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Securities Regulation in the European Community

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INTERNATIONAL CAPITAL MARKETS SECTION

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I. INTRODUCTION

A. *Overview*

The European Economic Community ("EEC" or "Community") has relentlessly pursued its objective of creating a single European market by 1992. In 1989 and 1990 the EEC worked vigorously in the area of securities regulation and financial services, adopting directives governing prospectuses, banking and insider trading, and proposing directives regarding investment services, capital adequacy and takeovers. The prospectus directive[1] will allow certain issuers from member states to make public offerings throughout the Community using a common prospectus. The banking directive will allow a bank to provide a variety of banking services, including investment banking services, if authorized by its home state, throughout the Community on the basis of a single license. The investment services directive, if adopted as proposed, similarly will allow investment firms to operate throughout the EEC with a single license. These licenses will allow banks and investment firms to tap potential markets of 320 million customers.[2] The banking and investment services

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1. Council Directive of 17 April 1989 Coordinating the Requirements for the Drawing-Up, Scrutiny and Distribution of the Prospectus to be Published When Transferable Securities are Offered to the Public, art. 21(1), 1989; *see infra* § 10.02[2] [hereinafter Prospectus Directive].

2. Note, *The European Community's Second Banking Directive: Can Antiquated United States Legislation Keep Pace?*, 23 VAND. J. TRANSNAT'L L. 615, 624 (1990) [hereinafter *EC Banking Directive*].

directives address the status of entities from non-EEC countries, and firms from non-member countries need to be sensitive to the institutional arrangements that will be necessary to compete in this market. The issue for the 1990's is not whether the EEC will have an impact on the international capital markets; the issue is simply the magnitude of the impact.

The EEC at present is the most active and influential organization in the nascent field of international securities regulation. It has been called "the world's primary actor in accomplishing regulatory harmony in the field of securities regulation."[3] The Community has established "the world's only multinational securities regime"[4] and has demonstrated that "substantial regulatory harmony can be achieved in the field of securities regulation."[5] Although, even aside from the EEC, the internationalization of securities regulation is underway,[6] with a number of organizations participating in the process,[7] "the [EEC] has become the major force for global regulatory harmony."[8] "No other bilateral or multilateral international accords have approached this degrdee of success."[9] Although the SEC's multijurisdictional disclosure system[10] has the potential to rival the EEC system, it remains to be seen whether it will transcend its present North American boundaries.

The prospectus directive referred to above, which the EEC adopted in April 1989,[11] mandates imposition of a prospectus requirement for all transferable securities publicly offered within a member state that are not already listed on an exchange within such state, absent an exemption. The impact of the directive is reduced by the exemption for Eurosecurities which are not the "subject of a generalized campaign of advertising or canvassing."[12] A mutual recognition provision of this directive establishes significant privileges for issuers: where public offerings are made within short intervals of each other in two or more member states, a prospectus

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3. Warren, *Global Harmonization of Securities Laws: The Achievements of the European Communities*, 31 HARV. INT'L L.J. 185, 193 (1990) [hereinafter *Global Harmonization*].

4. *Id.*

5. Warren, *Regulatory Harmony in the European Communities: The Common Market Prospectus*, 16 BROOKLYN J. INT'L L. 19, 53 (1990) [hereinafter *Regulatory Harmony*].

6. *E.g.*, Hawes, *Internationalization Spreads to Securities Regulators*, 9 U. PA. J. INT'L BUS. L. 257, 262 (1987).

7. *E.g.*, the International Organization of Securities Commissions and Similar Organizations, International Accounting Standards Committee, International Auditing Practices Committee of the International Federation of Accountants, Organization for Economic Cooperation and Development, U.N. Commission on Transnational Corporations, International Federation of Stock Exchanges, Group of Thirty, Federation Experts Comptables Europeens, Intergovernmental Working Group of Experts on International Standards of Accounting and Auditing, International Councils of Securities Dealers and Self-Regulatory Organizations, and International Society of Securities Administrators.

8. *Regulatory Harmony*, *supra* note 5, at 53.

9. *Id.* at 52-53.

10. *See Multijurisdictional Disclosure System*, Sec. Act Release No. 6902 (June 21, 1991) [Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶84,812.

11. *See* Prospectus Directive, *supra* note 1.

12. Prospectus Directive, *supra* note 1, art. 2, sec. 2(l), and art. 3, sec. (f).

prepared and approved in accordance with the prospectus and listing particulars directives must be recognized and accepted in all member states. The 1989 prospectus directive and a separate mutual recognition directive adopted in 1990 continue to integrate the listing and public offering processes in the Community by allowing a company to use listing particulars and prospectuses almost interchangeably.

The Community has also been extremely active in the past several years in the banking field, adopting three important directives in 1989: the Second Banking Directive, and two directives relating to capital and solvency requirements for banks. In 1990 the EEC released a proposal for the supervision of credit institutions on a consolidated basis. The Second Banking Directive will establish a single banking license applicable throughout the Community for the provision of banking services authorized by the home state. Banks authorized in their home state also will be able to provide investment banking services on a community-wide basis pursuant to the single license. This is expected eventually to lead to wider acceptance of "universal banking" (provision of both commercial and investment banking services) throughout the Community. The Second Banking Directive permits entities from non-member states to operate in the EEC through subsidiaries, but establishes a procedure under which they may be excluded if EEC banks experience difficulty in accessing the markets of such non-member countries. The Second Banking Directive contains an important grandfathering provision for previously established institutions. "For non-EC financial institutions, one thing is clear: ignoring developments in Europe and their strategic implications could result in exclusion from the world's largest single banking market."[13]

In February 1990 the EEC released an amended proposal for a directive on investment services. In general, this directive would provide for a home state license that would allow investment firms to provide in any member state the investment services that are authorized by the home state. As of early 1991 the member states were deadlocked over an amendment to the proposed directive that would restrict off-exchange and off-market trading activities by investment firms. In April 1990 the EEC released a separate proposal for a Council directive on the capital adequacy of investment firms and credit institutions. This directive also has been controversial as many participants are concerned that high capital requirements may drive business away from the Community.[14] The EEC adopted a directive on insider trading in 1989 and proposed an amended directive on takeovers in 1990.

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13. BATT, MIDDLETON AND ZENIC, 1992 AND BANKING INSTITUTIONS: MARKETS, MERGERS, MARGINS, EUROPE-1992: THE REPORT ON THE SINGLE EUROPEAN MARKET 316 (1989).

14. Barchard, et al., *Bank Opposes Brussels Capital Directive*, FIN. TIMES Feb. 5, 1990, at 53.

B. *Introduction to the Community*

The European Economic Community is one of the three "communities" constituting the "European Communities,"[15] which are often referred to as the "European Community" ("EC"). Six countries founded the EEC by the Treaty of Rome in 1957,[16] and since that time six others have acceded to the treaty. The current members of the EEC are Belgium, Germany, France, Italy, Luxembourg, the Netherlands, Denmark, Ireland, the United Kingdom, Greece, Spain and Portugal.[17] The Treaty of Rome requires, among many other provisions, that member states "progressively abolish" restrictions on the movement of capital and the freedom to provide services within the community.[18]

The EEC is a supranational organization,[19] its activities and relations governed by a system of "Community law."[20] The jurisprudence of the Court of Justice of the European Community has defined two principles that serve as the foundation of the EEC's legal system.[21] First, the Court has held that EEC law, within its sphere of applicability, takes precedence over national law.[22] Second, the Court has held that individuals have the right to invoke EEC law directly in their own national courts,

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15. The other two communities are the European Coal and Steel Community and the European Atomic Energy Community. The three communities "are, for practical purposes one Community," and are often referred to as such, since they have common decision-making bodies. ECONOMIST INTELLIGENCE UNIT, EUROPEAN TRENDS 1989-1990 15 (1990) [hereinafter EUROPEAN TRENDS].

16. Treaty Establishing the European Economic Community, *done at* Rome, March 25, 1957, 298 U.N.T.S. 11 (hereinafter Treaty of Rome).

17. EUROPEAN PARLIAMENT AND COMMISSION OF THE EUROPEAN COMMUNITIES, THE INSTITUTIONS OF THE EUROPEAN COMMUNITY 3 (1990) (hereinafter EC INSTITUTIONS). These countries are hereinafter referred to as the "member states." West Germany was one of the founding members of the EEC. East Germany became a member of the EEC not by accession but by reunifying with West Germany. *A Bigger Germany, A Bigger Community*, THE ECONOMIST, Aug. 25, 1990, at 41. Turkey, Austria, Cyprus and Malta have applied for EEC membership, but the Community has indicated it will not accept any new members until 1993 at the earliest. *The Makings of a New Constellation*, THE ECONOMIST, Aug. 4, 1990, at 41. It is anticipated that Sweden may apply for membership, and if so Finland is likely to follow. *Id.*

18. Treaty of Rome, *supra* note 2, arts. 67, 59.

19. Reynolds, *Introduction to the European Economic Community: Its History and Its Institutions*, 8 LEGAL REFERENCE SERVICES QUARTERLY 7, 11 (1988). "The twelve Member States have done much more than allocate mutual obligations; they have created a supranational authority." *Id.* at 12.

20. "When we speak of Community law, we mean neither international nor national law, but an actual and unique '*droite communautaire.*' " *Id.*

21. Thieffry, Van Doorn and Lowe, *The Single European Market: A Practitioner's Guide to 1992*, 12 B.C. INT'L & COMP. L. REV. 357, 359 (1989) [hereinafter Thieffry].

22. *Id.* "The supremacy of EC law over the national laws of the member states is well established." *Global Harmonization, supra* note 3, at 213, n. 171 *citing* T. HARTLEY, THE FOUNDATIONS OF THE EUROPEAN COMMUNITY LAW (1988); *Review of the European Economic Community Council and Commission: Securities Regulation, Franchising Agreements, and Knowhow Licensing*, 1 TRANSNAT'L L. 281 (1988).

which gives EEC law a supra-national character.[23]

In 1985 the European Commission presented a "White Paper" outlining a program for removing all "physical, technical and fiscal barriers between EC countries by the end of 1992 . . ."[24] The White Paper discussed, among other things, the remaining steps in the area of capital movements and financial services in order to create a "European financial common market."[25] The White Paper contained about 300 items of EC legislation necessary to complete the internal market.[26] In 1986, the member states entered into a new treaty, "clumsily titled the 'Single European Act,' "[27] that amended the Treaty of Rome.[28] The Single European Act is of critical importance to the development of the common market because, *inter alia*, it eliminates the requirement of unanimous voting for most directives.[29] Formerly, the adoption of all directives required a unanimous vote of the Council.[30] The Single European Act substituted "qualified majority voting" for unanimity in the case of all Council votes on directives that have as their purpose the establishment of the internal market, with several exceptions.[31] In addition, the Single European Act in general changed the EC's approach from strict harmonization to common minimum standards subject to mutual recognition.[32] "As a result, the EC's 1992 program has enjoyed remarkable success, and most observers are optimistic that its goals will be achieved."[33]

The four principal institutions of the European Communities are the European Parliament ("Parliament"), the Council of Ministers ("Council"), the European Commission ("Commission") and the Court of Justice.[34] The Parliament consists of over 500 delegates elected by universal suffrage in the member states.[35] The organization does not actually enact legislation although it does participate in the legislative process in various ways.[36] Parliament adopts the EC budget and has supervisory responsibil-

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23. Thieffry, *supra* note 21, at 359.

24. EUROPEAN COMMUNITIES, THE EUROPEAN FINANCIAL COMMON MARKET 18 (1989). *See* Completing the Internal Market, White Paper from the Commission to the European Council (COM No. 85) 310 (June 14, 1985).

25. EUROPEAN COMMUNITIES, THE EUROPEAN FINANCIAL COMMON MARKET 18 (1989).

26. Appel, *EEC-1992 and the Securities Industry*, 23 REV. SEC. & COMM. REG. April 11, 1990, at 67.

27. Reynolds, *supra* note 19, at 16.

28. Single European Act of 17 February 1986, 1987 O.J. (L 169) 1, 3 Common Mkt. Rep. (CCH) ¶ 21,000. The Single European Act is not a legislative act but rather an amendment to a treaty.

29. EC INSTITUTIONS, *supra* note 17, at 7; EUROPEAN COMMUNITIES, THE EUROPEAN FINANCIAL COMMON MARKET (1989); *Regulatory Harmony*, *supra* note 5, at 24.

30. EUROPEAN TRENDS, *supra* note 15, at 21.

31. *Id.* at 13. At present, there are 76 votes in the Council, 54 of which constitute a "qualified majority." Appel, *supra* note 26, at 68, n. 6.

32. *Regulatory Harmony*, *supra* note 5, at 24.

33. *Id.* at 24-25.

34. EC INSTITUTIONS, *supra* note 17.

35. *Id.* at 3; Reynolds, *supra* note 19, at 18.

36. Reynolds, *supra* note 19, at 18. The Parliament is the only body directly responsi-

ity over the Commission.[37] The Council, the principal decision-making body of the EC, consists of ministers from each member state.[38] The Council may only consider legislative proposals which the Commission presents,[39] must consult with the Parliament and is subject to review by the Court of Justice.[40] The Commission is composed of members, at least one from each state, appointed by mutual agreement of member states.[41] The members of the Commission "may not receive instructions from any national government and are subject to the supervision of the European Parliament which is the only body that can force them collectively to resign."[42] The Commission proposes legislation to the Council,[43] implements EC policies and attempts to ensure that rules of the EC are followed.[44] The Court of Justice considers questions such as possible conflicts between Community legislation and the applicable treaties[45] and interprets EC law upon the request of national courts.[46] The Court is the final interpreter of the treaties and the validity of the national legislation implementing them.[47]

EEC law is expressed through several means, including directives, regulations, decisions and judgments of the European Court.[48] A directive is an act adopted by the Council or the Commission.[49] The majority of the measures in the securities and financial services area are Council directives.[50] Directives are binding on the member states to which they are addressed but permit them to determine the method of implementation,[51] usually within a specified time period. A directive does not have immediate effect, but must be incorporated into national law,[52] a process the EC

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ble to the citizens of the member states. *Id.* at 21.

37. EC INSTITUTIONS, *supra* note 17, at 5.

38. *Id.* at 6. In addition to the general council, specialized councils are also constituted. Reynolds, *supra* note 19, at 21.

39. EC INSTITUTIONS, *supra* note 17, at 6.

40. Reynolds, *supra* note 19, at 22.

41. EC INSTITUTIONS, *supra* note 17, at 7.

42. *Id.*

43. The Commission made 624 proposals to the Council in 1989. *Id.* at 8.

44. *Id.* at 7-8. The Commission serves as the "executive branch" of the EC, responsible for its daily operation. Reynolds, *supra* note 19, at 23. In 1989 the Commission had a staff of 14,262 civil servants. *Id.* at 24.

45. EC INSTITUTIONS, *supra* note 17, at 9. The Court has "total jurisdiction" over the Treaty of Rome. Reynolds, *supra* note 19, at 26.

