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The Internationalization of the Securities Markets: Preface to a Symposium

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The place of the United States securities markets in an international order was perhaps most vividly conveyed by the global securities market collapse of October 19, 1987. In all, the Dow Jones Industrial Average fell 508 points, or approximately 23 percent of its value, on a record volume 604 million shares.[1] For those who lived through that extraordinary session, the most striking memory was the early morning news broadcasts of trading on the Tokyo Stock Exchange where the Nikkei Index declined 626 points to a level of 25,746, and sharp declines were reported in Hong Kong, Sydney, and London.[2] Never before had the interconnectedness of United States securities trading with a broad global consortium of stock markets been so powerfully suggested.

And yet, in a different sense, the extent of interconnectedness was highly exaggerated. Relatively few United States securities, and even fewer foreign securities, are traded outside of their home country. Relatively few new issues are offered multinationally. Linkages between securities markets of different countries are in their incipiency. For example, to date, there is no such thing as an "international" license to be a broker-dealer or investment adviser in two or more countries.

It is, thus, an appropriate time to explore the contours of the international securities trading order that may emerge. This preface begins by tracing certain of the initial steps taken by the SEC in the internationalization of securities trading. Regulations involving issuers of new securities are discussed in two contexts. First, when foreign private issuers offer securities into the United States, and second, when securities are simultaneously offered in the United States and abroad. The preface concludes by introducing each of the articles in this symposium.

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1. Report of the Presidential Task Force on Market Mechanisms Analytical Study No. 3 at III-21 (Jan. 12, 1988).

2. *Id.* at III-16.

I. THE FOREIGN INTEGRATED DISCLOSURE SYSTEM AND NEW ISSUES

Throughout much of its history the Securities and Exchange Commission ("the Commission") did not have special registration forms for offerings by foreign private issuers. As Chairman Garrett stated in 1974, "[t]here have never been enough such offerings to require this."[3] In recent years, however, American investment in foreign securities has increased dramatically,[4] providing one basis for persuading former SEC Chairman Manuel Cohen in 1973, among others, that an international securities market was a concept "whose time has come."[5]

3. Garrett, *Is the SEC a Barrier to New York's Role in International Finance*, address before Financial Times Conference, Sec. Reg. & L. Rep. (BNA) No. 257 at D1 (1974).

In 1987, the Commission staff expressed the view that foreign public offerings (including rights offerings) would not be integrated with a concurrent United States private offering nor impose on the foreign public offering any procedures in addition to those that would be required in the absence of the United States private offering. College Retirement Equities Fund, Fed. Sec. L. Rep. (CCH) ¶ 78,503 (July 5, 1987).

In January 1973, the Commission established a new Office of International Corporate Finance to supervise, among other things, offerings from foreign countries into the United States and offerings from the United States into foreign countries. The Office is in the Division of Corporation Finance and also supervises Exchange Act financial reporting by foreign issuers. Sec. Act Rel. 5,355 (1973).

Regarding foreign offerings in the United States, *see generally* SEC, REPORT TO THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS AND THE HOUSE COMMITTEE ON ENERGY AND COMMERCE ON THE INTERNATIONALIZATION OF THE SECURITIES MARKETS (1987)[hereinafter SEC STAFF REPORT]; J. STEVENSON & W. WILLIAMS, A LAWYER'S GUIDE TO INTERNATIONAL BUSINESS TRANSACTIONS: UNITED STATES LEGAL ASPECTS OF INTERNATIONAL SECURITIES TRANSACTIONS Part III, Folio 5 (2d ed. 1980); SECURITIES UNDERWRITING: A PRACTIONER'S GUIDE ch. 16 (K. Bialkin & W. Grant eds. 1985)[hereinafter SECURITIES UNDERWRITING]; Zaitzeff, *Foreign Bank Participation in the United States Capital Markets: A Legal Perspective*, 2 TOURO L. REV. 19 (1986); Liftin, *Recent Developments in the International Securities Field*, in 17th ANN. INST. ON SEC. REG. ch. 4 (S. Friedman, C. Nathan, & H. Pitt eds. 1985); Note, *Foreign Securities: Integration and Disclosure Under the Securities and Exchange Acts*, 58 NOTRE DAME L. REV. 911 (1983); SIXTH ANNUAL INSTITUTE ON SECURITIES REGULATION, chs. 14–16 (R. Mundeheim, A. Fleischer, J. Schupper, J. Jewett & J. Thomson eds. 1975); Coles, *Foreign Companies Raising Capital in the United States*, 3 J. COMP. CORP. L. & SEC. REG. 300 (1981); Thomas, *Internationalization of Securities Markets: An Empirical Analysis*, 50 GEO. WASH. L. REV. 155 (1982); Thomas, *Internationalization of the World's Capital Markets: Can the S.E.C. Help Shape the Future?*, 15 N.Y.U.J. INT'L L. & POL. 55 (1982); Mostoff & Spencer, *United States Regulation of International Securities Transactions* in 2 INTERNATIONAL FINANCIAL LAW: LENDING, CAPITAL TRANSFERS AND INSTITUTIONS 1 (R. Rendell ed. 2d ed. 1983); Cohen, *Toward an International Securities Market*, 5 LAW & POL'Y IN INT'L BUS. 357 (1973), *reprinted in* INTERNATIONAL CAPITAL MARKETS AND SECURITIES REGULATION, ch. 2 (H. Bloomenthal ed. 1987).

