The offsetting of assets and liabilities, expenditure and income is no longer admissible. Quoted companies have the obligation of publishing their financial statements, including consolidated ones. There is a disclosure obligation of important shareholders (or groups of shareholders).

For each financial period, the board of directors must establish the report to the shareholders which, under the new law, comprises the following three parts: the annual accounts, the annual report and the group accounts. The annual accounts must contain: the balance sheet, the profit and loss account and the notes (also called the "Annex"). The notes of the annual accounts are subject to new rules as regards form and content. They must show, *inter alia*, the total amount of the company's commitments secured by pledge or assignments, assets subject to reservation of title, leasing commitments not shown in the balance sheet, major share holdings, asset revaluations, liabilities to pension funds and - if material - the release of hidden reserves.

2. Draft Federal law on stock exchanges and securities trading

A preliminary draft of a Federal law on stock exchanges and securities trading as well as a commentary thereto have been published by the Federal Department of Finance in June 1991 in order to allow interested circles as well as cantons and political parties to express their comments. This so-called "consultation procedure" was closed in September 1991 and its results were published in January 1992. The final bill to Parliament will probably be published before the end of the current year.

3. European Economic Area

The negotiations between the European Community and the EFTA Member States (including Switzerland), in order to create a "European Economic Area", was successfully concluded in May 1992. The proposed Treaty will have to be ratified by Switzerland in a popular vote in December 1992. According to this treaty, Switzerland will have to take over, as from January 1, 1993, the whole EC legislation relating to the free movements of goods, services, capital and people as well as certain flanking policies (including company law). The treaty allows, however, for transition periods. The EC Directives on stock exchanges will have to be implemented by Switzerland as from 1995. In the case of company law, the transition period ends at the beginning of 1996.

4. Swiss Admission Board

The Swiss Admission Board decided to submit to the Zurich, Geneva and Basle Stock exchanges a proposal aiming at reducing, in the listing requirements, the minimum period of time for which listed companies must present corporate records. According to this proposal, the minimum period would be 3 years instead of 5. This is in conformity with EC rules.

5. Other projects

During the period under review, a proposal aiming at further improving - thanks to stricter minimal listing requirements - the financial transparency of listed companies was prepared by representatives of the Commission for regulation of the Federation of Swiss Exchanges together with representatives of listed companies.

UNITED KINGDOM

No changes to report.

UNITED STATES

1. Regulatory Requirements for Public Offers

Cross Border Rights Offerings

As discussed in the 1991 Annual Survey Report, in June 1991, the Commission published for comment proposals for a new exemption and new registration form to facilitate rights offerings by foreign private issuers to existing U.S. shareholders. Also proposed were amendments to Securities Act Form F-3 to permit any foreign private issuers filing periodic reports under the Exchange Act to register on that form in certain circumstances, rights offerings, offerings in connection with dividend and interest reinvestment plans, conversions of convertible securities, or the exercise of outstanding warrants, even if the issuers do not have a three year reporting history under the Exchange Act or have a minimum public float of $300 million.

International Tender and Exchange Offers

In June 1991, the Commission also published for comment a proposal that would permit tender offers for a foreign issuer's securities to proceed in the United States on the basis of the applicable regulation of the target company's home jurisdiction, where a small percentage of the shares sought are held of record by United States holders. The proposal also includes an exemption and forms with respect to the registration of exchange offers of a foreign issuer's securities under the Securities Act.

It is likely that the Commission will consider the adoption of these rules and forms relating to both Cross Border Rights Offerings and International Tender and Exchange Offers in Fall 1992. Further details of both these proposals are discussed in the 1991 Annual Survey Report.

2. Restrictions Applying to Private Placements

Rule 144A, adopted by the Commission in April 1990, provides a safeharbor exemption from the registration requirements of the Securities Act for specified resales of restricted or unregistered securities to certain qualified institutional buyers ("QIBs"). Except for registered broker dealers, institutions eligible to be QIBs must own or invest on a discretionary basis at least $100 million in eligible securities. For registered broker-dealers, the requisite ownership or investment amount is $10 million. Banks, savings and loan associations, and equivalent foreign institutions must also have a net worth of at least $25 million to be QIBs.

On July 16, 1992, the Commission proposed to expand the categories of investment vehicles eligible to be QIBs to include collective investment trusts and master trusts used for the investment of funds of corporate sponsored employee benefit plans and state-sponsored benefit plans. The Commission also proposed that sales to a QIB insurance company for its unregistered separate accounts can qualify under Rule 144A. Finally, the Commission proposed to amend the Rule to permit institutions to include U.S. government securities in the amount of securities held or invested.

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. There 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 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 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 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 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 and Other Control Over Dealings

Study of stabilisation 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 extraterritorial application of domestic statutory and regulatory provisions in order to accommodate market structures and authorised market practices 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 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 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	Australian Securities Commission
Mr. Claude Lempereur	Commission Bancaire et Financière, Belgium
Ms. Pamela Hughes	Ontario Securities Commission
Mr. Donat Branger	Commission des Operations de Bourse
Dr. Albrecht Burger Mr. Michael Radtke	Federation of German Stock Exchanges
Mr. Ermanno Pascutto	Securities and Futures Commission, Hong Kong
Mr. Carlo Biancheri	Commissione Nazionale per le Società e la Borsa
Mr. Kenji Aramaki	Ministry of Finance, Japan
Mr. Charles Kieffer	Commissariat aux Bourses, Luxembourg
Mr. Wietse de Jong	Securities Board of the Netherlands
Mr. Rafael Sánchez de le Peña	Comisión Nacional del Mercado de Valores, Spain
Mr. Michel Y. Dérobert	Association des Bourses Suisses
Mr. Patrick Morton	The London Stock Exchange
Ms. Barbara Muston	Securities and Investment Board
Ms. Linda C. Quinn (Chairman)	U.S. Securities and Exchange Commission

Published in the US for the International Organisation of Securities Commissions (IOSCO), Montreal, Canada

September, 1992