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The Regulation of Cross-Border Public Offerings of Securities in the European Union: Present and Future

Keywords

Comparative Law, Regulation, Securities Law

THE REGULATION OF CROSS-BORDER PUBLIC OFFERINGS OF SECURITIES IN THE EUROPEAN UNION: Present and Future[†]

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The European Union (E.U.)¹ has witnessed dramatic progress in recent years in terms of both monetary integration and the fortification of its position as a financial and economic powerhouse with the commencement of the European Monetary Union (E.M.U.), the introduction of the Euro as the European Union's single currency, and the formation of a European Central Bank.² While the E.U.'s success with monetary integration has been impressive, one area that remains incomplete is the integration of the E.U.'s various equity markets into a cohesive and singular capital market that would facilitate simpler capital-raising efforts by way of securities issuances.³

[†] The Holland & Hart Private International Law Award is a monetary award generously presented by the law firm of Holland & Hart LLP to a University of Denver College of Law student for a paper written on a topic in the private sphere of international law.

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1. The E.U. currently consists of fifteen Member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. See *European Union in the U.S.*, available at <http://www.eurunion.org/states/home.htm> (last visited Feb. 5, 2002).

2. See Roberta S. Karmel, *The Case for a European Securities Commission*, COLUM. J. TRANSNAT'L L. 9, 9 (1999).

3. See *id.* See also Financial Services: Implementing the Framework for Financial Markets: Action Plan, COM(99)232 final at 6, available at http://europa.eu.int/comm/internal_market/en/finances/general/actionen.pdf (last visited Feb. 21, 2002) [hereinafter Financial Services Action Plan]; Commission Proposal for a Directive of the European Parliament and of the Council on the Prospectus to be Published when Securities are Offered to the Public or Admitted to Trading, 2001 O.J. (C240E) 272, 272 (recognizing the need to completely overhaul the two existing and out-dated E.U. prospectus directives)

Those practicing in the European securities industry acknowledge that the directive-based regulatory framework currently in place does not produce the requisite efficiency to make pan-E.U. public offerings a reality. The European Commission attempts to rectify that with its Proposed Prospectus Directive submitted in June 2001.⁴ Recognizing the deficiencies that segmented financial markets create for capital-raising by companies wishing to offer securities to the public of more than one Member State and the changing financial landscape in Europe, the E.U. Commission first proposed ways to ease the raising of capital on an E.U.-wide basis in its 1999 Financial Services Action Plan.⁵ The Committee of Wise Men produced Initial and Final Reports on the Regulation of European Securities Markets in November 2000 and February 2001, respectively, spelling out the shortcomings of current European regulation and the benefits of greater capital markets integration.⁶ Additionally, the Forum of European Securities Commissions (FESCO)⁷ produced a report in December 2000 for the European Commission's consideration⁸ proposing concrete steps that would allow European issuers to make E.U.-wide public offerings "without having to produce duplicative sets of documentation or to respond to numerous additional national requirements."⁹ In consideration of the need for investor protection, the FESCO proposal also provided particulars for how best to facilitate the access to

[hereinafter Proposed Prospectus Directive].

4. See Proposed Prospectus Directive, *supra* note 3, at 272.

5. Financial Services Action Plan, *supra* note 3, at 6.

6. See Initial Report of the Committee of Wise Men on the Regulation of European Securities Markets (Nov. 9, 2000) at 4 & 15, available at http://europa.eu.int/comm/internal_market/en/finances/banks/report.pdf (last visited Feb. 21, 2002) [hereinafter Initial Report]. Final Report of the Committee of Wise Men on the Regulation of European Securities Markets (Feb. 15, 2001), available at http://europa.eu.int/comm/internal_market/en/finances/lamfalussyen.pdf (last visited Feb. 21, 2002).

7. FESCO was a body made up of the chairmen of seventeen statutory securities regulators of the European Economic Area and works to improve the cooperation between Europe's securities regulators. See FESCO's Organisation, available at <http://www.europesesco.org/v1/pOrganisation.htm> (last visited Oct. 2, 2001). FESCO's work has been taken over by the Committee of European Securities Regulators (CESR), a body that was established by European Commission Decision issued in June 2001, following recommendations contained in the Final Report of the Lamfalussy-chaired Committee of Wise Men published in February 2001. See Presentation of CESR, What is CESR? available at http://www.europesesco.org/v1/Presentation_of_CESR.htm (last visited Feb. 5, 2002).

8. See A "European Passport" for Issuers, A Report for the EU Commission, Fesco/00-138b (Dec. 20, 2000), available at http://www.bwa.at/download/European_passport_issuers.doc (last visited Feb. 21, 2002) [hereinafter European Passport Report].

9. *Id.* at 3.

approved documents to all European investors.¹⁰ The end result of these reports and proposals is the European Commission's Proposed Prospectus Directive, a document that adopts the notion of a European 'passport' for issuers, but has been the subject of serious debate and criticism, and will be discussed in greater detail later.

The purpose of this paper is two-fold: (i) to clearly and concisely address the relevant legislative directives currently applicable to a public offering of securities (whether listed or unlisted) in multiple E.U. Member States, and (ii) to examine how recent proposals, including the Proposed Prospectus Directive, attempt to reconcile their faults to better facilitate cross-border securities offerings without sacrificing investor protection in the process. The paper focuses exclusively on those issuers incorporated under the laws of an E.U. Member State and examines the public offering of equity securities, as opposed to bonds, or other security instruments.¹¹ *PART I* examines the structure of the E.U.'s directive-based regulation of the capital markets. *PART II* examines the applicable directives and procedures involved in facilitating cross-border offerings by distinguishing the requirements for offering exchange-listed securities from unlisted securities. *PART III* examines the perceived shortcomings of the E.U. directives currently in force in this area that have resulted in a scarcity of cross-border offerings in practice. *PART IV* examines the proposed procedures under FESCO's European Passport Report, and the current legislative status surrounding the harmonization of E.U. law pertaining to cross-border offerings, by focusing on the Proposed Prospectus Directive. This part also examines further hurdles that implementation of a harmonized system that will need to be overcome based on the realities of the current system and the outcry from the securities industry. Finally, a brief conclusion is provided.