4. The SEC STAFF REPORT, *supra* note 3, at I-1 (1987) explains:

> In 1980, the total amount of bonds issued internationally was approximately $38 billion. Last year, the figure was $254 billion. Of that amount almost $44 billion was raised by U.S. issuers. Last year, U.S. investors' transactions in foreign equity securities reached a record $102 billion, while foreign investors purchased and sold approximately $227 billion in U.S. equity securities.

5. Cohen, *supra* note 3, at 397 (1973). By 1981, the Commission officially recognized "the efforts

One Commission response to this development was the adoption of a *foreign* integrated disclosure system. This required the Commission to balance the goal of investor protection, its "primary mandate," and thus impose on foreign private issuers disclosure requirements comparable to those applied to domestic firms, with the "free trade goal" of "facilitating the free flow of capital among nations," a goal that suggested reducing the reporting burdens of foreign private issuers.[6] The Commission at the same time recognized, "that United States investors, if they are so inclined, can invest in foreign securities directly in foreign markets. Therefore, discouraging registration may not be in the public interest because the disclosure in the foreign market may be less than that required in filings with the Commission . . . ."[7]

The foreign integrated disclosure system is limited to issuers that annually file Form 20-F.[8] This form is available to any non-Canadian[9] foreign private issuer registering under § 12 of the Securities Exchange Act of 1934 or filing an annual report under § 13(a) or § 15(d) of that Act.

The term "foreign private issuer" is defined in Rule 405 to mean

> any foreign issuer other than a foreign government except an issuer meeting the following conditions: (1) more than 50 percent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and (2) any of the following: (i) the majority of the executive officers or directors are United States citizens or

of organizations such as the European Economic Community, the International Accounting Standards Committee, the Organization for Economic Cooperation and Development, and the United Nations to formulate guidelines and international disclosure standards." Sec. Act. Rel. 6, 360, 24 SEC Dock. 3, 6 (1981). *See also* Sec. Act Rel. 6,235, 20 SEC Dock. 1,175, 1,203 (1980); Note, *supra* note 3, at 924 (criticizing the Commission for failing to distinguish between the aspirations of international organizations and the actual disclosure standards required by nations).

6. *Compare* Sec. Ex. Act Rel. 13,056, 11 SEC Dock. 1,172 (1976), *with* Sec. Ex. Act Rel. 16,371, 18 SEC Dock. 1, 118 (1979).

7. Sec. Act Rel. 6,360, 24 SEC Dock. 3,13 (1981).

8. The Current Form 20-F was adopted in 1979, *see* Sec. Ex. Act Rels. 13,056, 11 SEC Dock. 1,172 (1976) (solicitation of comments); 14,128, 13 SEC Dock. 542 (1977) (proposal), 16,371, 18 SEC Dock. 1,118 (1979) (adoption); and amended in 1982. *See* Sec. Act Rels. 6,360, 24 SEC Dock. 3 (1981) (proposal); 6,437, 26 SEC Dock. 964 (1982) (adoption). Forms 20 and 20-K initially were adopted in 1935 and 1937. Sec. Ex. Act Rels. 324 (1935); 1,058 (1937). Registrants filing annual reports on Form 20-F, among other things, also are obligated to furnish copies of information made public in the home jurisdiction or furnished to shareholders on Form 6-K. *See generally* SEC STAFF REPORT, *supra* note 3 at IV-17 to IV-21; J. STEVENSON & W. WILLIAMS, *supra* note 5, at Folio 5, 75-77 (2d ed. 1980); Stephens, *Reevaluation of Disclosure Requirements for Foreign Issuers: Securities Exchange Act of 1934*, 45 GEO. WASH. L. REV. 494, 519–525 (1977). Foreign governments and depository institutions that issue American depositary receipts (but not the issuer of the deposited securities) are exempted from current reporting requirements including the requirement to file Form 6-K. *See* Rules 13a-11, 13a-16, 15d-11, 15d-16.