46. *Id.*

47. EUROPEAN TRENDS, *supra* note 15, at 20.

48. Thieffry, *supra* note 21, at 360-61.

49. EUROPEAN COMMUNITIES, THE EUROPEAN FINANCIAL COMMON MARKET 15 (1989); EUROPEAN TRENDS, *supra* note 15, at 21.

50. EUROPEAN COMMISSION, COMPLETING THE INTERNAL MARKET: A COMMON MARKET FOR SERVICES iii (1989).

51. *Id.*

52. EUROPEAN TRENDS, *supra* note 15, at 21. Member states which do not enact the implementing legislation may be challenged by the Commission in the European Court. *Id.* at 21.

calls "transposition." Member states may not "justify non-application of a directive on the grounds of domestic difficulties or legal rules, even when the rules deal with constitutional issues."[53] Unlike directives, regulations apply generally and directly in all member states.[54] "[R]egulations have immediate effect and convey individual rights for citizens which the national courts are obliged to protect."[55]

The European Commission has worked "resolutely" toward the completion of the internal market and has made considerable progress toward this objective.[56] By 1990 the Commission had transmitted to the Council all of the proposals announced in 1985;[57] as of March 1990, the Council reported that it had adopted about 60 percent of them.[58] While the Community has made significant progress in the area of EC legislation, it has experienced more difficulty in the national implementation phase of the internal market.[59] In 1989 the Commission released a report indicating that only 7 of the 68 single-market measures adopted by the Council had been transposed into national law.[60] "Even when E.C. directives are translated into national law," according to the Commission, a " 'nitpicking interpretation of the rules' by national bureaucracies often results in discrimination against citizens from other Community countries."[61] In 1990, the Commission commented that the member countries had improved their record on transposition.[62] As of March 1990, the member states, according to the Commission, had transposed 21 measures into national law.[63] Some countries have been slower than others in transposing Community directives.[64]

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53. Theiffry, *supra* note 21, at 360, *citing* Commission v. Italian Republic, Comm. Mkt. Rep. (CCH) ¶ 14,399 (1986).

54. Thieffry, *supra* note 21, at 359; EUROPEAN TRENDS, *supra* note 15, at 21.

55. Thieffrey, *supra* note 21, at 359, *citing* Leonesio v. Italian Ministry of Agriculture and Forestry, 1972 E. Comm. Ct. J. Rep. 287, 293, 12 Comm. Mkt. L. R. 343, 352 (1973).

56. Fifth Report of the Commission to the Council and the European Parliament Concerning Implementation of the White Paper on the Completion of the Internal Market, COM(90)90 final at 1 [hereinafter Fifth Progress Report].

57. *Id.*; *Commission Sets Out Work Programme for 1991*, Com. Mkt. Rep. (CCH), No. 673 (Jan. 24, 1991).

58. Fifth Progress Report, *supra* note 56, at 2.

59. DELAYS THREATEN SINGLE-MARKET PROGRAM, EUROPE-1992: REPORT ON THE SINGLE EUROPEAN MARKET 325 (Sept. 13, 1989).

60. *Id.*

61. *Id.*

62. Fifth Progress Report, *supra* note 56, at 4.

63. *Id.*

64. As of 1989, Italy had the greatest backlog; the United Kingdom and Denmark had among the best records. *Id.*; DELAYS THREATEN SINGLE- MARKET PROGRAM, EUROPE-1992: THE REPORT ON THE SINGLE EUROPEAN MARKET 325 (Sept. 13, 1989). Spain, Portugal, Greece, Belgium and Ireland have also experienced delays in implementing the EC directives. DELAYS THREATEN SINGLE MARKET PROGRAM, EUROPE-1992: THE REPORT ON THE SINGLE EUROPEAN MARKET 325 (Sept. 13, 1989).

II. STOCK EXCHAMGE AND PROSPECTUS DIRECTIVES

A. *Stock Exchange Listing*

The EC's two stock exchange directives have become increasingly significant with the adoption in 1989 and 1990 of directives further integrating the listing and public offering processes in the European Community. These directives permit, *inter alia*, listing particulars to function as a prospectus and a prospectus to function as listing particulars in qualifying cases. The prospectus directive, adopted in 1989 and discussed below, "further develops the EC's integrated disclosure system in which prospectuses and listing particulars ultimately may be used almost interchangeably throughout the common market."[65] The principal stock exchange directives, adopted in 1979 and 1980, concern the conditions to listing securities for trading on a stock exchange "situated or operating within" a member country (the "Listing Conditions Directive")[66] and the disclosure and filing requirements applicable to such listing (the "Listing Particulars Directive").[67] The Listing Conditions Directive sets forth minimum conditions for the admission of securities to listing on a stock exchange located in the EEC, and requires member states to ensure that securities may not be admitted to listing in their country unless the conditions of the Directive are satisfied.[68] These listing conditions involve matters such as the size of the issuer, its period of existence, and the distribution of its shares in the market.[69] The directive imposes numerous responsibilities, including reporting obligations, on issuers of listed securities.[70] The directive does not prohibit the listing of shares from non-EC countries, but provides that if shares of such a company are not listed in the issuer's home country or principal market, they may not be listed in an EC country unless the authorities are satisfied that the absence of the home country/principal market listing "is not due to the need to protect investors."[71] Non-EC issuers listing in an EC country are required to meet the minimum conditions and obligations of the directive as enacted into national law in the particular country involved.

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65. *Regulatory Harmony*, *supra* note 5, at 33.

66. Council Directive 79/279/EEC of 5 March 1979 Coordinating the Conditions for the Admission of Securities to Official Stock Exchange Listing, 1979 O.J. (L 66) 21, *as amended by* Council Directive 82/148/EEC, O.J. (L 62) 22 (concerning implementation dates) [hereinafter Listing Conditions Directive].

67. Council Directive 80/390/EEC of 17 March 1980 Coordinating the Requirements for the Drawing Up, Scrutiny and Distribution of the Listing Particulars to be Published for the Admission of Securities to Official Stock Exchange Listing, 1980 O.J. (L 100) 1 [hereinafter Listing Particulars Directive].

68. Listing Conditions Directive, *supra* note 66, preamble and art. 3. Members also must ensure that issuers admitted to listing are subject to the obligations imposed by the directive. *Id.*

69. *Id.*, schedule A. For example, a company must, in general, have published or filed its annual accounts for three financial years preceding the listing application. *Id.*

70. *Id.*, schedules C and D.

71. *Id.*, schedule A, no. 7.

The purpose of the Listing Particulars Directive is to coordinate the differences in member state disclosure requirements applicable to stock exchange listing.[72] This directive requires member states to ensure that the listing of securities upon a stock exchange in their territory is contingent upon the publication of a disclosure document referred to as "listing particulars."[73] The disclosure document must contain the information necessary to enable investors to make an "informed assessment" of the financial position and prospects of the issuer.[74] Since the line item disclosure requirements[75] are "without prejudice to the obligation referred to in article 4," this directive imposes a general obligation to disclose material facts in the listing application.[76] The Listing Particulars Directive allows a member state to create numerous exemptions, such as exemptions for securities that have been publicly issued or issued in connection with a takeover bid where within the preceding year the issuer published an equivalent disclosure document in that state.[77]

The Listing Particulars Directive sets forth detailed disclosure requirements based upon whether the securities to be listed are debt or equity securities.[78] Listing particulars may not be published until they have been approved by the competent authorities,[79] at which time they must be published.[80] Listing particulars may be published either by insertion in one or more newspapers circulated throughout the member state or as a brochure to be made available to the public.[81]

The Listing Particulars Directive provides that when applications for listing the same securities on stock exchanges in several member states are made within short intervals of each other, the authorities in each state should cooperate with each other "to avoid a multiplicity of formalities and to agree to a single text," where appropriate.[82] The Listing Conditions Directive has a similar provision.[83] In 1987 the Council adopted a directive requiring significantly further reciprocity in the listing process.[84]

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72. Listing Particulars Directive, *supra* note 67, preamble.

73. *Id.*, art 3.

74. *Id.*, art. 4.

75. *Id.*, art. 5.

76. *Id.*, providing that member states shall ensure that listing particulars contain *at least* the items of information provided for in Schedules A, B or C. The directive does not, however, use the word "material."

77. *Id.*, art. 6, no. 1.

78. *Id.*, art. 5, no. 1, schedules A and B.

79. *Id.*, art. 18, no. 2.

80. *Id.*, arts. 3, 18, and 20; *Global Harmonization*, *supra* note 3, at 211.

81. Listing Particulars Directive, *supra* note 67, art. 20.

82. *Id.*, art. 24.

83. Listing Conditions Directive, *supra* note 66, art. 18, no. 2. "Where applications are to be made simultaneously or within short intervals of one another. . ., the competent authorities shall communicate with each other and make such arrangements as may be necessary to expedite the procedure and simplify as far as possible the formalities and any additional conditions . . .". *Id.*

84. Council Directive 87/345/EEC of 22 June 1987 *amending* Council Directive 80/390/

This directive applies when applications are made to list securities on two or more exchanges located in the EC, in which event listing particulars are to be prepared in accordance with home state rules and approved by home state authorities.[85] Once so approved, "listing particulars must, subject to any translation, be recognized by the other Member States in which admission to official listing has been applied for, without it being necessary to obtain the approval of the competent authorities of those States and without their being able to require that additional information be included in the listing particulars."[86] If the issuer's registered office is not located in a member state, it must choose an EC country to supervise its listing.[87] The directive allows EC countries to restrict application of the foregoing rules to listing particulars of issuers having their registered office in a member state.[88]

In 1990 the Council adopted Directive 90/211 (the "Integration Directive"), discussed more fully below, further integrating disclosure in the listing and public offering process.[89] Directive 89/298 (the "Prospectus Directive"), also discussed below, provides that where public offers are made within short intervals of one another in two or more member states, a public offer prospectus prepared and approved in accordance with certain of its provisions must be recognized as a public offer prospectus in the other member states "on the basis of mutual recognition."[90] Under the Integration Directive, where application for listing in one or more member states is made and the securities in question were covered by a prospectus prepared and approved in any member state in accordance with certain provisions of the Prospectus Directive[91] in the three months

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EEC Coordinating the Requirements for the Drawing Up, Scrutiny and Distribution of the Listing Particulars to be Published for the Admission of Securities to Official Stock Exchange Listing, 1987 O.J. (L 185) 81.

85. *Id.*, *amending* Listing Particulars Directive, *supra* note 67, art. 24.

86. Council Directive 87/345/EEC, *supra* note 84, art. 24(a). The authorities of any EC country may, however, compel the inclusion of certain limited information specific to the country in which listing is sought. *Id.*

87. *Id.*

88. *Id.*, art. 1, *amending* Listing Particulars Directive, *supra* note 67, art. 24. Directive 87/345 also contained a provision concerning the recognition of public offer prospectuses as listing particulars. Directive 87/345, *supra* note 84, art. 1, *amending* Listing Particulars Directive, *supra* note 67, art. 24. This provision was "limited to circumstances in which a listing is sought on exchanges in two or more member states and where another member state has approved the prospectus, in accordance with the Listing Particulars Directive, within three months of the further application." *Regulatory Harmony*, *supra* note 5, at 30-31. A 1990 amendment to the Listing Particulars Directive (discussed below) superseded this provision.

89. Council Directive 90/211/EEC of 23 April 1990 *amending* Council Directive 80/390/EEC. *See also* In Respect of the Mutual Recognition of Public Offer Prospectuses as Stock Exchange Listing Particulars, 1990 O.J. (L 112) 24 [hereinafter Integration Directive].

90. Council Directive 89/298/EEC of 17 April 1989 Coordinating the Requirements for the Drawing-Up, Scrutiny and Distribution of the Prospectus to be Published When Transferable Securities are Offered to the Public, art. 21, no. 1, 1989 O.J. (L 124) 8, 14.

91. Specifically, articles 7, 8 or 12 of the 1989 Prospectus Directive. Article 7 requires

prior to the listing application, the public offer prospectus must be recognized as listing particulars in the member states in which listing is sought.[92] The Integration Directive extends the mutual recognition of prospectuses as listing particulars to all prospectuses that have been approved by any member state, regardless of whether the securities have been listed previously on a member state's exchange.[93]

B. *Prospectus Directive*

The Council adopted the Prospectus Directive on April 17, 1989 to coordinate the requirements for the "drawing-up, scrutiny and distribution" of a prospectus to be used when securities are offered to the public.[94] The purpose of the directive is to encourage "the creation of a genuine European capital market."[95] The directive applies to securities offered to the public for the first time in a member state if such securities are not already listed on a stock exchange in that state.[96] Member states must ensure, absent an exemption, that any offer of securities to the public "within their territories" is subject to the publication of a prospectus by the offeror.[97] The prospectus must be published or made available no later than the time when an offer is made to the public.[98]

The directive is expressly inapplicable to certain types of offers, including, without limitation, offers of securities to a "restricted circle of persons."[99] Various types of securities also are excluded, such as certain government securities; securities offered in connection with a takeover bid or merger; certain debt securities;[100] and "Eurosecurities which are not

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the contents of a prospectus and the procedures for reviewing and distributing it to be determined in accordance with the Listing Particulars Directive, where a public offer relates to securities that are the subject of a listing application in the same member state. Article 8, a corresponding provision applicable where a public offer is made in one member state and listing is sought in another member state, provides that the offeror "shall have the possibility" of preparing the prospectus in accordance with the Listing Particulars Directive. Article 12 authorizes a member state to allow the preparation of a prospectus on the basis of the Listing Particulars Directive even when listing is not being sought.

92. Integration Directive, *supra* note 89, art. 2, amending para. 1 of art. 24(b) of the Listing Particulars Directive. In this event it will not be necessary to obtain the approval of the authorities in the member states in which listing is sought. Authorities in these states may not require the inclusion of additional information in the prospectus, except for information specific to the country of admission.

93. *See Global Harmonization*, *supra* note 3, at 214, n. 181 and accompanying text; Integration Directive, *supra* note 89, art. 2, *amending* Listing Particulars Directive, *supra* note 67, art. 24(b)(1); *see* Prospectus Directive, *supra* note 1, art. 12; *Regulatory Harmony*, *supra* note 5, at 31.

94. Prospectus Directive, *supra* note 1.

95. *Id.*, preamble.

96. *Id.*, art. 1.

97. *Id.*, art 4.

98. *Id.*, arts. 9 and 16.

99. *Id.*, art. 2, no. 2.

100. *Id.*, art. 5(a) (debt securities issued by certain financial institutions); *id.*, art. 5(b) (certain debt securities guaranteed by a member state or subdivision thereof); *id.*, art. 5(c)

the subject of a generalized campaign of advertising or canvassing."[101] The provision for Eurosecurities, which includes both Euroequity and Eurobonds, will exclude huge amounts of securities issued annually in the Euromarket from regulation in the EC.[102] "Eurosecurities" are not, however, exempted from the Prospectus Directive if they are the subject of "a generalized campaign of advertising or canvassing." The exemption for Eurosecurities appears to have been born of competitive considerations.[103]

The Prospectus Directive approaches public offerings on the basis of whether the securities in question will be listed in a member state. If a public offer of transferable securities is made in a member state and at the time of the offer the securities are the subject of a listing application in the same state, prospectus requirements must be determined in accordance with the Listing Particulars Directive as distinguished from Article 11 of the Prospectus Directive.[104] This rule applies to both the prospectus content requirements and the procedures for reviewing and distributing the prospectus, subject to "adaptations appropriate to the circumstances of a public offer."[105] Thus, in this context, the Prospectus Directive incorporates the Listing Particulars Directive to establish the content of and review procedures relating to the prospectus. If a public offer is made in one member state and listing is sought on a stock exchange in another member state, the person making the public offering must have the possibility of using a prospectus governed by the Listing Particulars Directive as opposed to the Prospectus Directive, in terms of both content and procedure, subject to any changes necessary to reflect the circumstances of the public offer.[106]

In the case of public offerings of other securities (*i.e.*, securities not subject of a listing application), the prospectus must contain information necessary in order to enable investors to make an informed investment

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(certain other debt securities considered by national law as debt securities issued or guaranteed by the state).

101. *Id.*, art. 2, no. 2. "Eurosecurities" are transferable securities which are underwritten and distributed by a syndicate of which at least two of the members have registered offices in different states; are offered on a significant scale in one or more states other than that of the issuer's registered office; and may be subscribed for or initially acquired only through a bank or other financial institution. *Id.*, art. 3.