PART I:THE E.U. SYSTEM OF REGULATING SECURITIES OFFERINGS

The E.U.'s current system of securities regulation, a product of over twenty years of directive drafting and implementation, differs significantly from that of the United States in that it lacks any sort of legal uniformity in terms of laws that apply to pan-E.U. securities offerings.¹² While one commentator has described the E.U. as "the world's primary actor in accomplishing multinational regulatory

10. *Id.* These "particulars" involved the creation of procedures whereby the prospectus and disclosure documents provided to the primary listing authority would be valid in other jurisdictions where the offering was to be made subject only to a notification requirement. *Id.*

11. *See, e.g.*, Securities Act of 1933, 15 U.S.C. § 77b (1933) (providing an exhaustive definition of the term "security").

12. *See* Giovanni Nardulli and Antonio Segni, *EU Cross Border Securities Offerings: An Overview*, 19 FORDHAM INT'L L. J. 887, 887 (1996).

harmony in the field of securities regulation,"¹³ the E.U. has not been successful in fully integrating its capital markets. Generally speaking, the U.S.'s interstate sale of securities calls for the application of uniform federal laws and regulations – primarily by the Securities Act of 1933¹⁴ and the Securities Exchange Act of 1934¹⁵ – and involves the jurisdiction of a single compliance and enforcement supervisor: the Securities and Exchange Commission (SEC).¹⁶ On the other hand, under the E.U. system, there lacks both a uniform system of laws that apply generally to pan-E.U. securities offerings and a supervisory agency, or “super-regulator,” to ensure compliance with and enforcement of laws pertaining to financial markets.¹⁷ In place of an over-arching regulatory scheme, E.U. Member States maintain jurisdiction over securities offerings occurring within their borders, which means that cross-border securities offerings are forced to “conform with diverse national rules and regulations” and creates certain regulatory inconsistencies insofar as providing information is concerned.¹⁸

The E.U. rules relating to the securities industry and, more specifically, to the public offering of securities consist of various directives, a form of binding legislation upon each Member State to which the directive is addressed as to the result that it is to achieve, but which leaves to the discretion of national authorities “the choice of form and methods.”¹⁹ Directives are considered the most flexible of the various forms of legislation that can be adopted by E.U. Member States since the Member States must implement directives through their own ad-hoc national legislation, thereby maintaining their own

13. Manning Gilbert Warren III, *The European Union's Investment Services Directive*, 15 U. PA. J. INT'L. BUS. L. 181, 181 (1994).

14. 15 U.S.C. § 77a et seq.

15. 15 U.S.C. § 78a et seq.

16. See *A Ragbag of Reform: Europe's Ragbag of Financial Regulation: National Governments and EU Policymakers are Reshaping Europe's System of Financial Regulation. But They Cannot Agree on Which Shape will Make Their Markets Work Best*, ECONOMIST, Mar. 3, 2001, available at 2001 WL 7317931.

17. See Nardulli, *supra* note 12, at 888. See also Initial Report, *supra* note 6, at Introduction. See generally Karmel, *supra* note 2 (calling for the creation of a single SEC-type regulator to watch over the E.U.'s financial markets).

18. See Nardulli, *supra* note 12, at 887. See also Proposed Prospectus Directive, *supra* note 3, at Explanatory Memorandum (recognizing that differences in terms of practices and interpretations based on “distinct traditions within the European Union regarding the content and layout of prospectuses” and the time required to check information contained in those prospectuses cause inconsistencies, thereby fragmenting the E.U.'s financial markets).

19. Article 249 (ex Article 189), CONSOLIDATED VERSION OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY, Nov. 10, 1997, O.J. (C 340) 173 (1997), available at http://europa.eu.int/eur-lex/en/treaties/dat/ec_cons_treaty_en.pdf [hereinafter EC TREATY].

jurisdiction.²⁰ Therefore, the various directives related to the E.U. securities markets cannot and do not represent a superior system of legal authority for multi-state transactions.²¹ Rather, in the words of two commentators, the aim of the E.U. securities offering directives is:

to form a common background of provisions in order to create uniform *local* laws based on the following priorities: (1) to ensure the existence of *minimum standards of quality and information* concerning the securities traded, the issuers and the offerors involved; (2) to ensure *thorough supervision* of the securities market at a local and global level, by *fostering cooperation among national regulatory bodies*; and (3) *to make national markets accessible to issuers and intermediaries who have been admitted and are regulated in other Member States* through the elimination of regulatory barriers that are not justified by material interests and de facto impede the free circulation of services and products.²²

Accordingly, the European Union's use of directives still requires legal counsel to examine and comply with the varying national laws of the Member States in which their client-issuers wish to list or offer for sale securities, and prevents issuers from obtaining a single "passport" that would allow an issuer to offer its securities in multiple Member States, without having to comply with the local regulations of *each* Member State in which it offers the securities.²³ Thus, while an issuer may technically offer its securities to investors in some or all of the E.U.'s Member States, not only will that issuer have to check the specific directives that will apply to it depending on whether the issuer's securities offered are (i) listed on a stock exchange (in which case the Listing Particulars Directive²⁴ applies), or (ii) unlisted (in which case the Public Offering Prospectus Directive²⁵ applies), but will

20. See TOM KENNEDY, *LEARNING EUROPEAN LAW: A PRIMER AND VADE-MECUM* 114 (1998) (stating that directives are considered to represent the "collective will of the Member States to achieve certain objectives" but leaves to those Member States to whom the directive is addressed the implementation means by which they are to achieve that result "in accordance with their own legal, constitutional or social circumstances.").

21. See Nardulli, *supra* note 12, at 888.

22. Nardulli, *supra* note 12, at 888 (emphasis added).

23. The concept of a single issuer "passport" has gained popularity since being introduced by the Lisbon European Council in March 2000, recommended by FESCO in its report to the European Commission "A European Passport for Issuers" and adopted by the European Commission in its Proposed Prospectus Directive as a means of "simplify[ing] regulatory compliance for issuers" and ensuring investor protection. See Proposed Prospectus Directive, *supra* note 3, at Explanatory Memorandum.

24. Council Directive 80/390/EEC, 1980 O.J. (L100) 1, amended by Council Directive 87/345/EEC, 1987 O.J. (L 15/81), Council Directive No. 90/211/EEC, 1990 O.J. (L 112/24), and Council Directive No. 94/18/EEC, 1994 O.J. (L 135/1) [hereinafter Listing Particulars Directive].