9. There are limited exceptions to the prohibition of use of Form 20-F by Canadian private issuers specified in General Instructions A(b). Earlier, the Commission distinguished North American foreign private issuers (Canada and Mexico) from non-North American issuers. Sec. Act Rel. 6,360, 24 SEC Dock. 3, 15 (1981).

> residents, (ii) more than 50 percent of the assets of the issuer are located in the United States, or (iii) the business of the issuer is administered principally in the United States. For the purpose of this paragraph, the term "resident," as applied to security holders, shall mean any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

Each foreign private issuer using Form 20-F must file a report within six months after the end of the fiscal year covered by the report.[10] In its primary financial statements, a foreign private issuer must make statements using the currency of the country in which it is incorporated or organized, except that a different currency may be used if three conditions are met: (1) the other currency is the currency of the primary economic environment in which the operations of the issuer and its subsidiaries are conducted, (2) there are no material exchange restrictions or controls relating to that currency, and (3) the issuer publishes its financial statements for all of its shareholders in the other currency.[11] Dollar-equivalent financial statements ("convenience translations") may be presented for the most recent fiscal year and any subsequent interim periods.[12]

Form 20-F permits foreign private issuers to prepare financial statements in accordance with either Item 17 or 18. These items are identical in paragraphs (a), (b) and (c): (a) in essence, foreign private issuers, with specified exceptions, must furnish financial statements for the same years, together with the same schedules and accountants' certificates, that would be required if the registration statement were on Form 10 or the annual report on Form 10-K. (b) The *content* of the financial statements must be substantially similar to the content of financial statements that comply with generally accepted accounting principles in the United States and Regulation S-X. (c) The financial statements must be prepared according to generally accepted accounting principles in the United States or another comprehensive body of accounting principles, but, if another body of comprehensive principles is employed, there must be a discussion of the material variations, including qualification of each material variation in tables or in notes.[13]

10. *See* Instruction A(c) to Form 20-F.

11. Reg. S-X, Rule 3-20. *See* Sec. Act Rels. 6,352, 24 SEC Dock. 61 (1981) (proposal); 6,437, 26 SEC Dock. 964, 967 (1982) (adoption).

12. Convenience translations must use the exchange rate as of the most recent balance sheet involved in the filing unless a rate as of a more recent practicable date is materially different. Reg. S-X, Rule 3-20(b). Except when a currency has experienced cumulative inflationary effects of more than 100 percent in the most recent three-year period, the foreign private issuer need not present supplemental information on changing prices (so-called "inflation accounting"). Rule 3-20(c). *Cf.* Staff Acct. Bull. 49A, 27 SEC Dock. 62 (1983) (bank holding company disclosure about loans to borrowers in countries experiencing liquity problems). *See generally* Brooks, *Currency Translations in the Registration Statements of Foreign Issuers*, 35 Bus. Law. 435 (1980); Wang, *Reflections on Convenience Translations: A Reply to Professor Brooks*, 17 San Diego L. Rev. 309 (1980).

13. Items 17(c)(i)-(iii) and 18(c)(i)(iii) specify the form in which income statements, balance sheets and issuers in hyperinflationary economies should prepare *reconciling* items.

Rule 4-01(a)(2) permits foreign private issuer financial statements to be prepared according to a

There are two textual differences between Items 17 and 18. First, Instruction 3 to Item 17 permits registrants to prepare financial statements that do not comply with the "categories of activity" disclosure requirements otherwise specified in Item 1 of Form 20-F and Financial Accounting Standards Board Statement No. 14; Item 18 does require compliance with United States line-of-business disclosure requirements.[14] Second, Item 18 in paragraph (c)(3) expressly requires "all other information required by United States generally accepted accounting principles and Regulation S-X unless such requirements specifically do not apply to the registrant as a foreign issuer." There is no counterpart paragraph in Item 17. This means that Item 18 requires certain items that Item 17 does not, including pension information and various supplemental information as well as segment information.[15] Most securities offerings on Form F-1, F-2, or F-3 require Form 20-F disclosures employing Item 18 with exceptions permitting Item 17 disclosures on each of these forms for specified rights offerings, dividend or interest reinvestment plans and securities offered upon the conversion of outstanding securities or upon the exercise of warrants, and a further exception for nonconvertible "investment grade" debt on Form F-3.