102. *See Regulatory Harmony*, *supra* note 5, at 46, n. 167.

103. *Id.* at 38-41. "From the beginning, an all-pervasive fear of the Eurobond market taking flight to Zurich or elsewhere outside the EC dictated opposition to the [Prospectus] Directive." *Id.* at 39. "The United Kingdom and Luxembourg were concerned 'that the [Euromarket] would be driven offshore to Zurich rather than submit to the prospectus obligation.' " *Id.*, n. 132, quoting *Rules Requiring Detailed Prospectuses Adopted by EC; Will be Effective 1991*, 20 Sec. Reg. & L. Rep. (BNA) 1975 (Dec. 23, 1988). "Once it became clear. . .that a Eurobond exemption could be secured, the goal was expanded to include Euroequities as well." *Regulatory Harmony*, *supra* note 5, at 41.

104. Prospectus Directive, *supra* note 1, art. 7.

105. *Id.*

106. *Id.*, art 8.

decision.[107] Without limiting the foregoing, Article 11 of the Prospectus Directive sets forth the minimum prospectus disclosure requirements member states must adopt applicable to prospectuses for a public offer of securities not to be officially listed on an exchange in a member state.[108] Prospectuses for unlisted securities must be published or made publicly available pursuant to procedures established by each member state.[109] The member states may provide, however, that the person making the offering may prepare the prospectus, in terms of its content, and subject to appropriate adaptation, in accordance with the Listing Particulars Directive, even though the securities in question are not subject of a listing application.[110] In this event, prior scrutiny of the prospectus is made by authorities designated by the member state.[111] A prospectus so prepared and approved by a member state in the three months preceding application for listing must be recognized, subject to translation, as listing particulars in the member states in which application for listing is made.[112] Such a prospectus must also be deemed to satisfy the prospectus requirements of other member states in which the same securities are, simultaneously within a short time period, offered to the public.[113]

A member state may choose to allow issuers not proposing to apply for official listing to comply with Article 11 disclosure rather than compelling them to satisfy the same disclosure standards applicable to issuers concurrently applying for admission to official listing on an exchange in a member state. Further, a member state is not compelled to give such issuers the alternative of complying with the more stringent disclosure standards of the Listing Particulars Directive, but may limit those standards and procedures to securities for which an application for listing is to be made. This, of course, would require that the issuer be able to satisfy the conditions to listing. Under the Prospectus Directive, a member state has no obligation to recognize a prospectus meeting the requirements of another member states that satisfies only the Article 11 requirements. Presumably, issuers contemplating a multi-member state offering will be motivated to comply with the more stringent disclosure standards relating to securities to be listed, if that alternative is available to an unlisted security in an appropriate member state, in order to have the benefit of the

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107. *Id.*, art. 11, no. 1.

108. *Id.* Member states may allow the omission from the prospectus of otherwise required information under certain circumstances, such as if the disclosure of the information would be "contrary to the public interest." *Id.*, art. 13, no. 1(b). The member state also may permit omission of information if the disclosure thereof would be "seriously detrimental" to the issuer, if omission would not be likely to mislead the public. *Id.* Similar accommodation may be made in the case of sellers other than the issuer or an agent thereof, in respect of information not normally in the possession of the seller. *Id.*, no. 2.

109. *Id.*, art. 15.

110. *Id.*, art. 12(1).

111. *Id.*, art. 12(2).

112. Integration Directive, *supra* note 89, art. 2, *amending* Listing Particulars Directive, *supra* note 67, art. 24(b)(1).

113. Prospective Directive, *supra* note 1, art. 21(1).

multi-prospectus recognition provision. Some may conclude, however, that the cost of meeting the more stringent disclosure standards outweigh the mutual recognition benefit.

The Prospectus Directive requires a member state to recognize, subject to translation if necessary, a prospectus (other than an Article 11 prospectus) approved in another member state in accordance with the directive. Where public offers are made within short intervals of one another in two or more member states, a public offer prospectus prepared and approved in accordance with the Prospectus Directive (other than an Article 11 prospectus) must be recognized as a public offer prospectus in such member states.[114] The member states may not impose any approval requirement or require additional information to be included in such prospectus, other than certain country-specific information.[115] Article 21 of the Prospectus Directive will permit EC companies prepared to satisfy the disclosure requirements of the Listing Particulars Directive to sell securities, simultaneously or within a short time period, in several EC countries on the basis of one prospectus. The directive permits member states to limit this reciprocity requirement to issuers having their registered offices in a member state.[116] The EC may negotiate agreements with non-EC countries pursuant to which it would recognize, for purposes of the Prospectus Directive, prospectuses prepared and reviewed in accordance with the foreign law of non-member countries, provided such foreign law gives equivalent protection, even if it differs from the directive.[117] This possibility, however, is subject to "reciprocity,"[118] meaning subject to acceptance by the particular foreign country of prospectuses prepared in accordance with EC law. Although no negotiations between the SEC and the EC have been publicly reported, it is possible that at some future date this provision may serve as a basis for negotiating a multijurisdictional disclosure system between the United States and the EC.

C. *Continuous Reporting*

The Listing Conditions Directive establishes the framework for the periodic reporting of information in the EEC. A company listing its shares on a stock exchange located within the EC must comply with the obligations set forth in Schedule C to the Listing Conditions Directive.[119] Schedule C obliges a company to inform the public "as soon as possible" of any major new, non-public developments which may substantially affect the price of the company's shares.[120] The company must release to

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114. *Id.*, art. 21.
115. *Id.*
116. *Id.*, art. 21, no. 4.
117. *Id.*, art. 24.
118. *Id.*
119. Listing Conditions Directive, *supra* note 66, art. 4, no, 2. A company listing its debt securities must comply with Schedule D. *Id.*
120. *Id.*, schedule C, ¶ 5(a). The authorities may exempt the company from this re-

the public, as soon as possible, its most recent "annual accounts" and "annual report."[121] This information must comply with Council Directives concerning companies' accounts and also give a "true and fair view" of the company's financial position, or "more detailed and/or additional information must be provided."[122] Schedule C and D require disclosure of additional information,[123] and if the company's shares are listed on stock exchanges in different member states the company must release "equivalent information" to each market.[124] Member states may establish additional periodic reporting requirements.[125]

The Council has supplemented the reporting requirements of the Listing Conditions Directive with the adoption of a directive requiring the annual publication of mid-year reports.[126] This directive applies to any company listed in a member state, even a company headquartered in a non-EC country. Listed companies must publish half-yearly reports within four months of the end of the first six-month period of each financial year. The reports must include the "net turnover" and the "profit or loss before or after deduction of tax" during the relevant period[127] and for the corresponding period for the previous year.[128] The half-yearly report must also include an explanatory statement that discusses significant information concerning the companies activities and profits and losses[129] as well as, to the extent possible, "the company's likely future development in the current financial year."[130] The mid-year report must be published in the member states where the shares are listed or otherwise be made available to the public.[131]

D. *National Laws*

The prospectus provisions of the English Companies Act was the model on which the Securities Act of 1933 was based.[132] The Companies

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quirement if the disclosure would prejudice the legitimate interests of the company.

121. *Id.*, no. 4.

122. *Id.*, no. 4(c).

123. *E.g.*, *id.*, no. 5(b) and (c); schedule D, no. 4(b) - (d).

124. Listing Conditions Directive, *supra* note 66, art. 6(a). If a company's shares are listed in a member and non-member state, the company must release to the member state market information "at least equivalent" to that released in the non-member state, "if such information may be of importance for the evaluation of the shares." *Id.*, no. 6(b).

125. *Id.*, art. 4.

126. Council Directive 82/121/EEC of 15 February 1982, 1982 O.J. (L 48) 26.

127. *Id.*, art. 5, nos. 1 and 2. Member states may enact more stringent or comprehensive rules than those established by this directive, if such rules apply generally to all companies or to all companies of a given class. *Id.*, art. 3.

128. *Id.*, art. 5, no. 5.

129. *Id.*, art. 5, nos. 1 and 6.

130. *Id.*, art. 5, no. 6.

131. *Id.*, art. 7, no. 1.

132. *See* SELIGMAN, J., THE TRANSFORMATION OF WALL STREET 62-63 (1982). The unique contribution of the Securities Act of 1933 was to provide a waiting period between the filing of a prospectus as part of the registration statement and the effective date after which the

Act of 1985, a codification of the amendments over the years to the Companies Act, includes the current statutory prospectus provisions,[133] and Schedule 3 to that Act sets forth the prescribed content of a statutory prospectus.[134] The prospectus requirements of the Companies Act are satisfied by delivering the document meeting the statutory prospectus requirements for registration to the Registrar of Companies.[135] The Registrar is a ministerial official who is authorized to refuse registration of the prospectus only if (1) it is not dated, or (2) not signed in accordance with the requirements of the Act, or (3) it does not have attached documents required by the Act.[136]

If a company is able to meet the admission requirements of The Stock Exchange and a member firm is prepared to act as a sponsor and underwriter, the process of going public (or going to market) in the United Kingdom and the process of listing on the Exchange are intertwined and basically the same.[137] Prior to the adoption of the the Financial Services Act of 1986 (FSA), the application for listing required the publication of Listing Particulars meeting the requirements of the Rules of the exchange and the prospectus had to meet the requirements of the Exchange and the statutory requirements of Schedule 3 of the Companies Act.[138] For many years Appendix 34 to the Yellow Book prescribed in detail the information to be included in a prospectus which overlapped the information required in the Listing Particulars. The Adoption by the EC of the Sixth Directive relating to the content of Listing Particulars resulted in a 1984 revision to the Yellowbook, which, with a series of amendments, are the current rules of the Exchange. The 1984 revisions (and subsequent amendments) eliminated Appendix 34 and moved relevant provisions and procedures relating to the offering phase of the prospectus into the Rules relating to Listing Particulars.[139] The Listing Particulars and the Prospectus, in effect, became one and the same document for an issuer going public and concurrently applying for admission of the securities being offered to the Official List of the Stock Exchange.

The Financial Services Act of 1986, essentially leaves this process undisturbed with respect to securities publicly offered subject to admission

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securities could be offered. *Id.* Schedule A to the Securities Act, prescribing the content of the prospectus, also drew on the prospectus requirements of the then much maligned New York Stock Exchange. *Id.* at 57.

133. Companies Act of 1985, Pt. III, consisting of §§ 56-79.

134. Companies Act of 1985, § 56(1).

135. Companies Act of 1985, § 64(1).

136. Companies Act of 1985, § 64(5).

137. 10 INTERNATIONAL CAPITAL MARKETS AND SECURITIES REGULATION § 1.08[2] (Harold S. Bloomenthal & Samuel Wolff, eds., 1991 revision) [hereinafter ICMSR].

138. *See id.*, § 1.08[2][a].

139. *See* ADMISSION OF SECURITIES TO LISTING, § 3, ch. 1 (contents of listing particulars), §2, ch. 1 (application procedure), § 2, ch. 3 (publication of listing particulars) [hereinafter YELLOWBOOK].

to listing.[140] No security can be admitted to the Official List of the Stock Exchange except by complying with the listing rules of the competent authority.[141] The Council of The Stock Exchange is designated by the FSA as the competent authority.[142] The FSA also requires that before the Listing Particulars are published as required by the listing rules of The Stock Exchange that a copy of the Particulars be delivered to the Registrar of Companies and a statement to that effect must be included in the particulars.[143] The Prospectus Directive, which, in effect, incorporates the Listing Particulars Directive under these circumstances, adds little if anything to this basic process other than, perhaps, requiring that the Particulars be referred to as a Prospectus when being used to satisfy the requirements of the Prospectus Directive. The Prospectus Directive merely requires for securities offered subject to being listed that "the contents of the prospectus and the procedures for scrutinising and distributing it shall, subject to adaptations appropriate to the circumstances of a public offer," conform to the standards of the Listing Particulars.[144] The UK issuer complying with the requirements described above in the U.K. and the notice[145] and publication requirements[146] of the Prospectus Directive in the other member states in which the securities are to be offered should be entitled to the benefit of the mutual recognition provisions of the Prospectus Directive.[147]

Securities can be publicly offered in the United Kingdom subject to admission to dealings on the Unlisted Securities Market (USM), a second tier market also supervised by The Stock Exchange.[148] The application procedure and content of the particulars or prospectus are governed by the Stock Exchanges Green Book. Although admissions to dealings and dealings on the USM are governed by the Stock Exchange, securities so admitted are not listed securities. Securities are also publicly offered in the United Kingdom that are subsequently traded off the exchange. Part V of the FSA requires that before any security not to be officially listed can be advertised for sale that a prospectus be filed with the registrar of companies.[149] The content of the prospectus is to be determined by the Department of Trade and Industry (DTI).[150] The DTI has authority to accept a prospectus meeting the rules of an approved stock exchange admitting the securities for dealings in lieu of its own prospectus

140. *See* ICMSR, *supra* note 137, § 1.08[2][c].
141. Financial Services Act, 1986, § 142.
142. *Id.*, § 142(6).
143. *Id.*, § 149.
144. Prospectus Directive, *supra* note 1, art. 7.
145. *Id.*, arts. 14 and 17.
146. *Id.*, arts. 15 and 16.
147. *See* ICMSR, *supra* note 137, § 1.08[2].
148. *See id.*, § 1.08[2][b].
149. Financial Services Act, *supra* note 141, § 160(1).
150. *Id.*, § 162(1).

requirements.[151]

The FSA contemplated that Parts IV and V of the FSA would replace the prospectus provisions of the Companies Act by repealing Part III of that Act.[152] The DTI, shortly after the enactment of the FSA, implemented Part IV of the FSA and Part III of the Companies Act was thereby repealed as to securities offered subject to listing on The Stock Exchange.[153] The DTI has been slow, however, in implementing Part V of the FSA and the Companies Act prospectus provisions remain applicable to other public offerings of securities. The result has been that companies going to market subject to being listed on the USM have to use a prospectus meeting the requirements of the Green Book and Schedule 3 to the Companies Act of 1985.

On July 12, 1990, the DTI published a Consultative Document outlining and discussing in broad terms the implementation of Part V of the Financial Services Act and harmonization of the Part V prospectus with the requirements of the Prospectus Directive.[154] The expectation was that the DTI would propose draft regulations by the end of 1990 implementing Part V and permitting compliance with the Prospectus Directive by April 17, 1991, the date by which Member States were to have adopted measures necessary to comply with the Prospectus Directive.[155] As of March 28, 1991, the draft regulations had not been published[156] and the prospectus requirements relating to an offering of securities not to be admitted to the official list continue to be governed by Schedule 3 to the Companies Act of 1985.

In October of 1990, The Stock Exchange adopted rules governing the mutual recognition of listing particulars approved by the competent authority of another Member State.[157] The Rules provide that four copies of the qualifying documents must be submitted at least 14 days prior to the intended publication.[158] No publication can take place until The Stock Exchange confirms in writing that the application qualifies for mutual recognition.[159]

The Stock Exchange extensively regulates the continuing disclosure obligations of an issuer that has securities listed on the exchange, including annual accounts and half yearly reports that conform with the related EC Directives.[160] The Green Book requires companies listing securities on

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151. *Id.*, § 162(3).

152. *Id.*, § 212(3), sch. 17, pt. I.

153. SI 1986 No. 2246.

154. DTI, Consultative Document on Listing Particulars and Public Offer Prospectuses: Implementation of Part V of the Financial Services Act 1986 and Related EC Directives.

155. Prospectus Directive, *supra* note 1, art. 26.

156. David Cook, *Likelihood of a Simplified Route to Public Listing Remains Elusive*, FIN. TIMES, March 28, 1991, at p. 31, sec. I.