25. Council Directive 89/298/EEC, 1989 O.J. (L124) 8 [hereinafter Public Offering Prospectus Directive].

have to check each Member State's specific laws on public offerings and disclosure of information.²⁶

PART II: THE DIRECTIVES CURRENTLY APPLICABLE TO EUROPEAN PAN-E.U. PUBLIC OFFERINGS

Some commentators attribute the surge in popularity among European companies deciding to "go public" by issuing equity securities stems to two sources: under-capitalization and the privatization of state entities.²⁷ Others attribute the popularity of securities issuances to the introduction of the Euro as the lone currency across the Member States, which effectively created a single market for cash, as well as to the technological developments now available for equity research and electronic trading.²⁸ Generally speaking, a public offering is undertaken in one of two ways:

[F]irst, securities can be listed on one or more stock exchanges in the same or in different countries. Second, securities can be distributed without using the market created by the stock exchange, but by offering the securities directly into the large financial market of Continental Europe.²⁹

Employing the latter method, as opposed to using a market created by the stock exchanges, allows direct distribution of securities into Europe's large financial market without jumping through the dual regulatory hoops required by the stock exchange rules and applicable directives when undertaking an exchange listing. Both methods are discussed below, beginning with the offering of securities on multiple stock exchanges.

A. *Public Offerings of Exchange-Listed Securities*

In Europe, the national law of the stock exchange governs securities trading activities on a stock exchange.³⁰ As a preliminary matter, it is the law of the stock exchange that "will decide whether the financial instrument in question is a security and is therefore qualified

26. See Hal S. Scott, *Internationalization of Primary Public Securities Markets*, 63 LAW & CONTEMP. PROBS. 82 (2000).

27. Gerhard Wegen and Christian Lindemann, *The Law Applicable to Public Offerings in Continental Europe*, in THE LAW OF CROSS-BORDER SECURITIES TRANSACTIONS 153 (Hans Van Houte ed., 1999). See also Initial Report, *supra* note 6, at 9 (pointing out that the use of equity financing and corporate bonds by European companies has overtaken the traditional reliance on bank credit for corporate financing).

28. See *Ragbag of Reform*, *supra* note 16.

29. Wegen, *supra* note 27.

30. Wegen, *supra* note 27, at 154.

to be listed.³¹ However, while the national law of the stock exchange governs, the legal regime for listing equity securities is not purely national: an over-arching concept that governs cross-border offering of equity securities is “mutual recognition,” (sometimes referred to as “reciprocal recognition”³²) a concept prevalent throughout E.U. law as a means of harmonizing the laws of its Member States, and in simplest terms means that what is acceptable in one country is recognized as acceptable in a second country.³³ As applied to exchange-based offerings of securities, mutual recognition simply means that a prospectus used for a “primary listing” in one Member State (the home state) is sufficient for the “secondary listing” on the stock exchange of a second Member State (the host state), subject to minor differences in the States’ legal regimes.³⁴ The policy choice behind employing mutual recognition in European securities law is and was of course to produce some form of harmony in the Member States’ securities regulations, thereby facilitating greater efficiency in Europe’s fragmented securities markets and keeping the cost of multi-state offerings reasonable. With an understanding of mutual recognition in mind, the context behind the directives most relevant to offering securities on stock exchanges of two or more Member States becomes somewhat easy to understand.³⁵

1. The Admission Directive

As its title pronounces, Council Directive 79/279/EEC *Coordinating the Conditions for the Admission of Securities for Official Stock Exchange Listing*,³⁶ has the purpose of outlining the conditions for listing on a stock exchange of a Member States, taking into account the dual goals of (i) ensuring maintenance of adequate investor protection and (ii) allowing greater “interpenetration of the national securities markets” and thereby “contribut[ing] to the prospect of establishing a European capital market.”³⁷ The Council recognized that coordination by the Admission Directive was limited to the establishment of “*minimum* conditions for admission” and this partial coordination “constitute[d] a first step towards subsequent closer alignment of the rules of Member States in this field.”³⁸ Article 3 of the Admission

31. *Id.* at 156.

32. See Nardulli, *supra* note 12, at 890.

33. *Cf. id.*

34. See Wegen, *supra* note 27, at 154.

35. For comparative summaries of the three exchange listing directives described below, see generally Nardulli, *supra* note 12; See also Todd A. Sulger, *Harmonization of the Securities Market Regulations in the European Union: Is the Price Tag too High?*, 29 CAL. W. INT’L L.J. 221, 224-228 (1998).

36. Council Directive 79/279/EEC, 1979 O.J. (L 66) 21, amended by Council Directive 82/148/EEC, 1982 O.J. (L 62) 22 [hereinafter Admission Directive].

37. See *id.*, at Preamble.

38. *Id.*

Directive requires Member States to ensure that "securities may not be admitted to official listing on any stock exchange situated or operating within their territory unless the conditions laid down by this Directive are satisfied" thereby establishing minimum common listing criteria for equity and debt securities that list on E.U. Members' stock exchanges.³⁹ It is important to note that since the Admission Directive defines only minimum standards, the *specific* requirements of each country's stock exchange need to be consulted and adhered to as well. The Admission Directive provides Member States with discretion to impose *more* stringent requirements than those set forth in the Directive, so long as these requirements are applied on a non-discriminatory basis to all issuers who seek admission for listing of securities on a Member State exchange. For example, Article 5(4) of the Directive states that Member States are free to, "in accordance with their own national rules, require issuers admitted to official listings to inform the public on a regular basis of their financial position and the general course of their business."⁴⁰ Thus, due to the Admission Directive's adherence to mutual recognition, the content of the admission requirements for listing securities for trading on a stock exchange in each E.U. Member State, though *not* uniform, are very similar.

2. The Interim Reports Directive

Following closely on the heels of the Admission Directive and the Listing Particulars Directive (discussed below), the European Council adopted in February 1982 Council Directive 82/121/EEC *on Information to be Published in a Regular Basis by Companies the Shares of Which have been Admitted to Official Stock Exchange Listing*.⁴¹ Commonly referred to as the Interim Reports Directive, this Directive complements the Admission Directive's requirements on the publication of information, and requires company-issuers of equity securities listed on Member State stock exchanges to produce half-yearly reports to relate the company's activities and profits and losses for the relevant six-month period in both explanatory and tabular formats.⁴² The report must indicate both current financial figures and figures from the preceding financial year showing, at a minimum, the issuer's net asset turnover and the issuer's before-tax profit or loss, so that investors can make an informed assessment as to the trends of the company's activities and profits and losses.⁴³ An explanatory statement must also be included indicating the company's business prospects for the

39. *See id.*, at art. 3.

40. *See* Admission Directive *supra* note 36, at art. 5(4).