Another major difference between the mandatory disclosure system for foreign and domestic private issuers concerns disclosure of conflicts of interest. Items 11–12 of Form 20-F permit foreign private issuers to disclose *aggregate* remuneration and *aggregate* options to purchase securities of the class being registered unless the registrant discloses to its shareholders or otherwise these data for individually named directors and officers. Item 13 similarly specifies that data concerning material transactions with officers, directors, control persons and any of their spouses and relatives need be disclosed only if made public in reports to shareholders or otherwise. These requirements significantly compromise the more demanding conflict of interest requirements found in Items 402–404 of Regulation S-K.[16]

comprehensive body of foreign GAAP if a reconciliation to United States GAAP and Regulation S-X is also filed "except as stated otherwise in the applicable form." At a practical level this means that Item 18 will require reconciliation to United States GAAP of segment, pension, and various supplemental information that Item 17 does not. "It can be argued that requiring an Item 18 reconciliation in all filings would be too great an impediment for foreign issuers to enter the United States markets, which could thereby deprive United States investors of many investment opportunities." *Id.* at 6. *See* SEC STAFF REPORT, *supra* note 3, at IV-51 to IV-54.

14. "The Commission believes that foreign private issuers should be required to furnish the same segment financial information as that which is required to be presented by domestic issuers because similar information about issuers is essential to a full analysis of various investment alternatives." Sec. Act Rel. 5, 893, 13 SEC Dock. 1,217, 1,222 (1977). Nonetheless, Item 1 of Form 20-F is considerably less demanding than Item 101 of Regulation S-K.

15. *See* Sec. Act Rel. 6,360, 24 SEC Dock. 3, 9-10 (1981). Form 20-F does not include a supplementary disclosure item comparable to Item 302 of Regulation S-K. This is of significance only to foreign private issuers proceeding under Item 17, because Instruction 3 to Item 18 implicitly requires this item.

16. Sec. Act. Rel. 6,157, 18 SEC Dock. 1,052 (1979)(interpretative guideline).

As with the integrated disclosure system for domestic issuers, there are three basic forms in the foreign integrated disclosure system for foreign private issuers. The most exclusive form is F-3. To be an eligible registrant, an issuer: (1) must have a class of securities registered pursuant to § 12(b) or 12(g) of the 1934 Act or be required to file reports pursuant to § 15(d) of that Act, and have filed annual reports on Form 20-F; (2) must have been subject to the requirements of § 12 or § 15(d) and filed all material required by §§ 13, 14, or 15(d) for at least 36 months, and have filed all required reports in a timely manner during the 12 calendar months and any portion of a month immediately preceding the filing of the registration statement; (3) since the end of the last fiscal year for which certified financial statements were included in a report pursuant to § 13(a) or § 15(d) or the 1934 Act, neither the registrant nor any of its subsidiaries may have (a) failed to pay any dividend or sinking fund installment on preferred stock, or (b) defaulted on any debt installment or long-term lease rental if the defaults in the aggregate were material to the financial position of the registrant; and (4) the aggregate worldwide market value of the voting stock held by nonaffiliates of the registrant must equal at least $300 million.[17]