157. YELLOWBOOK, *supra* note 139, § 8, ch. 2.

158. *Id.*, § 8, ch. 2, ¶ 3(a).

159. *Id.*, § 8, ch. 2, ¶ 3(b).

160. *Id.*, § 5, ch. 2 (primary listing), § 8, ch. 3 (foreign companies with a secondary

the USM to undertake to include with the directors' annual report specified information and to either send shareholders a half-yearly report or publish such report in a leading daily newspaper.

In France, the Minister of Finance approved three new stock exchange regulations in 1988.[161] The regulations govern the conditions for listing on the stock exchange, delisting, and disclosure requirements for public offerings.[162] Subsequently, the Commission des Operations de Bourse ("COB") adopted new rules designed to comply with the EC directive of June 22, 1987 governing mutual recognition of listing particulars.[163] Pursuant to the new rules, EC issuers listing in one member country can use, in effect, the same listing particulars in France.[164]

The Federal Republic of Germany has eight stock exchanges, located in Berlin, Bremen, Dusseldorf, Frankfurt, Hamburg, Hannover, Munich and Stuttgart.[165] There are plans to re-establish a stock exchange in Leipzig. The largest volumes by far are transacted by the stock exchange in Frankfurt, where about 65 percent of the all equities (70% of bond deals) are traded, and Dusseldorf, where about 20 percent of the total volume is traded. The total volume of stocks traded on the German stock exchanges in 1989 was US $810.5 billion, making the German market in terms of trading the fourth largest after the United States, Japan and the United Kingdom.[166]

The German stock exchanges operate independently of one another. They each have their own rules, which in turn are subject to local and federal laws. In addition, the stock exchanges in Berlin and Hamburg are subject to control and supervision by the local Chambers of Industry and Commerce, while independent associations of stock exchange members exercise control and supervision over the stock exchanges in Bremen, Dusseldorf, Hannover and Stuttgart, and a stock corporation whose shares are held by the stock exchange members now controls the Frankfurt stock exchange. The supervising agents, in turn, are responsible to a state commissioner in each federal state (Land) of the Federal Republic, having jurisdiction over the location where the stock exchange is

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listing on The Stock Exchange).

161. *France: Amendments to Stock Exchange General Regulations Approved*, Doing Business in Europe (CCH) ¶ 98-165, at 97,185.

162. *Id., citing Arretes* of July 6, 1988, 1988 J.O. 9154, 9158 (Reg. No. 88-03, -04). *See also France: Further Amendments to Stock Exchange General Regulations Approved*, Doing Business in Europe (CCH) 98-210, at 97,212; *France: CBV's New Rules Define Conditions of Delisting*, Int'l Sec. Reg. Rep. (BNA) 3 (Nov. 22, 1989).

163. *COB Rules Harmonized With the EC*, 3 Int'l Sec. Reg. Rep. (BNA) 2 (March 12, 1990). *See* Directive 87/345, *supra* note 84.

164. *COB Rules Harmonized with the EC*, 3 Int'l Sec. Reg. Rep. (BNA) 2 (March 12, 1990).

165. *See* ICMSR, *supra* note 137. *See* Eberhard Rohm's discussion of securities regulation in Germany, chapter 8C.

166. Annual Report 1989, Federation of the German Stock Exchanges.

situated.[167]

There are three principal markets in Germany — (1) trading in listed securities on the eight German stock exchanges (the Amtlicher Handel); (2) trading in unlisted securities on one of the stock exchanges (Geregelter Markt), and (3) unregulated trading in Unlisted Securities (Ungeregelter Freiverkehr), also called Telefonverkehr (Telephone Trade).[168] The Amtlicher Handel involves an official listing and is similar in this respect to The Stock Exchange in London. Section 36 BorsG, which was amended in accordance with the EC-Directive on Listing Particulars)[169] and the EC-Directive on Admission to Securities Listing, govern this process.[170] If an application is filed with listing boards at more than one exchange, all listing boards have to approve the application unanimously.[171]

The stock exchanges were required by the Reform Act of December 16, 1986 to establish a separate market in unlisted securities (the Geregelter Markt)[172] to facilitate original issues by small and medium-sized corporations that cannot meet the listing requirements for the Official Trade (Amtlicher Handel).[173] The Geregelter Markt is comparable in this respect to the Unlisted Securities Market in the United Kingdom.

The going public process in Germany for securities to be listed on an exchange is similar to that in the United Kingdom. An application for listing must be made to the Listing Board of the exchange and must be accompanied by a Prospekt (Prospectus) and is subject to Sec. 36-49 BorsG which incorporates into national law the requirements of the EC Listing Particulars Directive.[174] Regulations issued pursuant to the new statute contain detailed disclosure requirements.[175] These procedures, as in the United Kingdom, do not require significant modification in order to comply with the requirements of the EC Prospectus Directive.[176]

The application for trading in the Regulated Market, however, required only a business report that would not necessarily comply with the standards established by Article 11 of the Prospectus Directive. Germany adopted the Securities Prospectus Requirements Act, which, among other things, specifies the content and use of a prospectus in compliance with

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167. *See* ICMSR, *supra* note 137, § 8C.02[5].

168. *See id.*, § 8C.04[2].

169. Council Directive 80/390, 1980 O.J. (L 100/1) (1980), Common Mkt. Rep. (CCH) ¶ 1731.

170. Council Directive 79/279, 1979 O.J. (L 66/21), Common Mkt. Rep. (CCH) ¶ 1721.

171. *See* ICMSR, *supra* note 137, § 8C.04[1][b].

172. Sections 71 - 77 BorsG contain the amendments reflecting the Reform Act Borsenzulassungs-Gesetz (BGBl.I, at 2478).

173. *See* ICMSR, *supra* note 137, § 8C.04[2].

174. *See id.*, § 8C.07[4].

175. This Regulation is the Verordnung uber die Zulassung von Wertpapieren zur amtlichen Notierung an einer Wertpapierborse (Borsenzulassungs-Verordnung - BorsZulV) of April 15, 1987 (BGBl.I, Page 1234).

176. *See* ICMSR, *supra* note 137, § 8C.07[4].

the requirements of the Prospectus Directive.[177] The Prospectus Directive is also implemented by provisions providing for acceptance by German stock exchanges of prospectuses accepted by the issuer's home country exchange.[178] Germany also imposes periodic reporting requirements on issuers of listed securities.[179]

Spanish regulation is based upon the Securities Market Act of 1988 The National Securities Commission (*Comision Nacional del Mercado de Valores*) approved rules in December 1989 allowing foreign issuers to list their securities on the Spanish exchanges.[180] A prospectus must be furnished when securities are offered to the public.[181] The December 1989 rules also established periodic reporting requirements applicable to foreign issuers listed on Spanish exchanges.[182]

Italian securities law imposes a notice and prospectus requirement in the event of a public offering in Italy of domestic or foreign securities.[183] The listing process is governed by Regulation 4088 of May 24, 1989, which has been reported to "comprehensively embod[y] all relevant EC Directives and supersede previous regulations."[184] Regulation 4088 provides that if a public offer prospectus has been made public within six months of an application for listing in Italy, and contains information equivalent to that called for by Regulation 4088, the regulatory authority (*Commissione Nazionale per le Societa e la Borsa*) may simply allow the filing of a notice updating the prospectus in satisfaction of the listing application requirements.[185] A public offer prospectus prepared in accordance with the law of another member state may be recognized as listing particulars in Italy if the listing application in Italy is filed within three months of regulatory approval in the other member state.[186]

An issuer publicly offering securities in the Netherlands must publish

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177. Wertpapierkverkausprospekt Gesetz. *See* ICMSR, *supra* note 137, § 8C.07[4].

178. *West Germany: German Stock Exchange Act Amended*, INT'L FIN. L. REV., Sept. 1989, at 43.

179. *See* ICMSR, *supra* note 137, § 8C.08.

180. *Spain Implements New Rules for Foreign Stock Trading*, Int'l Sec. Reg. Rep. (BNA) 5 (Jan. 31, 1990); *see also Spanish Commission Allows Foreign Share Listing*, Doing Business in Europe (CCH), No. 211, at 6 (Feb. 8, 1990). *Compliance Is High for New Disclosure Rule*, Int'l Sec. Reg. Rep. (BNA) 5 (March 12, 1990). Listing by foreign issuers is supervised by the *Comision Nacional del Mercado de Valores* in the case of foreign and domestic issues. Garrigues, et. al., *Spain, in Issuing Securities: A Guide to Securities Regulation Around the World*, INT'L FIN. L. REV., Supp. July, 1990, at 43 [hereinafter *Guide*].

181. Article 3 of the Securities Market Law applies to all securities whose issuance or trading takes place on Spanish territory. *Guide*, *supra* note 180, at 39.

182. *Spanish Commission Allows Foreign Share Listings*, Doing Business in Europe (CCH) No. 211, at 6 (Feb. 8, 1990).

183. *Guide*, *supra* note 180, at 26 (Supp. July 1990), *citing* Law No. 216 of June 7, 1974, art. 18, as amended by Law 77 of 1983. *See also Italy: Ministry Seeks Transparent Trading on Reformed Bourse*, Int'l Sec. Reg. Rep. (BNA) 5 (Aug. 2, 1989).

184. *Guide*, *supra* note 180, at 30.

185. *Id.* at 31.

186. *Id.* at 32.

a prospectus whether the securities will be listed or unlisted.[187] The prospectus is governed by stock exchange rules in the case of listed securities or law in the case of other securities.[188] The Netherlands applies virtually no formal rules or regulations to the issuance of Eurobonds in its territory.[189] Listed companies must publish periodic reports.[190] In 1989, the Dutch Minister of Finance, by decree, authorized a new regulatory body (Securities Board of Netherlands) to begin supervising the Dutch exchange and its members.[191]

In 1990 Belgium adopted new regulations designed to implement the EC listing directives.[192] The new law assigned supervision of the listing process to one of the stock exchange authorities and the concomitant reporting requirements to the Banking Commission.[193] Luxembourg also enacted new legislation governing the financial services industry in 1990.[194] Under the new legislation, the Stock Exchange Commission replaces the Institut Monetaire Luxembourgeois as the authority responsible for regulating securities to be quoted on the Luxembourg Stock Exchange.[195]

III. FINANCIAL SERVICES

A. *Banking*

The most important recent development in the EC banking program is the adoption of the Second Council Directive on December 15, 1989 (the "Second Banking Directive"),[196] which member states are required to

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187. *Guide*, *supra* note 180, at 33.

188. *Id.* at 33, *citing Wet Effectenhandel.*

189. *Id.* at 36.

190. *Id.*

191. NORMAN POSER, INTERNATIONAL SECURITIES REGULATION 424 (1991).

192. Bruyneel and Peeters, *Too Much Red Tape?*, INT'L FIN. L. REV., Nov. 1990, at 12.

193. *Id.*

194. *Financial Legislation Consolidated*, FIN. TIMES, FINANCIAL REGULATION REPORT (Feb. 1991).

195. *Id.*

196. Council Directive 89/646/EEC of 15 December 1989 On the Coordination of Laws, Regulations and Administrative Provisions Relating to the Taking Up and Pursuit of the Business of Credit Institutions and Amending Directive 77/780, 1989 O.J. (L 386) 1. The First Banking Directive, adopted in 1977, currently is in force in all member states. *EC Banking Directive*, *supra* note 2, at 619. The First Banking Directive requires EC countries to establish an authorization procedure for banks and sets minimum conditions for such authorization. POSER, *supra* note 191, at 347, n. 22. The United Kingdom implemented the First Banking Directive through the Banking Act of 1979. THE SECURITIES ASSOCIATION, INVESTMENT SERVICES DIRECTIVE: A COMMENTARY AND ANALYSIS 20 (March 1989) [hereinafter SECURITIES ASSOCIATION]. Other relevant EC legislation includes Council Directive 86/524/EEC (Oct. 27, 1986) (list of exclusions of certain credit institutions); Council Directive 86/635/EEC 1986 O.J. (L372) 1, (annual accounts and consolidated accounts of banks and other financial institutions); Commission Recommendation 87/63/EEC (Dec. 1986) (deposit guarantee arrangements); and Commission Recommendation 87/62/EEC, 1986 O.J. (L 033) 10, (monitoring large exposures of credit institutions), in addition to the directives discussed below.

implement by January 1, 1993. The directive will establish a single license applicable throughout the EEC for the provision of banking and other financial services. The directive disallows "host" member states from requiring authorization or endowment capital for branches of credit institutions authorized in other member states.[197] Thus, with one license, a credit institution will be able to provide a wide variety of financial services throughout the EEC. The Second Banking Directive thus is of singular importance in the field of European finance.[198]

While the First Banking Directive requires a bank based in one member state to obtain authorization from eleven different states to branch throughout the community,[199] the Second Banking Directive depends upon home state supervision and mutual recognition. On the basis of these principles, "credit institutions"[200] are entitled to engage in, on a community-wide basis, any or all of the following activities, provided that such activities are covered by the home state authorization: acceptance of deposits from the public; lending; trading transferable securities, money market instruments, options and futures, foreign exchange, and exchange and interest rate instruments; providing investment and financial advisory services; participating in stock issues and providing services related to such issues.[201] A credit institution may only engage in the activities that are covered by its authorization from its home country.[202] It is ex-

197. Second Council Directive 89/646/EEC, *supra* note 196, art. 6. The "host" member state is the member state in which a credit institution has a branch or in which it provides services. *Id.*, art. 1. The "home" member state is the member state in which a credit institution has been authorized in accordance with article 3 of the First Banking Directive. *Id.*

198. EC Banking Directive, *supra* note 2, at 625, *citing* 21 BULL. EC 1-1988, pt. 1.2.2, at 12 (April 1988).

199. *See* EUROPEAN COMMISSION, COMPLETING THE INTERNAL MARKET: A COMMON MARKET FOR SERVICES 5.

200. A "credit institution" is an undertaking "whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account." First Council Directive 77/780/EEC of 12 December 1977 on the Coordination of Laws, Regulations and Administrative Provisions Relating to the Taking Up and Pursuit of the Business of Credit Institutions, 1977 O.J. (L 323) 30, *as amended by* Directive 86/524, 1986 O.J. (L 309) 15.

201. Second Council Directive 89/646/EEC, *supra* note 196, preamble, annex, and art. 18. Other activities credit institutions may engage in on a community-wide basis include financial leasing; money transmission services; issuing and administering means of payment (e.g., bankers' drafts); issuing guarantees and commitments; money brokering; safekeeping and safe custody services; and credit reference services. *Id.*, annex. Banks may engage in other activities (i.e., those not included in the Annex) to the extent permitted by the Treaty of Rome. Second Council Directive, *supra* note 196, preamble; Ewing, *The Single Market of 1992: Implications for Banking and Investment Services in the EC*, 13 HASTINGS INT'L & COMP. L. REV. 453, 458 (1990).