41. Council Directive 82/121/EEC, 1982 O.J. (L 48) 26 [hereinafter Interim Reports Directive].

42. *See id.*, at arts. 4 and 5.

43. *See* Interim Reports Directive, *supra* note 41, at arts. 4 and 5.

remainder of the financial year as well as “special factors” that would shed light on the company’s activities.⁴⁴

These continuing reporting requirements are akin to the annual 10K and quarterly 10Q forms that must be published by issuers in the United States under the Securities Exchange Act of 1934.⁴⁵ Again, the purpose of the notice requirements is to allow investors to make informed appraisals of the security issue. The notice requirements fulfill the Directive’s goal of providing equivalent investor protection for the entire E.U. “throughout the period during which the securities are listed” and “contributing towards the establishment of a genuine Community capital market by permitting a fuller interpenetration of securities markets.”⁴⁶

Additionally, in light of the fact that the E.U. currently lacks uniform accounting standards,⁴⁷ determining which accounting standards have to be met in these reports “is not resolved by the application of mandatory national standards or regulations of the stock exchange involved, but by using conflict of law rules.”⁴⁸ Therefore, the law governing the company determines the law applicable to accounting standards, and “the law governing the company is determined by the rules of conflict of laws of the Member State in which the listing is sought.”⁴⁹ The different accounting systems employed by each Member State are and remain a major impediment to “ensur[ing] the effective protection of investors and the proper operation of stock exchanges”⁵⁰ envisioned by the Council in this Directive. Furthermore, heightened disclosure standards employed by certain Member State exchanges means that what may be appropriate for one exchange is lacking in detail for another exchange.

3. The Listing Particulars Directive

Of the directives described herein, the Listing Particulars Directive is perhaps of greatest significance in terms of what is currently going on legislatively in the E.U. securities field. This directive was adopted in 1980 in order to “safeguard . . . actual and potential investors” by requiring that Member States “ensure that the admission of securities

44. *Id.*

45. See 15 U.S.C. § 78m (1933) (“Periodical and Other Reports”).

46. See Interim Reports Directive, *supra* note 41, at Preamble.

47. See Initial Report, *supra* note 6, at 16. See also Karel Van Hulle, *Accounting & Auditing: Developments in the EU*, ACCT. IR. 10 (Apr. 4, 2001), available at 2001 WL 15067274 (explaining that the E.U. is undergoing efforts to converge its accounting directives in order to produce accounting standards that are in line with International Accounting Standards (IAS)).

48. Wegen, *supra* note 27, at 156.

49. *Id.*

50. See Interim Reports Directive, *supra* note 41, at Preamble.

to official listing on a stock exchange situated or operating within their territories [be] conditional upon the publication of an information sheet" referred to as "listing particulars".⁵¹ Though it does not use the term "prospectus" anywhere within the Directive, the Listing Particulars Directive and the Public Offering Prospectus Directive (discussed below) are the E.U.'s two "Prospectus Directives," and are the subjects of reform in the European Commission's Proposed Prospectus Directive. The Listing Particulars Directive applies to those securities that are "the subject of an application for admission to official listing on a stock exchange situated or operating within a Member State."⁵² Article 4 of the Listing Particulars Directive requires that the listing particulars contain information on the particular issuer and securities of which application is being made "necessary to enable investors . . . to make an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the issuer and of the rights attaching to such securities."⁵³ At a minimum, the listing particulars, or information sheet, contains: information concerning the issuer, the security, the corporation's capital position, business activities and financial position, the officers and directors of the corporation, and the corporation's recent developments, as well as current business prospects.⁵⁴

To reiterate, the Listing Particulars Directive, like the other Directives relating to the listing of securities on stock exchanges in the E.U., requires only that Member States adopt the minimum standards and guidelines set out in those Directives. Member States remain free to supplement the minimum requirements with more extensive information disclosure requirements and have done so.⁵⁵ Consequently, levels of disclosure vary from Member State to Member State; while all States meet the minimum threshold level of disclosure required by the Listing Particulars Directive, others require a heightened standard of disclosure from issuers wishing to list in their forum.

As one commentator points out, the Listing Particulars Directive serves as a limitation on an issuer's ability to "forum shop" for favorable disclosure rules within the E.U. by requiring that the issuer list in the country of its registered office, i.e., its home state if it will be listing its securities there at all.⁵⁶ By way of example, this commentator points out that this limitation serves as a mechanism to prevent a French company seeking to list its securities on the Paris Bourse and other exchanges from first listing its securities on another Member State's

51. See Listing Particulars Directive, *supra* note 24, at Preamble & art. 3.

52. See *id.* at art. 1.

53. See *id.* at art. 4.

54. See *id.* at art. 8.

55. See Initial Report, *supra* note 6, at 2 & 16.

56. See Scott, *supra* note 26, at 82.

exchange which might have less disclosure requirements than those in France.⁵⁷ The French issuer would have to list in Paris first, with the result that its securities would be subject to French disclosure rules throughout the E.U.⁵⁸ This bars a circumvention of home state disclosure regulations in states with more stringent disclosure regulation, and is consistent with the notions of investor protection, an overriding principle among all securities regulation in the E.U.

In summing up the three E.U. Directives relating to stock exchange-listed securities, the mutual recognition-based directives fail to harmonize securities listing requirements in the Member States. While the principle of mutual recognition again applies to a substantial part of the conditions for a secondary listing (e.g., a listing on a second or third stock exchange),⁵⁹ the fact that the directives spell out only minimum requirements and require that domestic law in each Member State where listing is sought be consulted to determine the additional requirements that the State mandates above and beyond those contained in the directives means that issuers are required to incur additional trouble and expense to facilitate multi-stock exchange listings.

B. Public Offerings of Unlisted Securities

A second way to publicly offer securities is through open market transactions whereby an issuer, care of an underwriter or underwriting syndicate, offers the securities to the public by direct purchase, as opposed to listing them on a stock exchange.⁶⁰ As discussed above, when securities are going to be listed on an official stock exchange the prospectus, or "listing particulars," must conform to the minimum specifications of the Listing Particulars Directive as adopted by the Member States.

The purpose behind the Public Offering Prospectus Directive,⁶¹ on the other hand, is to set out how prospectuses should be prepared where unlisted securities, or transferable securities, which include securities admitted to trading on a regulated market, but not listed on an official stock exchange, are offered to the public.⁶² Like the Listing Particulars Directive,⁶³ the Public Offering Prospectus Directive sets out the framework for information disclosure when transferable securities are

57. *Id.*

58. *Id.*

59. See Wegen, *supra* note 27, at 157.

60. See *id.*, at 160.

61. Public Offering Prospectus Directive, *supra* note 25.

62. See Wegen, *supra* note 27, at 160.

63. Listing Particulars Directive, *supra* note 24.

offered to the public.⁶⁴ Article 1 of the Public Offering Prospectus Directive establishes that the Directive applies to “transferable securities which are offered to the public for the first time in a Member State provided that these securities are not already listed on a stock exchange situated or operating in that Member State.”⁶⁵ Article 4 requires that Member States ensure that a prospectus be published by an issuer offering transferable securities to the public within their territories, with certain exceptions to this rule listed in Article 5.⁶⁶ Adhering to the mutual recognition concept, Directive 90/211/EEC amending the Listing Particulars Directive points out that Article 21 of the Public Offering Prospectus Directive provides that “where public offers are made simultaneously or within short intervals of one another in two or more Member States, a public-offer prospectus drawn up and approved in accordance with Article 7, 8 or 12 of that Directive must be recognized as a public-offer prospectus in the other Member States.”⁶⁷

Furthermore, Directive 90/211/EEC points out that:

where application for admission to official listing in one or more Member States is made and the securities have been the subject of a public-offer prospectus drawn up and approved in any Member State in accordance with Article 7, 8 or 12 of the Public Offering Directive in the three months preceding the application for admission [to the stock exchange], the public-offer prospectus shall be recognized, subject to any translation, as listing particulars in the Member State or States in which application for admission to official listing is made, without its being necessary to obtain the approval of the competent authorities of that Member State or those Member States and without their being able to require that additional information be included in the prospectus.⁶⁸

The competent authorities may, however, require that the prospectus include information specific to the market of the country of admission “concerning, in particular, the income tax system, the financial organizations retained to act as paying agents for the issuer in the country of admission and the ways in which notices to investors are published.”⁶⁹ Here again, Member States remain free to make issuers supplement their prospectuses with additional information, thereby hindering the goal of capital market integration.

PART III: SHORTCOMINGS OF THE E.U. DIRECTIVES AND POSSIBLE

64. Her Majesty's Treasury, Public Offers of Securities 17 (1998), available at www.hm-treasury.gov.uk/html/posec.html (last visited Mar. 29, 2001) [hereinafter Public Offers Report].

65. Public Offering Prospectus Directive, *supra* note 25, at art. 1.

66. *See id.* at arts. 4 & 5.

67. Council Directive 90/211/EEC, 1990 O.J. (L112) 3.5.

68. *Id.* at art. 2(1).

69. Public Offering Prospectus Directive, *supra* note 25 at art. 21.

REASONS FOR THE SHORTAGE OF CROSS-BORDER OFFERINGS

While the mutual recognition principle contained in the directives summarized above allows offers of securities in multiple Member States of the E.U., few cross-border offers have been effectuated in reality.⁷⁰ In fact, one commentator points out “that the 1999 and 2000 Deutsche Telekom distributions are the only instances of a European-wide public offering.”⁷¹ A 1998 United Kingdom Treasury report “proposing amendments to the U.K. legislation on the public offer of securities and seeking views on reforming public offers of securities within the E.U.”⁷² recognized that, theoretically at least, mutually recognized prospectuses provided companies with the advantage of being able to access the widest possible range of investors across the European Union.⁷³ The economic benefits of a cross-border offering system are obvious. On the one hand, it allows investors the opportunity invest in a wider range of companies and diversify their risk more easily across the economies of several Member States. On the other hand, companies would be able to access a much wider pool of investors.⁷⁴ Furthermore, with a single framework in place, European issuers should – theoretically, anyway – be able to access capital markets in multiple states at a low cost. Thus, in its ideal form the directives on the listing and offering of securities were to benefit both investors and issuers.

Various theories exist for the infrequent use of cross-border offerings, but all focus on the complexity⁷⁵, uncertainty, cost and lack of a harmonized securities law under the current directive-based system.⁷⁶ The specific reasons are varied and are a product of “unnecessary differences in the various jurisdictions of the E.U.”⁷⁷ The reasons include: translation costs,⁷⁸ compliance with individual countries’

70. See Proposed Prospectus Directive, *supra* note 3, at “General Comments” (pointing out that unless the directives in place undergo revision, “the European financial market will remain fragmented ... [and] cross border capital raising will remain the exception, rather than the rule – the antithesis of the logic of the single currency”); see also Scott, *supra* note 26, at 82; Initial Report, *supra* note 6, at 15-17.

71. Scott, *supra* note 26, at 83 (citing A. Ostrovsky & U. Harnishfeger, *Deutsche Telekom in Global Balancing Act*, FIN. TIMES, May 15, 2000 at 33).

72. See Public Offers Report, *supra* note 64.

73. See *id.* at 18. See also Scott, *supra* note 26, at 82.

74. Public Offers Report, *supra* note 64, at 18.

75. See Initial Report, *supra* note 6, at 17 (arguing that the large quantity of regulatory authorities creates inefficiency, unnecessary cost and confusion for issuers).

76. See *id.* at 16 (pointing out that issuers are required to comply with differing requirements “in order to gain the approval of local Regulatory Authorities” and that the absence of a generally agreed definition of “public offer” across the E.U. means that ‘public offers’ may in fact be defined as ‘private placements’ depending on the regulations of a particular Member State jurisdiction).

77. *Id.* at 2.

78. See Proposed Prospectus Directive, *supra* note 3, at “General Comments” (pointing out that a requirement to “fully translate the content of a prospectus does not

information and disclosure requirements,⁷⁹ and legal expenses incurred to determine how investors in each Member State need to be notified.⁸⁰ The predominant theory holds that transaction costs incurred by using the mutual recognition procedure are too high and pose a stumbling block for issuers, especially for small and medium-sized issuers who typically have limited finances.⁸¹ A frequent commentator in the securities field also theorizes that the cross-border offering directives are infrequently utilized due to "the wide scope for private placements within the [E.U.] and the relative ease of the resale of privately distributed securities to public investors."⁸²

PART IV: PROPOSALS TOWARD HARMONIZING THE CROSS-BORDER OFFERING SYSTEM

A. *The FESCO Issuer Passport Proposal*

While the E.U. has discussed perfecting its cross-border offering system of regulation in past years,⁸³ not until recently had concrete corrective measures been advanced by the European Commission.⁸⁴ Prior to the publication of the Proposed Prospectus Directive, proposals suggested retaining the current structure, under which the receiving state competent authorities recognize "incoming" prospectuses, but removing the ability of these authorities to require some or all additional information or translation.⁸⁵ The Forum of European Securities Commission's (FESCO) 2000 *European "Passport" for Issuers* provides the most concrete plan to improve and at the same time to simplify the system of cross-border securities offerings.⁸⁶ FESCO was founded in 1997 with the mission of developing uniform standards of regulation in Europe's financial markets.⁸⁷ Drafted at the bequest of the European Commission, FESCO's European Passport Report recognized that the system is meant to facilitate cross-border offerings, and that the level of disclosure should be the same for *both* listed and

encourage multinational offerings or admission to trading").