202. Second Council Directive 89/646/EEC, *supra* note 196, art. 18; *EC Banking Directive*, *supra* note 2, at 23 (licensing home country determines the scope of the activities in which the bank may engage). *See also 1992 and Banking Institutions: Markets, Mergers, Margins*, EUROPE 1992 THE REPORT OF THE SINGLE EUROPEAN MARKET 316, 317 (August 30, 1989) (single license would allow a bank to practice throughout the community activities permitted by home country).

pected that competition among E.C. states will lead to wide acceptance of "universal" (combined commercial and investment) banking.[203]

Under the Second Banking Directive, supervision of a credit institution generally is the responsibility of the home member state.[204] Host member states are responsible, in cooperation with the home state, for supervising the liquidity of branches established in their state "pending further coordination"[205] by the EC. The Second Banking Directive does not disturb the ability of host states to take remedial actions when appropriate or to prevent or punish irregularities committed within their territories which are contrary to any rules they have adopted "in the interest of the general good."[206]

The Second Banking Directive permits a credit institution licensed in one member state to engage in the activities specified above in other member states through the establishment of a branch or by directly providing services.[207] Member states must also provide that the specified activities may be undertaken by any financial institution[208] from another member state, "whether a subsidiary of a credit institution or the jointly-owned subsidiary of two or more credit institutions," if numerous conditions are satisfied.[209] The directive establishes the procedures pursuant to which a credit institution may open a branch or directly provide services in another member state.[210]

A duly authorized credit institution may engage in any or all of the activities specified in the Annex to the directive, including trading in securities, participating in stock issues and providing services relating to such offerings, if the activities are authorized by the licensing member

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203. *1992 Spurs Call for U.S. Banking Reforms*, EUROPE-1992: THE REPORT ON THE SINGLE EUROPEAN MARKET 592 (April 1990). *See also 1992 and Banking Institutions: Markets, Mergers, Margins*, EUROPE-1992: THE REPORT ON THE SINGLE EUROPEAN MARKET 316, 317 (Aug. 30, 1989), which summarized the competitive situation as follows: "Ultimately, therefore, countries whose regulatory systems are more restrictive than that envisioned by the Commission would come under pressure to liberalize their markets to prevent domestic institutions from being placed at a competitive disadvantage against foreign institutions within their own national boundaries."

204. Second Council Directive 89/646/EEC, *supra* note 196, art. 13.

205. *Id.*, art. 14, no. 2. Host member states are also responsible for measures resulting from the implementation of their monetary policies, "[w]ithout prejudice to the measures necessary for the reinforcement of the European Monetary System." *Id.*

206. Second Council Directive 89/646/EEC, *supra* note 196, art. 21, no. 5. "This shall include the possibility of preventing offending institutions from initiating any further transactions within their territories." *Id.* Any such limitation on freedom to provide services would, however, be subject to judicial review. *Id.*, art. 21, no. 5.

207. Second Council Directive 89/646/EEC, *supra* note 196, art 18, no. 1.

208. A "financial institution" is any firm other than a credit institution the principal activity of which is to acquire holdings or to engage in the activities listed in the Annex to the Second Banking Directive except for taking deposits (or providing credit reference or safe custody services). Second Council Directive 89/646/EEC, *supra* note 196, art. 1; *see also* EC BANKING DIRECTIVE, *supra* note 2, at 623, n. 38.

209. Second Council Directive 89/646/EEC, *supra* note 196, art. 18, no. 2.

210. *Id.*

state.[211] Banks operating under a banking license may provide all such services authorized by the home member state, including investment services, without obtaining additional authorization under the proposed Investment Services Directive, discussed below.[212] Banks providing investment services in member states would be subject, however, to other provisions of the proposed Investment Services Directive.[213]

Member states must prohibit persons or firms that are not credit institutions from carrying on the business of taking deposits or other repayable funds from the public, with several exceptions.[214] Credit institutions must apply to a member state for authorization to carry on the business of banking. In general, the authorities may not grant such authorization where initial capital is less than ECU 5 million.[215] A credit institution's "own funds" generally must meet the minimum applicable requirement at the time of its authorization.[216] "Own funds" are funds that are the property of the bank, as opposed to "client funds" which are on deposit with the bank but are the property of depositors.[217] In considering whether to authorize an applicant to operate as a credit institution, the authorities of a member state must be satisfied as to the suitability of the owners to operate the business.

The Second Banking Directive permits entities from non-member states to form subsidiaries under the laws of member states for the purpose of engaging in banking activities. The directive establishes, however, a procedure pursuant to which the EC may monitor the treatment of entities from member states in non-EC countries. If credit institutions from member states experience difficulties in engaging in banking activities in non-EC countries, member states must notify the Commission. If a non-EC country denies EC credit institutions "effective market access comparable to that granted by the Community to credit institutions from that third country," the EEC may to seek, through negotiation with such other countries, "comparable competitive opportunities" for Community credit institutions.[218] If EEC credit institutions do not receive national treatment[219] in another country, "the Commission may initiate negotiations in

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211. *Id.*, art. 18.

212. Ewing, *supra* note 201, at 462, *citing* Opinion on the Proposal for a Council Directive on Investment Services in the Securities Field, 1989 O.J. (C 298) 6, 9. "The general provisions of the Banking Directive will apply in this context unless otherwise specified in the Investment Directive." *Id.*

213. *See infra* note 253 (only art. 9, nos. 2, 11 and 13 of the Investment Services Directive apply to investment firms that are credit institutions authorized by their banking license to engage in securities business).

214. Second Council Directive 89/646/EEC, *supra* note 196, art. 3.

215. *Id.*, art. 4.

216. *Id.*, art. 10, no. 1.

217. COMMISSION OF THE EUROPEAN COMMUNITIES, COMPLETING THE INTERNAL MARKET: A COMMON MARKET FOR SERVICES 17 (1989).

218. Second Council Directive 89/646/EEC, *supra* note 196, art. 9, no. 3.

219. A country provides national treatment when it affords the same competitive opportunities as are available to domestic institutions. EC BANKING DIRECTIVE, *supra* note 2,

order to remedy the situation."[220] In the event member state banks experience difficulty in engaging in banking activities in third countries, the member state may temporarily suspend decisions on applications to engage in banking by companies from these particular countries.[221] In these cases, the Council, based upon a proposal from the Commission, will decide whether to continue such restrictions.[222] The Commission may not, however, interfere with the establishment of subsidiaries by credit institutions already authorized in the EC or with the acquisition of shares in EC credit institutions by such previously authorized institutions.[223] Therefore, financial institutions from outside the EC should consider establishing a subsidiary in at least one EC country prior to 1993.[224]

Branches that have commenced their activities, in accordance with host member state provisions, before the entry into force of the national provisions implementing the directive are treated as duly authorized branches under the directive.[225] The provision of the directive pursuant to which a credit institution from one member state may directly provide services in another member state does not affect rights of a credit institution providing services before the entry into force of the provisions adopted in implementing the directive.[226]

The Second Banking Directive regulates the acquisition of shares of EC credit institutions by providing that member states must require persons proposing to acquire a "qualifying holding" in a credit institution to inform them of the proposed acquisition.[227] The member state authorities may object to the proposal within three months of notice on the grounds that the acquiror is unsuitable.[228] Persons selling their qualifying holdings in credit institutions or reducing them below certain thresholds must

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at 626, n. 65; *Regulatory Harmony*, *supra* note 5, at 51, n. 198, *quoting* MICHAEL CALINGAERT, THE 1992 CHALLENGE FROM EUROPE: DEVELOPMENT OF THE EUROPEAN COMMUNITY'S INTERNAL MARKET 85 (1988) ("treatment no less favorable in like circumstances than that accorded domestic firms").

220. Second Council Directive 89/646/EEC, *supra* note 196, art. 9, no. 4. The First Banking Directive conditions access to the EC by banks from non-EC countries on "reciprocity." *EC Banking Directive*, *supra* note 2, at 626. The Second Council Directive 89/646/EEC represents a liberalization in this regard.

221. Second Council Directive 89/646/EEC, *supra* note 196, art. 9, no. 4.

222. *Id.*, no. 4.

223. *Id.*

224. *1992 and Banking Institutions: Markets, Mergers and Acquisitions*, EUROPE 1992: THE REPORT ON THE SINGLE EUROPEAN MARKET 318 (August 30, 1989); Furlonger, *Boarding the EC Ship: Is it Now or Never for U.S. Banks?*, INT'L FIN. L. REV. 9 (May 1989).

225. Second Council Directive 89/646/EEC, *supra* note 196, art. 23.

226. *Id.*, art. 23, no. 2.

227. Second Council Directive 89/646/EEC, *supra* note 196, art. 11. A "qualifying holding" means an interest which represents 10% or more of capital or voting rights or which enables the holder to exercise significant influence over the management of the issuer. *Id.*, art. 1, no. 10. A proposed acquiror must also notify the member state authorities if he intends to increase his proportion of voting rights or capital above the 20%, 33%, or 50% level, or if the credit institution would become a subsidiary. *Id.*, art. 11, no. 1.

228. *Id.*

likewise notify member state authorities.[229]

Another recent directive in the banking area relates to the publication of annual accounting documents by a branch of a credit institution located in a member state in cases where the head office of the credit institution is outside that state.[230] The Council took the position in this directive that a branch with its head office in another member state is not required to publish separate accounts covering solely branch activities.[231] Member states must require branches of credit institutions and financial institutions having their head office in another member state to publish annual accounts (and related information) of the credit institution or financial institution.[232] Branches may not, however, be required to publish annual accounts relating solely to their own activities.[233] Member states may require branches to publish certain additional information about the branch.[234] Where the main office of a branch is outside the EC, member states may require separate branch accounts in certain cases.[235]

In 1990, the Commission presented a proposal for the supervision of credit institutions on a consolidated basis.[236] If adopted by the Council, this measure will enable member states to supervise on a consolidated basis banking groups the parent of which is not a credit institution but is a "financial holding company."[237] A 1983 Council directive requires supervision of credit institutions on a consolidated basis, but is only applicable to banking groups the parent of which is a credit institution.[238] The objective of the proposal is to give supervising authorities a more complete perspective of the solvency of credit institutions belonging to a group, and therefore to enhance protection for depositors.[239] Under the proposal, "a bank would not be able to obtain a reduction in its regulatory capital requirements simply by shifting activities previously conducted within the bank to a non-banking affiliate."[240]

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229. *Id.*, no. 3.

230. Council Directive 89/117/EEC of 13 February 1989, 1989 O.J. (L 44) 40.

231. *EC Briefings: Foreign Bank Branches*, INT'L FIN. L. REV., March, 1989, at 43.

232. Council Directive 89/117/EEC, *supra* note 230, art. 2.

233. *Id.*, art. 2.

234. *Id.*

235. *EC Briefings: Foreign Bank Branches*, INT'L FIN. L. REV., March, 1989, at 43.

236. Proposal for a Council Directive Relating to the Supervision of Credit Institutions on a Consolidated Basis, COM(90)451 final - SYN 306, 1990 O.J. Eur. Com. (C 315).

237. *Id.*, explanatory memorandum, at 1. A "financial holding company" is an institution the subsidiaries of which are exclusively or primarily one or more credit institutions or financial institutions. *Id.*

238. *Id. See* Council Directive on the Supervision of Credit Institutions on a Consolidated Basis, 1983 O.J. (L 193) 18. Under this directive, the member state in which the credit institution has its head office is charged with supervising the institution and its branches throughout the community. *EC Banking Directive*, *supra* note 2, at 620.

239. *Id.*

240. *EC Official Urges Congress to Consider EC Firms When it Mulls Banking*, 56 Banking Report (BNA) 125 (Jan. 21, 1991) (*quoting* Leon Brittan, vice president of the Commission).

B. *Investment Services*

In February 1990, the Commission submitted to the Council an amended proposal for a directive on investment services ("Investment Services Directive").[241] It is not clear when or in what form the Council ultimately will adopt the directive. Although the EC in general had planned for the new investment services regime to become effective simultaneously with the new banking program on January 1, 1993,[242] this result is unlikely to be achieved. One of the purposes of the Investment Services Directive is to ensure that, non-banks not covered by the Second Banking Directive, are not put at an unfair competitive disadvantage in relation to banks.[243] If the member states implement the Second Banking Directive before the Investment Services Directive, non-banks will be at a severe disadvantage in the EC in relation to banks. Many of the provisions of the Investment Services Directive reflect, *mutatis mutantis*, the provisions of the Second Banking Directive.[244]

As of February 1991 the Commission was debating proposed amendments to its earlier proposal, with member states in sharp disagreement over the proposed amendments.[245] One group of member states, led by France, supports an amendment to the Investment Services Directive to restrict investment firms from engaging in "off-exchange" trading.[246] Other countries, such as Britain and Germany, strenuously oppose France's initiative which is at odds with their loosely regulated off-exchange markets.[247] In February 1991 the Council of Economic and Finance Ministers formed a working group to address the issue of off-exchange trading[248] and the Council met in July of 1991 to consider a

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241. Amended Proposal for a Council Directive on Investment Services in the Securities Field, 1990 O.J. (C 42) 7 [hereinafter Investment Services Directive]. The Commission previously proposed the Investment Services Directive on December 16, 1988. Proposal for a Council Directive on Investment Services in the Securities Field, COM(88) 778-SYN 176.

242. Clarkson, *EC States Continue War Over Investment Regime*, REUTERS (Dec. 14, 1990); *see* Investment Services Directive, *supra* note 241, art. 25. A legislative committee in Britain has emphasized that the investment services directive should become effective at the same time as the banking directive. *United Kingdom: MPs Urge Speedier Adoption of Investment Services Rules*, Int'l Sec. Reg. Rep. (BNA) 3 (Aug. 16, 1989).

243. SECURITIES ASSOCIATION, *supra* note 196, at 16.

244. Proposal for a Directive on Investment Services in the Securities Field, COM (88) 778-SYN 176, Explanatory Memorandum, Sec. I.

245. London, *AIBD Opposes Plan to Amend EC Directive*, FIN. TIMES, Feb. 28, 1991, at 30.

246. *Pan-European Share Markets: More Matter, Less Art*, THE ECONOMIST, Dec. 8, 1990, at 86; *Finance Ministers Deadlocked On Off-Exchange Trading Regulations*, Int'l Sec. Reg. Rep. (BNA) 6 (Dec. 1990).

247. *Id.*; Clarkson, *EC States Continue War Over Investment Regime*, REUTERS (Dec. 14, 1990). *See also New Draft of EC's Investment Services Directive Could Fail to Resolve Differences*, 3 Int'l Sec. Reg. Rep. (BNA) 1 (Oct. 22, 1990). Inasmuch as trading on German stock exchanges is limited to several hours per day, German banks engage in off-exchange trading during the periods when the exchanges are closed. POSER, *supra* note 191, at 399.

248. *EC Working Group Set Up to Shepherd Proposed Investment Services Directive*, Daily Rep. for Executives (BNA) A-2 (Feb. 26, 1991). The working group was to report back

proposed compromise which would leave it to each member state to determine what is to be considered a regulated market.[249] The effect of such compromise would be to permit each state to determine the extent to which the single passport to engage in the securities business extends within its borders to securities that are not listed on an exchange in a member state.

The Investment Services Directive provides for a home state license which will allow investment firms to provide in any member state the investment services that are authorized by the home member state.[250] The firm may provide investment services directly or by establishing a branch in another member state.[251] The following are "investment services" encompassed within the directive: brokerage; dealing as principal; market-making; portfolio management; underwriting; investment advice; safekeeping and administration.[252] The investment firm may provide the foregoing services with respect to transferable securities (including units in undertakings for collective investment in transferable securities): money market instruments; financial futures and options; and exchange rate and interest rate instruments.[253] The host state may not condition the right to provide investment services (either directly or through the establishment of a branch) on any authorization, capital requirement or similar condition. A controversial provision requires host member states to grant access by investment firms from other member states to mem-

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to the Council of Economic and Finance Ministers on April 8, 1991. *Id.*

249. Hill and Waters, *New Effort to Find EC Accord on Investment*, FIN. TIMES, July 8, 1991, at 12, col. 5.

250. Investment Services Directive, *supra* note 247, arts. 3 and 12. An "investment firm" is any natural or legal person whose business is to provide any "investment service." *Id.*, art. 1, no. 2. "Investment service" is defined below. The "home member state" is the member state where the investment firm has its registered office, or its head office if it does not have a registered office. *Id.*, no. 4. If the investment firm is a natural person, the home member state is the member state where that person has his principal place of business. *Id.*

251. *Id.*, art. 12, no. 1. The procedures for establishing a branch and for providing services are set forth in articles 14 and 15, respectively.