79. See Financial Services Action Plan, *supra* note 3, at 6 (stating that production of multiple sets of documentation to conform with national requirements in order to offer securities in a second or third Member State is costly and inhibits pan-E.U. capital-raising activity).

80. See Scott, *supra* note 26, at 83.

81. Public Offers Report, *supra* note 69, at art. 5.6.

82. See Scott, *supra* note 26, at 83.

83. See generally Financial Services Action Plan, *supra* note 3.

84. See Proposed Prospectus Directive, *supra* note 3.

85. See Financial Services Action Plan, *supra* note 3.

86. European Passport Report, *supra* note 8.

87. See FESCO's Organization, *supra* note 7.

unlisted securities.⁸⁸ But FESCO goes on to boldly suggest that “the level of disclosure should be the *same* throughout the E.U. market and therefore no difference should exist between domestic and cross-border issues.”⁸⁹ The incorporation of this specific proposal would be a dramatically positive step towards complete harmonization of securities regulation because the disclosure standards would be uniform throughout the E.U. Complete harmonization in the information disclosure requirements would remedy the twin reasons for the lack of cross-border offerings: it would create greater efficiency in terms of issuers’ abilities to disclose once to one regulator, and by lowering the transaction costs associated with disclosure and multi-State offerings or listings. Under the current system, the level of securities market regulation varies dramatically from one Member State to another. The directives described above after all stipulate only the minimum required disclosure standards, allowing Member States, if so inclined, to require greater disclosure. Consequently, the level of regulation runs the spectrum from the minimum directive requirements to highly complex regulatory disclosure systems.

FESCO proposed the creation of a uniform regulatory system thereby creating certainty vis-à-vis the treatment of investors in all jurisdictions. The rationale behind the FESCO proposal is simplification of the steps issuers wishing to extend offers to other Member States need to undertake. This requires replacing the “mutual recognition principle with a procedure based on ‘simple notification.’”⁹⁰ The notification would be based on enhanced European disclosure standards that follow those disclosure standards created by International Organization of Securities Commissions (IOSCO).⁹¹

FESCO’s Issuer Passport balances the dual needs for investor protection on the one hand with issuer efficiency on the other. The advantages to European investors under this proposal are that investors will: (i) have access to securities offered by other European companies, and (ii) have the same information throughout the E.U. The advantages for issuers of the European Passport are the reduction of bureaucratic work, while at the same time gaining access to all of the E.U. Member States with little more effort than is currently necessary to obtain approval for a domestic offering. Additionally, the “Issuer Passport” minimizes the risk that an issuance gets to the market after market conditions have changed, courtesy of the optional shelf registration system.

Under the FESCO proposal, the home country authority (where the

88. See European Passport Report, *supra* note 8, at 5.

89. *Id.*

90. See European Passport Report, *supra* note 8, at 3.

91. *Id.*

issuer has its registered office or its primary listing) would fully control the entire set of documents relating to the securities offering.⁹² Once the prospectus is approved by the home country authority, the issuer may make an offer or list its shares in other Member States by simply notifying its intention to the competent authorities where it is making the offer.⁹³ The notification would be accompanied by the approved prospectus, the approval certificate, and if required, a translation of the summary of the prospectus.⁹⁴ Under the proposal, the host country authority would not be allowed to ask for further information. Adoption of the enhanced European IOSCO-based disclosure standards would replace the current disclosure requirements provided in the Listing Particulars Directive and the Public Offering Prospectus Directive, thereby creating greater uniformity.⁹⁵

Finally, while the FESCO proposal deals with creating uniformity in the notification and disclosure system, a major part of creating that uniformity will require the adoption of uniform accounting standards.⁹⁶ Like the varying degrees of securities regulation employed by Member States, there is not a uniform accounting standard to which all Members adhere.⁹⁷ Under the current system, preparation of disclosure documents is burdensome because of the lack of universally accepted accounting practices. IOSCO has "urged the development of internationally accepted accounting and auditing standards" to remedy this problem.⁹⁸ However, adoption of international accounting standards, though necessary to the success of harmonizing system of cross-border offerings, will not be without hurdles and such standards "will need to be flexible enough to support variations resulting from peculiarities in legal, tax, and regulatory structure, differing economic environments", and other country-specific circumstances.⁹⁹

B. Other Developments in the Sphere of Capital Markets Integration

In February 2001, the Committee of Wise Men on the Regulation of European Securities Markets, chaired by Baron Alexandre Lamfalussy, urged the creation of a single Committee of European Securities Regulators with the specific mandate of drafting legislation to facilitate an improved and better integrated pan-E.U. securities market for the

92. See European Passport Report, *supra* note 8, at 4.

93. *Id.*

94. *Id.*

95. *Id.*

96. See Initial Report, *supra* note 6, at 16.

97. See *id.*

98. See Samuel Wolff, *Recent Developments in International Securities Regulation*, 23 DENV. J. INT'L L. & POL'Y 347, 402 (1995).