252. *Id.*, art. 1, no. 2, and annex.

253. *Id.* It should be noted that pursuant to the Second Banking Directive, credit institutions will be able, among other things, to trade securities and participate in stock issues on the basis of their banking license, if authorized by the home state. Second Council Directive 89/646/EEC, *supra* note 196, art. 18, annex. A bank may provide these services on the basis of its banking license (if covered in its authorization) without obtaining additional authorization under the Investment Services Directive. Ewing, *supra* note 201, at 462, *citing* Opinion on the Proposal for a Council Directive on Investment Services in the Securities Field, 1989 O.J. (C 298) 6, 9.; Lobl and Werner, *1992 Effects on Securities Regulation and Mergers and Acquisitions in the European Community*, 21 ANN. INST. SEC. REG. 9, 16 (1989). Thus, for example, a German bank which was authorized by the banking authorities to engage in securities business would not also be required to be authorized by a securities regulator. SECURITIES ASSOCIATION, *supra* note 196, at 17. Certain provisions of the Investment Services Directive would apply to such activities, however. Investment Services Directive, *supra* note 241, art. 2. The "prudential" rules of the Investment Services Directive would apply to all institutions doing securities business, whether banks or non-banks. SECURITIES ASSOCIATION, *supra* note 196, at 18.

bership of stock exchanges and "organized securities markets" in their country.[254] This provision specifically applies to banks as well as non-bank investment firms.[255]

Investment firms are required to be authorized by their home state but not the host state prior to providing investment services.[256] To obtain home state authorization, a person must apply to the home state, furnish a plan of operations, satisfy capital requirements,[257] and disclose the names of principal owners who must satisfy home state suitability requirements.[258] While the directive allows member states to license subsidiaries of companies governed by the law of non-EC countries, it establishes a procedure similar to that of the Second Banking Directive for monitoring the treatment of EC investment firms in third countries.[259] Member states, subject to review by the Council, may limit or suspend the licensing of firms from third countries, except for the establishment of subsidiaries by investment firms already authorized in the EEC or the acquisition of shares of EC firms by such previously authorized firms.[260] The Investment Services Directive expressly allows member states to license *subsidiaries* of companies governed by the law of non-EC countries.[261] The directive does not cover the establishment of branches within the community by investment firms domiciled outside the community, but member states may not apply to such branches provisions that result in more favorable treatment than that accorded to branches of member state investment firms.[262]

The directive requires investment firms at all times to maintain the initial capital requirement, which, subject to certain exceptions, will be incorporated by reference from the capital adequacy directive.[263] Under one provision of the Investment Services Directive that applies to banks

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254. *Id.*, art. 13. The right of access applies when investment firms are authorized to provide "broking," dealing or market-making services by their home state and similar services are provided by host state stock exchanges or organized securities markets. *Id.* The host state must also ensure that such investment firms have access to membership of clearing and settlement systems on the host state exchanges or markets which are available to members of such exchanges and markets. *Id.*

255. *Id.*, art. 2. *See* Kellaway, *EC Investment Market Plan Hits Trouble*, FIN. TIMES 3 (Nov. 20, 1990). The directive establishes a corresponding right for investment firms dealing in financial futures and options. *Id.*, art 13, no. 3.

256. Investment Services Directive, *supra* note 241, art. 3.

257. Capital requirements that will be applicable to investment firms are treated in a separate proposal. *See infra* § 10.03[3].

258. Investment Services Directive, *supra* note 241, arts. 3 and 4. The home member state has the exclusive responsibility of administering the capital and suitability requirements applicable to the initial authorization. *Id.*, art. 9, no. 3.

259. *Id.*, art. 7.

260. *Id.*, art. 7, no. 5.

261. Levintin, *The Treatment of United States Financial Services Firms in Post-1992 Europe*, 31 HARV. INT'L L.J. 515 (Spring 1990).

262. POSER, *supra* note 191, at 350; Investment Services Directive, *supra* note 241, art. 5.

263. Investment Services Directive, *supra* note 241, art. 8.

as well as investment firms, home member states must require investment firms authorized by them to "make sufficient provision against market risk" in accordance with the capital adequacy directive.[264]

Like the Bank Directive, the Investment Services Directive grants primary supervisory responsibility over an investment firm to the home country. The directive requires member states to adopt "prudential" rules governing the investment firms they license and gives them "exclusive competence" to administer such rules, regardless of whether that investment firm establishes a branch or directly provides services in another member state.[265] These "prudential rules" must govern the following aspects of investment firms' business, among others: administrative and accounting procedures and internal control; segregation of money and securities; insurance arrangements to protect investors against losses arising from the failure of the firm; recordkeeping; and conflicts of interest.[266] At least initially, the EC may continue to allow the host state to regulate some aspects of investment firms' business (*e.g.*, conduct of business, advertising).[267] It is anticipated that "conduct of business" rules eventually will be the subject of another EC directive.[268]

The directive provides an important grandfathering provision for investment firms already operating in EC countries. Investment firms authorized in their home member state before the effectiveness of the national provisions implementing the Investment Services Directive will be considered to be licensed for purposes of the directive, if the license were given under conditions equivalent to those of the directive.[269] The directive makes a corresponding provision for branches operating in another member state[270] and investment firms providing services in a member state prior to the effectiveness of the national provisions implementing the directive.[271]

C. *Capital and Related Requirements for Banks and Investment Firms*

1. Own Funds and Solvency Ratio Directives

The Council adopted the "own funds" directive in April 1989 to describe the types of funds banks must maintain.[272] The "own funds" direc-

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264. *Id.*, art. 9, no. 2.

265. *Id.*, art. 11, no. 1.

266. *Id.*, art. 11.

267. Appel, *supra* note 26, at 70.

268. Lobl and Warner, *1992 Effects on Securities Regulation and Mergers and Acquisitions on the European Community*, 21 ANN. INST. SEC. REG., vol. 29, 17 (Nov. 1989); *New Directive Underway on Capital, Market Risk*, Int'l Sec. Reg. Rep. (BNA) 9 (June 7, 1989).

269. Specifically, the firm will be grandfathered if the authorization were given under equivalent conditions to those set out in arts. 3(2) and 4 of the Investment Services Directive, *supra* note 241, art. 24.

270. *Id.* art. 24, no. 2.

271. *Id.*, no. 3.

272. Council Directive 89/299 of 17 April 1989 On the Own Funds of Credit Institu-

tive establishes a common definition for the capital of banks to assess compliance with initial capital requirement.[273] "*Own funds* are the funds which are the property of the bank, as opposed to *client funds* which are on deposit with the bank but the property of the clients."[274] This directive defines which items constitute "own funds," including (without limitation) paid-up capital reserves, revaluation reserves, funds for general banking risks, value adjustments, cumulative preferential shares and subordinated loan capital.[275] Regulatory authorities use the size of own funds in calculating acceptable lending levels.[276] The directive separately categorizes "original own funds" and "additional own funds."[277] Original own funds consists of the highest quality items and additional own funds consists of items of lesser quality.[278] In recognition of the fact that "items constituting additional own funds are not of the same nature as those constituting original own funds, the amount of the former included in own funds must not exceed the original own funds. . ."[279]

The definition of own funds is critical for the solvency ratio directive the Council adopted in December 1989.[280] In general, the directive concerns the amount of funds banks must keep in reserve in relation to outstanding loans[281] and establishes the manner in which the ratio should be calculated.[282] The ratio expresses the relation of own funds to total assets and off- balance-sheet items, weighted according to the degree of credit risk.[283] The ratio relates principally to the credit risks involved in the event of counter-party default.[284] The numerator of the equation is "own funds" as defined in the own funds directive, discussed above.[285] The denominator is the total of the risk-adjusted assets and off-balance sheet items specified in the directive.[286] The denominator distinguishes between degrees of risk associated with particular assets and off-balance sheet items, and with particular categories of borrowers.[287] Beginning January 1, 1993, credit institutions will be required to maintain at all times a sol-

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tions, 1989 O.J. (L 124) 16. *See EC Banking Directive*, *supra* note 2, at 622.

273. Appel, *supra* note 26, at 70.

274. EUROPEAN COMMISSION, COMPLETING THE INTERNAL MARKET: A COMMON MARKET FOR SERVICES 17 (1989).

275. THE EUROPEAN FINANCIAL COMMON MARKET 30 (1989).

276. EUROPEAN COMMISSION, *supra* note 274, at 17.

277. Council Directive 89/299, *supra* note 272, preamble.

278. EUROPEAN COMMISSION, supra note 274, at 17.

279. Council Directive 89/299, *supra* note 272, preamble.

280. Council Directive 89/647 of 18 December 1989 On a Solvency Ratio for Credit Institutions, 1989 O.J. (L 386) 14.

281. *EC Banking Directive*, *supra* note 2, at 622.

282. Appel, *supra* note 26, at 70.

283. Council Directive 89/647, *supra* note 280, preamble and art. 3, no. 1.

284. EUROPEAN COMMISSION, *supra* note 274, at 25.

285. Council Directive 89/647, *supra* note 280, art. 4.

286. *Id.*, art. 5, nos. 2 and 3.

287. EUROPEAN COMMISSION, *supra* note 274, at 25.

vency ratio of at least 8%[288] unless national regulatory authorities prescribe a higher minimum ratio.[289]

2. Capital Adequacy Directive

In April 1990 the Commission adopted a proposal for a Council Directive on the capital adequacy of both investment firms and credit institutions ("Capital Adequacy Directive").[290] The Commission's principal objectives in formulating this proposal were to establish common conditions for the establishment of investment firms; to subject banks and investment firms to substantially equivalent requirements concerning "own funds;" to enhance the "international competitiveness" of the financial centers of the EEC; and to protect investors.[291] It is unclear when the Council will adopt the proposal as a directive.

Member states will be required to apply the Capital Adequacy Directive to "investment firms" and "credit institutions," and may adopt measures more stringent than those required by the directive if they choose.[292] Investment firms must have initial capital of at least ECU 500,000, with certain exceptions.[293] This minimum capital requirement does not apply to credit institutions, which are governed in this respect by the capital provision of the Second Banking Directive.[294] In general, an investment firm's capital may not fall below that initially required for authorization.[295]

The Capital Adequacy Directive requires investment firms to provide a specified amount of their own funds for risks associated with certain activities.[296] Credit institutions, however, for their part, would be required to meet either (i) the capital requirements of the solvency ratio

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288. Council Directive 89/647, *supra* note 280, art. 10.

289. *Id.* On December 2, 1988, the French Banking Commission issued a memorandum implementing a solvency ratio for international banks. *Implementing the Cooke Ratio*, INT'L FIN. L. REV., Feb., 1989, at 46-47. In 1991 the United Kingdom implemented the Solvency Ratio Directive and the Own Funds Directive. Together these two directives establish "a new capital regime for UK banks." *New Banking Rules Made in U.K.*, Doing Business in Europe (CCH) 7 (Feb. 12, 1991).

290. Proposal for a Council Directive on Capital Adequacy of Investment Firms and Credit Institutions, COM(90)141 final - SYN 257, 1990 O.J. (C 153) [hereinafter Capital Adequacy Directive]. For purposes of arts. 3-6 of the Capital Directive, "investment firms" refers to investment firms which are neither credit institutions, local firms, nor firms engaged "purely" in the business of rendering investment advice. *Id.*, art. 3, no. 1. A "local firm" means certain firms involved with financial futures or options. *Id.*, art. 2.

291. *Capital Adequacy of Investment Firms*, BULL. E.C. 4-1990 14, 15 (1990). "Own funds" means "own funds" as defined in the own funds directive, Directive 89/299, except that the definition may be modified as specified in art. 2 of the Capital Adequacy Directive.

292. Capital Adequacy Directive, *supra* note 290, art. 1, no. 2.

293. *Id.*, art. 3, no. 2.

294. *EC Briefings: Capital Adequacy*, INT'L FIN. L. REV., June 1990, at 44.

295. Capital Adequacy Directive, *supra* note 290, art. 3, no. 8.

296. *Id.*, art. 4.

directive,[297] or (ii)(A) the capital requirements of Annex 2 (regarding position risk) and Annex 3 (regarding counterparty/settlement risk) of the Capital Adequacy Directive in respect of their proprietary trading positions, and (B) the requirements of the solvency ratio directive in respect of the rest of their business.[298] Thus, national regulatory authorities may either apply the solvency ratio directive to all of the activities of a credit institution, or may apply the Capital Adequacy Directive to the credit institution's securities activities.[299] The purpose of the provision is to establish a level playing field for the large universal banks and smaller nonbank specialty firms.[300] British securities firms, for example, are accustomed to a more "flexible system of regulation," while German universal banks "carry out investment services on the basis of strict bank solvency rules."[301] The proposed directive gives member states a choice, in effect, between regulating banks' securities activities on the basis of banking solvency ratios or the capital adequacy provisions.[302]

Investment firms must provide a specified amount of capital to cover four categories of risk: position risk; counterparty/settlement risk; foreign exchange risk; and other risks.[303] These risks must be quantified in accordance with the directive, the sum of them constituting the "own funds requirement." Investment firms must ensure that their own funds requirement is lower than or equal to their own funds.[304] The Capital Adequacy Directive has been an extremely controversial proposal. "Securities firms in London have voiced their fear that high capital adequacy requirements would make entry into the business so expensive that it would drive international securities business away from the European Community, and that London would have the most to lose from such a development."[305]

IV. TAKEOVERS AND ACQUISITIONS

A. *Takeover Directive*

The Commission adopted an amended proposal for a directive on takeover bids in September 1990 ("Takeover Directive").[306] This directive

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297. *See supra* note 280.

298. Capital Adequacy Directive, *supra* note 290, art. 4, no. 4.

299. *EC Briefings: Capital Adequacy*, INT'L FIN. L. REV., June 1990, at 44.

300. *EC Commission Proposes Investment Services Minimum Capital Requirements*, 54 Banking Report (BNA) 756 (April 30, 1990).

301. Dickson, *EC Unveils Capital Adequacy Plans*, FIN. TIMES, April 26, 1990, at 28.

302. *Id.*

303. Capital Adequacy Directive, *supra* note 290, art. 4, annexes 2-5.

304. *Id.*, art. 4, no. 1.

305. POSER, *supra* note 191, at 351; *TSA Warns Member Firms on Latest EC Draft Capital Adequacy Directive*, 3 Int'l Sec. Reg. Rep. (BNA) 1 (Jan. 31, 1990); *Bank of England's Kent Warns on Capital Adequacy*, Int'l Sec. Reg. Rep. (BNA) 3 (Feb. 26, 1990); Barchard, Waters and Kellaway, *Bank Opposes Brussels Capital Directive*, FIN. TIMES, Feb. 5, 1990.

306. Amended Commission Proposal for a Thirteenth Council Directive on Company

applies to the laws of the member states that relate to takeover bids for securities of an issuer governed by the law of a member state.[307] The Takeover Directive as amended only applies if the securities are admitted to trading on a member state market "which is regulated and supervised by authorities recognised by public bodies, operates regularly and is accessible, directly or indirectly, to the public".[308] For purposes of the directive, a "takeover or other general bid" is an offer made to the shareholders of a company to purchase all or part of their securities for cash or in exchange for other securities.[309] The Takeover Directive would impose both substantive and disclosure requirements on the offeror. A person who acquires securities that, when added to his existing ownership, equal a percentage of a company which the member state may not set at more than one-third of the voting rights of the issuer, must make a bid to acquire all of the securities of the issuer.[310] Member states may adopt exemptions from this requirement.[311]

Member states must designate a regulatory authority to administer the provisions of the directive.[312] The authority responsible for reviewing the takeover offer disclosure document is that from the member state in which the target company has its registered office if the securities of the target are listed on a regulated market in that member state.[313] A disclos-

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Law Concerning Takeover and Other General Bids, 1990 O.J. (C 240) 7 [hereinafter Takeover Directive]. The Commission submitted an earlier proposal to the Council in 1989. Proposal for the Thirteenth Council Directive on Company Law Concerning Takeover and Other General Bids, COM(88)823 final SYN 186.

The amended proposal would require member states to adopt implementing provisions by January 1, 1992, to become effective no later than January 1, 1993. Takeover Directive, *supra*, art. 22. At present takeover regulation varies greatly within the member states. *The European Community's Proposed Directive on Takeover Bids and Its Impact on Shareholders' Rights*, 16 BROOKLYN J. INT'L L. 561 (1990). The United Kingdom has an extensive system of takeover regulation, for example, while Germany does not. *Id.* Regarding takeover regulation within the member states, *see generally New Takeover Code Amendments to Broaden MBO Disclosures*, Int'l Sec. Reg. Rep. (BNA) 1 (Jan. 17, 1990); *New Takeover Code Comes Under Review in Paribas Case*, Int'l Sec. Reg. Rep. (BNA) 4 (Jan. 4, 1990); *EC's Sir Brittan Criticizes Dutch Takeover Defense's*, Int'l Sec. Reg. Rep. (BNA) 4 (Nov. 22, 1989); *EC Takeover Rules Threaten Dutch Defenses Say Executives*, Int'l Sec. Reg. Rep. (BNA) 4 (Oct. 25, 1989); *Disclosure, Takeover Reforms to Meet International Practice*, Int'l Sec. Reg. Rep. (BNA) 3 (Oct. 25, 1989); *New Rules to Limit Takeover Defense Set for Implementation*, Int'l Sec. Reg. Rep. (BNA) 5 (Oct. 11, 1989); *Final Takeover Codes Issued, CBV Given Expanded Powers*, Int'l Sec. Reg. Rep. (BNA) 5 (Oct. 11, 1989); *EC Takeover Proposal Unsound, Says Bourse Supervisory Board*, Int'l Sec. Reg. Rep. (BNA) 7 (Aug. 2, 1989); *Protection Against Hostile Takeovers*, INT'L FIN. L. REV. 42 (March 1989).

307. Takeover Directive, *supra* note 306, art. 1, no. 1.

308. *Id.*

309. *Id.*, art. 2.

310. *Id.*, art. 4, no. 1.

311. *Id.*, art. 4, no. 2C.

312. *Id.*, art. 6, no. 1.

313. *Id.*, art. 6, no. 3. If the securities are not listed in the member state in which the target company has its registered office, the supervising authority in respect of the disclosure document is the member state in which the securities were first admitted to trading on a

ure document approved in accordance with the directive is entitled to mutual recognition in the other member states.[314] Member states must vest the regulatory authority with necessary powers, including either the power to forbid publication of an incomplete takeover disclosure document or the power to order remedial action in respect of the document.[315] In discharging its duties, the supervisory authority must seek to ensure that (i) all shareholders of the "offeree company" (*i.e.*, the target company) are treated equally; (ii) the shareholders have sufficient time and information to make an informed decision; (iii) the board of directors of the offeree company acts in the interests of all the shareholders "and cannot frustrate the bid;" (iv) "false markets" are not created in securities of the offeree company, the offeror company or other companies concerned by the bid; and (v) offeree companies are not hindered in the conduct of their business beyond a reasonable time by a bid.[316]

The announcement provision of the Takeover Directive is somewhat unusual by U.S. standards. "As soon as he decides to make a bid," the offeror must announce his decision by informing the appropriate regulatory authority, the board of the target company, and the public.[317] After making this announcement, the offeror must "immediately" prepare a disclosure document and make it public.[318] The Takeover Directive contains a detailed list of the minimum information which the offeror must disclose.[319] Prior to releasing the disclosure document to the public, the offeror must transmit it to the regulatory authority,[320] which may review the document, require corrections, or prohibit publication thereof if it is incomplete.[321]

The Takeover Directive also contains provisions relating to defensive actions by the target company board. After the offeror has informed the target's board of its decision to make a bid, the board may not, without shareholder approval, issue securities; engage in certain defensive transactions without regulatory approval; or acquire its own shares.[322] In the United States these matters generally are not regulated by federal law and usually are relegated to the decisional law of the states.

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regulated market. *Id.*

314. *Id.*, art. 6, no. 3.

315. *Id.*, art. 6, no. 2.

316. *Id.*, art. 6A.

317. *Id.*, art. 7, no. 1.

318. *Id.*

319. *Id.*, art. 10. If the offeror is using securities as consideration for the bid, and the securities have been listed on a member state stock exchange in the preceding 12 months, the offeror must transmit the listing particulars along with the takeover disclosure document. *Id.*, art. 10, no. 3. If the offeror is using unlisted securities as consideration, the takeover disclosure document must contain information equivalent to that required by the Listing Particulars Directive. *Id.*, no. 4.

320. *Id.*, art. 7, no. 3.

321. *Id.*, art. 6, no. 2.

322. *Id.*, art. 8.

The period for the acceptance of the takeover bid may not be less than four weeks or more than ten weeks from the date the disclosure document is made public.[323] After commencement of the offer, it may be withdrawn only under the circumstances enumerated in the directive.[324] In "good time" before the expiration of the offer period, the target company board must prepare a disclosure document stating its opinion on the bid and making it public.[325] The directive also contains provisions regulating competing bids.[326]

B. *Major Shareholdings Directive*

The Council adopted a directive in December 1988 requiring disclosure of substantial acquisitions or dispositions of the shares of listed companies.[327] This directive is analogous to Section 13(d) of the U.S. Securities Exchange Act of 1934. The directive applies to persons making acquisitions or dispositions of holdings above specified thresholds which involve changes in voting rights in issuers incorporated under the laws of a member state and the shares of which are listed on a stock exchange in one or more member states.[328] Member states must require any person acquiring or disposing of a qualifying holding in such an issuer to notify, within seven calendar days, the issuer and the competent authorities of the member state the law of which governs the issuer.[329] The person making the filing must disclose the voting rights that he holds following the acquisition or disposition. The notification requirement generally applies to cases where, following the acquisition or disposition, the proportion of voting rights held by the person exceeds or falls below one of the following levels: 10%, 20%, ⅓, 50%, and ⅔.[330] A company which has received such a "declaration" (*i.e.*, the subject company) must disclose it to the public in each of the member states in which its shares are listed.[331]

C. *National Laws*

In 1990, the United Kingdom changed its requirements concerning

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323. *Id.*, art. 12, no. 1.

324. *Id.*, art. 13.

325. *Id.*, art. 14.

326. *Id.*, art. 20.

327. Council Directive 88/627/EEC on the Information to be Published When a Major Holding in a Listed Company is Acquired or Disposed Of, 1988 O.J. (L 348) 62 [hereinafter Major Shareholdings Directive]. The implementation date for this directive was January 1, 1991.

328. Major Shareholdings Directive, *supra* note 327, art. 1. The directive does not apply to the acquisition or disposition of major holdings in collective investment undertakings. *Id.*, no. 3. Regarding collective investment undertakings, *see infra* § 10.06.

329. *Id.*, art. 1. The seven-day period commences on the date when the owner learns, or should have learned, of the acquisition or disposition. *Id.*

330. *Id.*, art. 4.

331. *Id.*, art. 1, no. 4.

disclosure of major shareholdings.[332] As amended, the Companies Act requires disclosure of all shareholdings of three percent or more (formerly five percent or more) in a U.K. listed company.[333] In the period since the announcement, the International Stock Exchange has been "deluged with corporate stake announcements."[334] In 1989, Belgium enacted new legislation requiring the disclosure of major shareholdings. The new legislation requires persons purchasing five percent or more of Belgian companies of specified sizes to disclose the acquisition. One of the consequences of noncompliance is disenfranchisement until a certain period after the purchaser notifies the regulatory authorities.[335] Spain adopted a new rule effective in 1990 that requires shareholders owning five percent or more of listed companies to disclose publicly their holdings.[336] The change reportedly is an aspect of the reform program based upon the 1988 Financial Securities Law.[337] Italy adopted a rule in 1990 that requires public disclosure of more than two percent in either a publicly quoted Italian company or an Italian financial institution.[338] These shareholdings as well as changes of ownership must be reported to either the *Commissione Nazionale per le Societa e la Borsa* or the central bank, as appropriate.[339]

V. INSIDER TRADING

A. *Insider Trading Directive*

In November 1989 the Council adopted a directive on insider trading the implementation date of which is June 1, 1992 ("Insider Dealing Directive").[340] The member states must prohibit specified persons who possess "inside information" from using that information "with full knowledge of the facts" by purchasing or selling transferable securities of the issuer to

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332. *UK Corporate Disclosure Requirements Revised*, Doing Business in Europe (CCH) 8 (July 18, 1990).

333. *Id.*

334. *Id.*

335. *See Belgium: Disclosure Requirements for Shareholdings - New Takeover Rules*, Doing Business in Europe (CCH) ¶ 98-205, at 97,209.

336. *Spain: Disclosure, Takeover Reforms to Meet International Practice*, Int'l Sec. Reg. Rep. (BNA) 3 (Oct. 25, 1989).

337. *Id.*

338. *Italy: New Rule on 2 Percent Holdings Goes Into Effect*, 3 Int'l Sec. Reg. Rep. (BNA) 1 (July 30, 1990).

339. *Id.*

340. Council Directive 89/592/EEC of 13 November 1989 Coordinating Regulations on Insider Dealing, 1989 O.J. (L 334) 30 [hereinafter Insider Dealing Directive]. *See generally* Hopt, *The European Insider Dealing Directive*, 27 COMMON MARKET L. REV. 51 (1990); *A New Look at the European Economic Community Directive on Insider Trading*, 23 VAND. J. TRANSNAT'L L. 135 (1990); *EC Briefings: Insider Trading*, INT'L FIN. L. REV., Aug. 1989, at 45.

Regarding member state implementation, *see generally West Germany: Insider Trading Law Tightened*, INT'L FIN. L. REV., Dec. 1989, at 46; *COB Sends Prosecutor Secret Report on Insider Trading*, Int'l Sec. Reg. Rep. (BNA) 4 (Aug. 16, 1989).

which the information relates.[341] This prohibition applies to any person who possesses inside information by virtue of his membership in the structure of the issuer, his share ownership, or his access to information through his employment, profession or duties.[342] The directive also applies the prohibition to other persons who possess inside information the source of which "could not be other than" one of the previously enumerated persons.[343] The member states must prohibit any such person from disclosing inside information to third other parties outside the normal course of his employment or professional duties, or procuring another person on the basis of such information to purchase or sell securities admitted trading on a securities market as specified in the directive.[344]

"Inside information" is non-public information "of a precise nature" relating to an issuer or to securities, which, if public, "would be likely to have a significant effect on the price" of the securities in question.[345] Unlike U.S. law, the EC directive only applies to securities admitted to trading on a market which is regulated by "public bodies," "operates regularly and is accessible directly or indirectly to the public."[346] The member states must apply the prohibitions of the directive "at least" to actions undertaken "within its territory" if the securities in question are admitted to trading on a market of a member state.[347] The directive only applies to purchases or sales effected through a professional intermediary.[348] The directive specifically permits member states to exclude transactions effected without a professional intermediary outside a regulated market.[349]

The Insider Dealing Directive also adopts a disclosure provision applicable to issuers. Article 7 applies one of the disclosure requirements of the Listing Conditions Directive[350] to all companies and undertakings the transferable securities of which are admitted to trading on one of the markets covered by the Insider Dealing Directive.[351] This provision speci-

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341. Council Directive 89/592/EEC, *supra* note 340, art. 2.

342. *Id.*

343. *Id.*, art. 4.

344. *Id.*, art. 3.

345. *Id.*, art 1.

346. *Id.*, art. 1. The directive prohibits the purchase or sale of "transferable securities" under the described circumstances. "Transferable securities" include shares and debt securities, equivalent securities, and rights applicable thereto; futures, options, financial futures and financial index contracts. *Id.*

347. *Id.*, art. 5. A transaction will be deemed to be within the territory of a member state if carried out on a regulated market (operated regularly and accessible to the public) situated or operating within such territory. *Id. See* Hopt, *supra* note 340, at 79 (discussing difficulty of applying territorial approach in view of computer oriented markets that have more than one place of functioning).

348. *Id.*, art. 2, no. 3.

349. *Id.*

350. Specifically, schedule C.5(a) of the annex to the Listing Conditions Directive, *supra* note 66.

351. Hopt, *supra* note 340, art. 7.

fies that the issuer must inform the public of any major new developments in its activities that are not public knowledge and which may lead to substantial movement in the prices of its shares.[352]

The Insider Dealing Directive is "a *major piece of capital market law harmonisation* in the European Community. . .based on convincing and legal considerations."[353] According to one observer, "[t]he fact that insider dealing will be prohibited all over the Community and that this prohibition will have to be based on a clear and solid legal ground without depending on the cooperativeness of the insiders themselves must be considered as an improvement which was *overdue*."[354]

B. *National Laws*

In the United Kingdom, trading in a security of an issuer by a person having a prescribed association or position with the company (defined as a "connected person"), or a person obtaining information from a connected person, on a recognized stock exchange or in advertised securities through an off market dealer on the basis of unpublished price sensitive information is a crime under the Company Securities (Insider Dealing) Act 1985.[355] The Department of Trade and Industry has responsibility for enforcing the insider trading law.[356] The EC directive reportedly required only a " 'modest strengthening' " of British law.[357]

In France, the legislature passed a law enhancing the powers of the COB to combat insider trading.[358] Under the new provisions, the COB may release its findings to the public, refer a case to the Stock Exchange Council for disciplinary action or initiate judicial proceedings.[359] In 1990 the government issued new regulations on insider trading.[360] "Privileged information" is defined as non-public, specific information concerning a security, issuer, negotiable future or quoted financial product that, if made public, could affect the price of the instrument involved.[361] The regulation applies to persons possessing privileged information by virtue of

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352. Listing Conditions Directive, *supra* note 66, schedule C.5(a). The competent authorities may exempt the issuer from this requirement under certain conditions. *Id.*

353. Hopt, *supra* note 340, at 80.

354. *Id.*

355. *See* ICMSR, § 1.08[5][b].

356. *DTI Says It Will Continue to Regulate Insider Trading*, Int'l Sec. Reg. Rep. (BNA) 2 (1990).

357. *United Kingdom: Changes in Insider Rules Make Directive "Useful,"* Int'l Sec. Reg. Rep. (BNA) 2 (1989). In September 1989 the U.K. signed the Council of Europe Convention on Insider Trading, which establishes a system for the exchange of information on insider trading. *United Kingdom: UK Signs Council of Europe Convention on Insider Trading*, Doing Business in Europe (CCH) ¶ 98-343, at 97,300.

358. *France: Powers of Stock Exchange Transactions Commission Broadened*, Doing Business in Europe (CCH) ¶ 98-102, at 97,146.

359. *Id.*

360. *France: Securities Regulations Approved on Public Disclosure, Pricing, Ruling Requests, Insider Information*, Doing Business in Europe (CCH) ¶ 98-604, at 97,518.