99. See Sulger, *supra* note 35, at 236.

European Commission's review.¹⁰⁰ The Lamfalussy Report, to which it is referred, envisioned that the legislation would be the product of the advice of a second independent committee of European regulators, made up of Member State representatives from "competent authorities in the securities field."¹⁰¹ Over some disagreement in the European Parliament regarding the powers of the proposed Committee of European Securities Regulators (CESR), the European Commission set up the CESR in May 2001.¹⁰² It takes over the work of harmonizing securities offerings once undertaken by FESCO.¹⁰³ FESCO created the Constitution for the CESR whose role is laid out as (i) improving coordination between securities regulators, (ii) advising the European Commission in regards to the drafting of measures in the securities industry, and (iii) working to ensure "more consistent and timely day-to-day implementation of community legislation in the Member States."¹⁰⁴ Some have criticized the creation of committees such as the CESR because of the likelihood that it will be slow in implementing changes.¹⁰⁵

C. *The Proposed Prospectus Directive*

On May 30, 2001, the European Commission produced its Proposed Prospectus Directive. In view of the urgency surrounding the upgrade of the two existing Prospectus Directives – namely the Listing Particulars Directive and the Public Offering Prospectus Directive, both discussed above – and in view of the "extensive consultation" already undertaken by FESCO (especially in its European Passport for Issuers), the European Commission produced its Proposed Directive without "delay[ing] it through recourse to a more formal consultation process as foreseen in the Lamfalussy Report."¹⁰⁶

Broadly stated, the Proposed Prospectus Directive adopts many of the ideas laid out by FESCO in its European Passport Report. The Proposed Prospectus Directive is very 'pro-passport' in terms of the information to be contained in each prospectus issued to each Member

100. See John Willman, *New Pledge on Securities Plan*, FIN. TIMES, June 20, 2001, available at <http://www.ft.com> (last visited Feb. 23, 2002).

101. See John Willman, *New Pledge on Securities Plan*, FIN. TIMES, June 20, 2001, available at <http://www.ft.com> (last visited Feb. 23, 2002).

102. See *id.*

103. See *id.*

104. See *Continuity and orderly functioning of markets in Europe*, M2 PRESSWIRE, Sept. 12, 2001, available at 2001 WL 26353828.

105. See Proposed Prospectus Directive, *supra* note 3, at "General Comments" (expressing the view that to application of the "more formal process" envisioned in the Lamfalussy Report would be to merely "delay" a proposal, unappealing to the Commission in light of the "urgency" of a new framework and the extensiveness of consultation already carried out).

106. See Proposed Prospectus Directive, *supra* note 3, at "General Comments".

State, and the features of the Proposed Prospectus Directive were based on (i) introduction of enhanced disclosure standards in line with international standards, (ii) introduction of a registration document system so as to ensure annual update of key issuer information, (iii) the possibility of offering securities to trading on the basis of simple notification of the prospectus approved by the home competent authority, and (iv) concentration of responsibilities in the home administrative competent authority.¹⁰⁷ The Proposed Prospectus Directive would do away with the "existing mutual recognition system" and replace that with a "simple notification system," akin to that used by those E.U. directives involving financial services¹⁰⁸ and as envisioned in FESCO's European Passport Report.¹⁰⁹ Therefore, under this system, host or secondary Member State, authorities would be unable to request additional information in a prospectus.¹¹⁰ Furthermore, the Proposed Prospectus Directive tackles the issue of multiple translations, a transaction cost that some consider a deterrent to cross-border offerings and stock exchange listings.¹¹¹ The Proposal states that "host Member States competent authorities shall only be entitled to ask for a translation of the *summary* of the prospectus provided that the full prospectus is drafted in a language which is customary in the sphere of finance (normally English)".¹¹² Thus, the key feature of the Proposed Prospectus Directive is a single set of disclosure documents, regardless of the size of the issuer, to be filed with the home Member State competent authority, and thereafter notified to host Member State competent authorities as appropriate.¹¹³ This has proved to be a significant point of contention, with several European securities industry groups arguing that small- and medium-sized enterprise issuers (SMEs) will be adversely affected by such a requirement.¹¹⁴

In September 2001, in advance of the first scheduled meeting of the Committee of European Securities Regulators held on September 11,

107. See Proposed Prospectus Directive, *supra* note 3, at "General Comments".

108. *Id.*

109. See European Passport Report, *supra* note 8, at 3.

110. See Proposed Prospectus Directive, *supra* note 3, at "General Comments".

111. *Id.*

112. *Id.*

113. See Jonathan Todd, *Letter to the Editor: Prospectus Proposal Would Lower Cost of Raising Capital*, FIN. TIMES, Sept. 9, 2001, available at www.ft.com (last visited Feb. 21, 2002).

114. See Andrew Croke, *Brussels Study Deepens Divide over EU Prospectus Laws*, available at www.legalmediagroup.com (last visited Jan. 20, 2002); see also London Stock Exchange, Comments from the London Stock Exchange on the Proposed Prospectus Directive, (Sept. 2001), available at <http://www.londonstockexchange.com/press/pdfs/pdwebstory.pdf> (last visited Feb. 11, 2002) (arguing that mandatory prospectus filing and annual updates for all issuers will significantly burden SMEs in terms of increasing the cost of raising capital) [hereinafter LSE Comments].

the Financial Times reported in two separate articles on European banks' and securities firms' opposition to the Commission's Proposed Prospectus Directive.¹¹⁵ Three associations – the International Primary Market Association, the International Securities Market Association, and the Bond Market Association – accused the European Commission of failing to “consult widely enough” in the securities industry prior to its publication and demanded the E.U. to either drop its proposal or turn it into a consultation paper, which could be watered down or blocked.¹¹⁶ In terms of membership, these three entities encompass virtually all of Europe's banks and securities firms.¹¹⁷ In spite of their claims to support a single European “passport” for issuers, the associations said that the proposal failed to address key issues and needed to be fundamentally rewritten to correct a number of errors and omissions which could have been avoided had market consultation taken place before the draft directive was published.¹¹⁸ Specifically, the associations alleged inadequate treatment of “common liability standards, due diligence, common definitions of a public offer, nor did it accelerate the time for approval of prospectuses to meet securities deadlines.”¹¹⁹ Critics point out that a “one size fits all” regime would be too burdensome on SMEs looking to access the capital markets because they would need to incur unnecessary costs to produce the requisite documentation and opinions.¹²⁰ Others point out that:

Requirements that issuers file a prospectus with the competent authority of the Member State in which they have their registered office would fragment the markets and distort competition, they say. Regulators would impose varying levels of disclosure, stunting the goal of a single passport. And the Commission's shelf registration system would require issuers to expend the cost of registering an update of a large part of their prospectus for scrutiny every year, regardless of whether or not they access the capital markets.¹²¹

Finally, the associations allege that the Proposal would increase the

115. See Vincent Boland, *Call to Scrap Share Reform*, FIN. TIMES, Sept. 5, 2001, available at <http://www.ft.com> (last visited Feb. 22, 2002); see also Vincent Boland, *Opposition Mounts to EU Securities Directive*, FIN. TIMES Sept. 7, 2001, available at <http://www.ft.com> (last visited Feb. 22, 2002); Andrew Crooke, *Securities Markets Attack EU Prospectus Reforms*, Legal Media Group, Sept. 9, 2001, available at <http://www.legalmediagroup.com> (last visited Sept. 10, 2001).

116. See *Call to Scrap Share Reform*, *supra* note 115.

117. *Id.*

118. See *Securities Markets Attack EU Prospectus Reforms*, *supra* note 115.

119. See *Trade Associations Want EC to Drop or Redo Directive*, SEC. IND. NEWS, Oct. 1, 2001, available at 2001 WL 6554070.

120. Andrew Crooke, *Brussels Report to Suggest 60 Changes to Prospectus Directive*, Dec. 2, 2001, available at <http://www.legalmediagroup.com> (last visited Feb. 10, 2002). See also LSE Comments, *supra* note 114.

121. *Trade Associations*, *supra* note 119.

cost of raising capital in Europe.¹²²

The criticism to the proposed Directive was met with a vigorous defense launched by the European Commission's Spokesman for the Internal Market and Taxation Jonathan Todd and published in the *Financial Times* as a letter to the editor.¹²³ Attempting to clear up some of the "misunderstandings" about the Proposed Prospectus Directive, Mr. Todd addressed the fact that the Proposed Prospectus Directive created a single definition of both "public offer"¹²⁴ and "home member state" and called the Proposed Prospectus Directive a "framework directive," akin to that proposed in the Lamfalussy Report's recommendations, and stated that more detail would be produced in subsequent and more technical directives.¹²⁵ Insinuating that certain critics wish to maintain the status quo, Mr. Todd maintained that the door remained open for "constructive and informed comments" on the proposal.¹²⁶

The Proposed Prospectus Directive has suffered another setback. On December 2, 2001, it was announced that a draft report, commissioned by the European Parliamentary Committee on Economic and Monetary Affairs, and to be presented on December 4, proposed around sixty amendments to the Proposed Directive.¹²⁷ The report, prepared by Mr. Chris Huhne, a member of the British Parliament, features prominently reduction of the burden on SMEs, "making the 'shelf registration' system optional, and leaving a degree of choice of competent authority to issuers,"¹²⁸ a proposal that the London Stock Exchange favors very much.¹²⁹ It remains to be seen what effects this report and the numerous comments, reports and criticism that abound will have on the viability of the Proposed Prospectus Directive.

CONCLUSION

To truly appreciate what has been done in terms of improving the securities regulation to its current form in the E.U. and the direction in which it is heading, one must consider the history of such regulation in the E.U. This aside I think will better explain regulation as it stands in the E.U. presently as well as the susceptibility and proclivity for future

122. *See id.*

123. Todd, *supra* note 113.

124. Until the Proposed Prospectus Directive arrived, a common definition of the term "public offer" had eluded the European Commission. *See* Public Offering Prospectus Directive, *supra* note 25, at Introduction (stating that "so far, it has proved impossible to furnish a common definition of the term 'public offer' and all its constituent parts").

125. *See* Todd, *supra* note 113.

126. *See* Todd, *supra* note 113.

127. *See* Crooke, *supra* note 114.

128. *Id.*

129. *See* LSE Comments, *supra* note 114, at art. 4.2.

changes. “[I]n the 1980s, seven of the twelve E.U. countries did not require prospectus disclosure to investors in public offerings.”¹³⁰ Furthermore, no Member States “had a securities regulatory agency to enforce the laws that did exist.”¹³¹ As late as 1990, “nine of the twelve Member States failed to impose any criminal penalties for insider trading of securities.”¹³² These figures demonstrate that while regulatory agencies are now in place, these agencies are not particularly well-established, as opposed the United States’ own SEC, which was created over sixty years ago.¹³³ Arguably, the lack of foundation and deep-rooted history among the various E.U. securities regulators makes the propensity for modification care of a “passport” approach laid out in the Proposed Prospectus Directive that much higher. Furthermore, associations made up of Member State securities regulators – FESCO, for example – have recognized the need for a better system and endorsed proposals.

While the European Commission’s Proposed Prospectus Directive provides definitive steps towards effectuating the true harmonization of the E.U.’s capital markets, there exists some doubt as to the likelihood that these steps will be taken in their entirety, as evidenced by the recently published opposition to that Proposal. While there is some credibility to the claim that individual Member States would prefer not to lose control over their markets, and that different “attitudes towards corporate governance and investor protection” may hamper integration,¹³⁴ the E.U. has had substantial success in the integration of its Member States in the economic and financial arenas. As was the case with the controversy over adoption of the Euro as Europe’s singular currency, one will note that the Euro was so adopted. Furthermore, the commencement of the European Monetary Union (E.M.U.) and the formation of a European Central Bank also exemplify E.U. Member States’ willingness to evolve into a more unified economic powerhouse, because doing so is in both of their individual and collective interests. With much of E.U. corporate financing shifting from a dependency on bond issuances, bank lending and other credit-based mechanisms to a reliance on equity markets and the recognition that there are better ways for European companies to raise such capital, the tide is moving in the direction of legislative changes. The advantage to companies of a cost-effective means of raising capital through access to the widest range of investors is of course great. And,

130. Manning Gilbert Warren III, *The European Union’s Investment Services Directive*, 15 U. PA. J. INT’L. BUS. L. 181, 185 (1994).

131. *Id.*

132. *Id.* at 186.

133. The U.S. Congress created the SEC in 1934. See Introduction–The SEC: What We Do, available at <http://www.sec.gov/about/whatwedo.shtml> (last visited Feb. 5, 2002).

134. See Initial Report, *supra* note 6, at 20.

with general recognition that so-called "patchwork of regulation"¹³⁵ currently in place creates uncertainty and increased costs for issuers¹³⁶ the current system cannot remain in place for much longer. The simplicity behind the notion of a passport-based system in which one prospectus approved by an issuer's home country authority, which would have to be accepted throughout the EU for public offer and/or admission to trading on regulated markets is certainly an attractive one. Whether the Proposed Prospectus Directive will undergo a greater degree of revision or not, especially with regards to the concerns about SMEs, remains uncertain. However, with the Committee of European Securities Regulators now in session, and recognition on the part of not only the European Commission, but by the industry commentators and players that the system of cross-border offerings calls for greater efficiency, improvements in the efficiency and integration of the E.U.'s financial markets are certainly forthcoming.

135. See *Ragbag of Reform*, *supra* note 16.

136. See *id.*