361. *Id.* at 97,522.

an inside position, participation in a particular financial transaction, or the practice of a profession or discharge of a duty.[362] These persons must abstain from exploiting privileged information by purchasing or selling the financial products that are the subject of the information,[363] and may not disclose privileged information for a purpose other than that for which it is held.[364] The 1990 regulation also imposes public disclosure requirements relating to all instruments subject to the jurisdiction of the COB.[365] Listed companies must disclose publicly, at the "earliest opportunity," all material facts which, if known, would significantly affect the price of the security in question.[366] Any person planning to engage in, for his own account, any financial transaction likely to affect significantly the price of the securities of an issuer must disclose to the public, at the "earliest opportunity," the terms of the proposed transaction.[367]

Traditionally, the German government has been relatively uninvolved in the regulation of insider trading, delegating the task in effect to the stock exchanges and trade industries.[368] German insider trading rules were bolstered in 1989 but remain non-statutory.[369] Belgium criminalized insider trading in 1989.[370] Belgian law imposes an obligation on issuers immediately to disclose all facts that, if public, would significantly affect the price of the issuer's securities.[371] Insider trading has not been subject to regulation by the government in Italy.[372] The Milan Stock Exchange, it has been observed, "is notorious for insider trading, which is not illegal. . . ."[373] The Netherlands enacted new insider trading legislation effective in 1989, authorizing criminal penalties.[374] The law applies to trading in the Netherlands of securities listed in the Netherlands and trading from the Netherlands in foreign markets, on the basis of insider information.[375] The Model Code adopted by the Amsterdam Stock Exchange also regulates insider trading.[376] The Spanish Securities Market Act, enacted in July 1988, contains prohibitions relating to insider

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362. *Id.*

363. *Id.*

364. *Id.*

365. *Id.* at 97,518.

366. *Id.*

367. *Id.*

368. *See* ICMSR § 8C.11.

369. *West Germany: Insider Trading Law Tightened*, INT'L FIN. L. REV., Dec. 1989, at 46.

370. *Belgian Government Approves Financial Markets Reform*, Doing Business in Europe (CCH) No. 210 (January 16, 1990).

371. Bruyneel and Peeters, *Too Much Red Tape*, INT'L FIN. L. REV., Nov. 1990, at 12.

372. *Ministry Seeks Transparent Trading on Reformed Bourse*, Int'l Sec. Reg. Rep. (BNA) 5 (Aug. 2, 1989).

373. POSER, *supra* note 191, at 416, *citing* Friedman, *Flagging Milan Comes to Life After Hours*, FIN. TIMES, July 8, 1988, at 38, col. 4.

374. POSER, *supra* note 191, at 426.

375. Schreuder and Kasdorp, *Guide*, *supra* note 180, at 37.

376. *Id.*

trading.[377]

VI. UCITS

A. *UCITS Directive*

The Council adopted a directive governing "undertakings for the collective investment in transferable securities" ("UCITS") on December 20, 1985.[378] UCITS are undertakings formed for the collective investment in transferable securities of funds raised from the public. UCITS redeem their own units at the request of the holders from the assets of the fund,[379] and thus are similar to "open-end" investment companies in the United States.[380] The directive provides that undertakings "may be constituted according to the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies)."[381] The implementation date for the UCITS directive was October 1, 1989, except for Portugal and Greece which were given until April 1992 to implement the directive.[382]

Under the directive, UCITS may not operate as such without authorization by the competent authorities of the member state in which they are situated.[383] The laws of such member state, which must meet the minimum requirements of the directive, will govern both the authorization and operations of the firm.[384] Once authorized, UCITS may operate in all member states,[385] but must comply with the laws of such "host" states that do not fall within the areas governed by the EC directive.[386] Since the UCITS directive does not have a reciprocity provision comparable to that of the Second Banking Directive, investment companies from nonmember countries may form EC-based affiliates to operate in the EC.[387]

The directive establishes detailed rules regarding the structure, obli-

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377. POSER, *supra* note 191, at 440.

378. Council Directive 85/611/EEC on the Coordination of Laws, Regulations, and Administrative Provisions Relating to Undertakings for Collective Investment in Transferable Securities, 1985 O.J. (L 375) 3. *See also* Directive 88/220, 1988 O.J. (L 100) 31 (amending Directive 85/611 in respect of the investment policies of certain UCITS); Council Recommendation 85/612, 1985 O.J. (L 375) 19.

379. *Id.*, art. 1. Article 2 of the directive excludes several funds from coverage, including, inter alia, UCITS of the closed-end type; UCITS which do not promote the sale of their units to the public within the Community; and UCITS which may be sold only to the public in non-EC countries.

380. ICMSR, § 1.09[2].

381. *Id.*

382. UCITS Directive, art. 57; EC DIRECTIVE REMOVES INVESTMENT BARRIERS, EUROPE-1992: THE REPORT ON THE SIGLE EUROPEAN MARKET 391 (Oct. 25, 1989). Italy, Germany and the Netherlands missed the October 1, 1989 deadline. *Id.*

383. *Id.*, art. 4.

384. ICMSR, § 1.09[2].

385. *Id.*, art. 1.

386. *Id.*, art. 44, no. 1.

387. ICMSR, § 1.09[2].

gations, investment policies and disclosure obligations of unit trusts and investment companies. With certain exceptions, UCITS may only invest in transferable securities listed on a stock exchange in a member state, dealt in on a regulated market in a member state, or traded on an exchange or regulated market in a non-member state provided such market has been approved by the competent authorities or is provided for in law or the fund's rules or articles of incorporation.[388] UCITS are not allowed to borrow funds, with certain exceptions relating to borrowing on a temporary basis or for the purchase of certain immovable property.[389] In general UCITS must stand ready to re-purchase or redeem units from holders upon request.[390]

B. *National Laws*

In the United Kingdom, investment companies are subject to regulation under the Financial Services Act and the business conduct rules of the Securities and Investments Board and self- regulatory organizations.[391] In 1989 the U.K. published statutory amendments implementing the UCITS directive.[392] Under the FSA, a "collective investment scheme" is an arrangement with respect to property the purpose or effect of which is to enable persons taking part in the arrangement to participate in or receive profits from the acquisition, holding, management, or disposal of the property.[393] A "unit trust scheme" is a collective investment scheme under which the subject property is held in trust for the participants.[394] One must be an authorized person[395] in order to establish or operate a collective investment scheme since such activities under the Financial Services Act constitute an investment business.[396] The collective investment scheme must be separately authorized and is subject to extensive regulation.[397] The Department of Trade and Industry ultimately is responsible for investment funds but has delegated much of its authority to the Securities and Investment Board.[398] A collective investment scheme formed in any EC country may be sold to the public in the United King-

388. UCITS Directive, *supra* note 378, art. 19. Article 19, no. 2, of the directive establishes certain exceptions relating to permissible investments which are generally limited to ten percent of the assets of a UCITS.

389. *Id.*, art. 36.

390. *Id.*, art. 37. The directive provides several exceptions to this duty.

391. POSER, *supra* note 191, at 105.

392. *United Kingdom: UCITS Directive Implemented*, Doing Business in Europe (CCH) ¶ 98-345, at 97,301.

393. Financial Services Act, *supra* note 141, § 75(1).

394. *Id.*, § 75(8).

395. *Id.*, § 3. In order to be an authorized person, one must be admitted to membership in an appropriate self-regulatory organization. *See* ICMSR § 6A.03.

396. Financial Services Act, *supra* note 141, § 1(2), sch. 1, pt. II, ¶ 16.

397. *Id.*, pt. 1, ch. 8.

398. Shipton and Kilner, *Managing Money: A Guide to the World's Investment Fund Market*, INT'L FIN. L. REV., Supp. April 1990, at 88. [hereinafter *Investment Company Guide*].

dom, if the licensing state certifies that the undertaking complies with the UCITS directive, and the undertaking follows U.K. marketing rules.[399]

In 1988 France enacted legislation designed to harmonize French law on mutual funds with the EC UCITS directive.[400] The government adopted additional regulations applicable to EC-based funds in late 1989.[401] By early 1990, about thirty investment funds from other EC countries had been authorized to offer securities in France.[402]

In 1989 the German Ministry of Finance issued a proposal designed to implement the UCITS Directive in Germany.[403] Germany subsequently adopted the proposal, effective March 1, 1990, as amendments to the two pertinent laws, the Domestic Investment Company Act and the Foreign Investment Funds Act.[404] In Germany, domestic mutual funds are treated like a bank and are subject to bank regulations in addition to investment company rules.[405] The Federal Banking Commission administers the investment company regulations.[406] The German statutes as amended establish detailed rules for the sale in Germany of UCITS from EC member countries. The Institut Monetaire Luxembourgeois clarified existing investment fund laws in a circular issued in 1991.[407] The circular interprets the investment company legislation Luxembourg enacted in 1988.[408] The 1988 legislation implemented the EC UCITS directive, making Luxembourg the first country to do so.[409] Since that time Luxembourg has made a concerted effort to become the headquarters of the UCITS industry in the EC.[410] The legislation provides that UCITS from other EC member countries may be freely sold in Luxembourg, subject to Luxembourg's marketing rules and several other conditions.[411]

Spanish law permits shares of investment firms from EC member states to be publicly offered in Spain pursuant to the EC UCITS Directive.[412] As of early 1990, the Netherlands was in the process of enacting

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399. *Id.*, at 92.

400. *France: Bill Submitted on Mutual Funds*, Doing Business in Europe (CCH) ¶ 98-195, at 97,201; *France: Mutual Funds Law Enacted*, Doing Business in Europe (CCH) ¶ 98-211, at 97,213, *citing* Law No. 88-1201 of Dec. 23, 1988, 1988 J.O. 31.

401. *Investment Company Guide*, *supra* note 398, at 34.

402. *Id.*

403. *West Germany: Implementing the UCITS Directive*, INT'L FIN. L. REV., June 1989, at 42.

404. *Investment Company Guide*, *supra* note 398, at 101. *See generally* ICMSR, § 8C.09.

405. *Id.*; *see* ICMSR, § 8C.09[a].

406. *Id.*

407. *Financial Legislation Consolidated*, FIN. TIMES LIMITED, FINANCIAL REGULATION REPORT (Feb. 1991).

408. *Id.*

409. *Investment Company Guide*, *supra* note 398, at 62. Luxembourg's implementing statute of March 30, 1988 was published in the Official Gazette on March 31, 1988. *Id.*

410. *See* ICMSR, § 1.09[2].

411. *Id.*

412. *Guide*, *supra* note 180, at 45.

legislation to implement the UCITS directive[413] Under the draft Act on the Supervision of Investment Institutions, UCITS licensed by other EC countries will not need a further license to operate in the Netherlands, provided evidence of the other license is produced, the fund satisfies the standards of the UCITS directive and certain additional information is furnished.[414] Belgium adopted new rules in 1989 and 1990 to implement the UCITS directive.[415] The provisions introduced a new form of unit trust and opened the country's market to foreign unit trusts.[416]

VII. MISCELLANEOUS

A. *Pan-European Market*

The Federation of Stock Exchanges in the European Community (FSEEC) announced in 1989 that it would work toward closer linkages between European equity markets.[417] The members of FSEEC agreed to pursue the development of a "single stock exchange for Europe's largest companies."[418] FSEEC would begin by authorizing a shared information system which would carry real-time price information as well as price-sensitive company announcements.[419] In January 1990 the chairman of the FSEEC discussed a proposal for a " 'super-league' single equity listing for Europe's leading 250 to 300 companies"[420] which subsequently drew questions from London's International Stock Exchange.[421] The British later put forward a separate proposal which would use London's SEAQ International system as the foundation for a "European Wholesale Market."[422] In June 1990 the committee envisioned two parallel markets: a "Eurolist" of leading European stocks aimed at the retail market and a

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413. *Investment Company Guide*, *supra* note 398, at 45.

414. *Id.*, *citing* Wet Toezicht Beleggininstellingen.

415. *Belgium: New Form of Unit Trusts to be Introduced*, Doing Business in Europe (CCH) ¶ 98-299, at 97,267; *Belgian Government Approves Financial Markets Reform*, Doing Business in Europe (CCH) No. 210 (Jan. 16, 1990).

416. *Belgium: New Form of Unit Trusts to be Introduced*, Doing Business in Europe (CCH) ¶ 98-299, at 97,267; *Belgian Government Approves Financial Markets Reform*, Doing Business in Europe (CCH) No. 210 (Jan. 16, 1990).

417. *Single Stock Exchange*, INT'L FIN. L. REV., Nov. 1989, at 43.

418. *Id.*

419. *Id.* This network, called Pipe, was created in May 1990. *EC Bourses' 'Pipe' Project Has Trading Ambitions*, REUTERS (July 4, 1990).

420. *Knight Sees EC 'Super-League' Equity Listing Forming in '91*, Int'l Sec. Reg. Rep. (BNA) 2 (Jan. 31, 1990).

421. *'Super-League' Proposal Still Faces Fundamental Questions*, 3 Int'l Sec. Reg. Rep. (BNA) 1 (Feb. 26, 1990); *see Rousselle Sees 'Super-League' EuroEquity List as Inevitable*, 3 Int'l Sec. Reg. Rep. (BNA) 1 (March 12, 1990) (French regulator responding that British were "reluctant Europeans").

422. *ISE 'Super-League' Concept on FSEEC's July Meeting Agenda*, Int'l Sec. Reg. Rep. (BNA) 2 (1990). The European "wholesale market" would be founded upon SEAQ systems and could be integrated with wholesale markets being developed elsewhere in Europe. *Chairman of ISE Outlines Future European Market for Equities*, FIN. TIMES, FIN. REG. RPT. (June 1990).

European wholesale market catering to block trades.[423] Like so many of the EEC's initiatives, competitive considerations have become salient features of the debate.

B. *European Company Statute*

In 1989 the European Commission issued a new proposal for a European Community statute after a seven-year hiatus.[424] The proposal would establish a Community-wide system of company law[425] applicable to a single legal entity formed in one EC country.[426] A European Company, or *societas europeas*,[427] could be formed by two or more companies provided at least two companies have their headquarters in two or more member states.[428] The statute would "permit a multinational to unify capital and personnel in several Community countries" and would "provide some flexibility in setting off profits in one country against losses in another. . ."[429] One especially controversial provision involves the issue of worker participation.[430]

VIII. CONCLUSION

In addition to the EEC's contribution to international trade and commerce through the reduction of regulatory barriers, the Community has constructed an important model which may be used in developing a global system of securities regulation. Although other organizations, such as the International Organizational of Securities Commissions (IOSCO), are actively working to develop international norms in the area of securities regulation, the EEC at present is the most active and influential organization in the field. Whether in developing a system of international securities regulation, the international community chooses to follow the European Community Model, follows other models such as the U.S./Canada multijurisdictional disclosure system, or pursues the IOSCO approach remains to be seen. Irrespective of the approach the international community ultimately takes to the question of international securities regulation, it cannot and should not ignore the substantive and creative work of the European Community.

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423. *FSEEC Begins to Map Out Technical Details for Pan-European Eurolist*, 3 Int'l Sec. Reg. Rep. (BNA) 1 (July 16, 1990).

424. *See European Company Statute*, INT'L FIN. L. REV., Oct. 1989, at 44. *See Global Harmonization*, *supra* note 3, at 207, n. 133, *citing* Proposal for a Council Regulation on the Statute for a European Company, Eur. Parl. Doc. (COM 268 final—SYN-218) (1989).

425. *Id.*

426. *Commission Revives Proposal for 'Societas Europeas'*, 2 Int'l Sec. Reg. Rep. (BNA) 1 (July 19, 1989).

427. *Id.* at 2.

428. *European Company Statute*, INT'L FIN. L. REV., Oct. 1989, at 44.

429. *Commission Revives Proposal for 'Societas Europeas'*, 2 Int'l Sec. Reg. Rep. (BNA) 1 (July 19, 1989).

430. *European Company Statute*, INT'L FIN. L. REV., Oct. 1989, at 44.