An eligible registrant may use Form F-3: (1) for primary cash offerings, but

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The disclosure items in Regulation S-K serve as the basis of the required disclosures in Forms F-1, F-2, and F-3 (as well as Forms S-1, S-2, S-3). There are several special provisions designed for foreign private issuers: Item 201, Instruction 5, provides guidance when foreign private issuers register common equity in bearer form or when the securities being registered are in the form of American Depositary Receipts; Item 202(f) specifies how American depositary receipts are to be described (*see also* Instruction 5 to Item 202); Item 301, Instructions 6,7, and 8, specify that, in providing selected financial data, foreign private issuers must disclose specified information about the exchange rate into United States currency and must present selected financial data in the same currency as its financial statements; Item 303(a), Instruction 8 states, "[f]oreign registrants normally are not subject to [Financial Accounting Standards Board Opinion No.] 33" (*see also* Instruction 9); Item 303(a), Instruction 12, provides, "If the registrant is a foreign private issuer . . . [t]here shall be a reference to the reconciliation to United States generally accepted accounting principles, and a discussion of any aspects of the difference between foreign and United States generally accepted accounting principles, not discussed in the reconciliation, that the registrant believes is necessary for an understanding of the financial statements as a whole"; Item 402, General Instruction 1, permits a non-Canadian foreign private issuer to respond to all of the Item 402 executive compensation disclosures by indicating the aggregate payment or benefits paid to all executive officers as a group unless data for individually named executive officers have been otherwise made public; item 503(d)(10) specifies how the ratio of earnings to fixed charges should be computed for foreign private issuers; Item 512(a)(4), (f)(4) specifies certain undertakings for foreign private issuers. The exhibits required for Securities Act Forms F-1, F-2, F-3, and F-4 are specified in Item 601. *See generally* Sec. Act Rel. 6,437, 26 SEC Dock. 964, 970-973 (1982).

17. This "float requirement" initially was proposed as a dual test of $500 million worldwide and $150 million in the United States, but was revised to the current level because of concern that very few registrants would be eligible for the short forms, F-2 and F-3. *See* Sec. Act Rel. 6,437, 26 SEC Dock. 964, 966 (1982).

There are additional eligibility requirements for successor registrants and majority owned subsidiaries. *See* Form F-3, General Instructions I.A.5, 6, in *id.* at 991.

only if the registrant's latest filing on Form 20-F complied with the more demanding Item 18 financial statement requirements; (2) nonconvertible "investment grade" debt securities; (3) secondary offerings;[18] or (4) offerings to current security holders, specifically rights offerings, dividend or interest reinvestment plans, and securities offered upon the conversion of outstanding securities or upon the exercise of warrants.[19] Form F-3 incorporates by reference the registrant's latest Form 20-F and otherwise generally requires only transaction-related data.[20]

Form F-2 somewhat relaxes the eligibility requirements of Form F-3. Both forms require the registrant: (1) to have a class of security registered pursuant to § 12(b) or § 12(g) of the 1934 Act, or (2) to be subject to the reporting provisions of § 15(d), and to be filing annual reports on Form 20-F. But, there is a significant difference: Form F-3 both requires a registrant to have filed all material designated pursuant to §§ 13, 14 or 15(d) for at least 36 months (including timely filing for at lease 12 months), *and* to satisfy a $300 million worldwide "float" test.[21] In contrast, Form F-2 requires a registrant either: (1) to have been subject to the requirements of § 12 or §15(d) and to have filed all material required by § § 13, 14 or 15(d) for at least 36 months including (timely filing for at least 12 months), *or* (2) to have a $300 million worldwide float of voting stock unless the securities being registered are nonconvertible, "investment grade debt securities." All

18. Here, as elsewhere, an investment grade debt security is defined as one that, at the time of the effectiveness of the registration statement, has been rated in a generic rating category signifying investment grade (typically the four highest rating categories) by at least one nationally recognized statistical rating organization [as that term is used in Rule 15c3-1(c)(2)(vi)(F)].

19. Here defined to mean:

> Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In addition, Form F-3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S-8 . . . if the financial statements in the registrant's latest filing on Form 20-F comply with Item 18 thereof.

Form F-3, General Instruction I.B.3. Only the registrations by affiliates described in the last sentence require compliance with Item 18.

20. Rights offerings or dividend or interest reinvestment plans may not be sold in a standby underwriting employing Form F-3. Original registration statements on Form F-3 solely with respect to securities offered pursuant to dividend or reinvestment plans become effective automatically on the 20th day after filing. *See* paragraph 8(a); Rules 456, 459. Preefective amendments will not commence a new 20-day period. *See* Rule 475a. Post effective amendments become effective upon the date of filing. Rule 464. Delaying amendments under Rule 473(a) are not permitted in connection with a filing on Form F-3. *See* Rule 473(d). *See generally* Sec. Act Rel. 6,437, 26 SEC Dock. 964, 992 (1982).

21. Part I of Form F-3 requires Items 501–10 of Reg. S-K, Item 202, and a description of material changes. Part II requires Items 511–12, Item 601, Item 702. Registration statements on Form F-4, because they relate to offerings that are continuous over time, are subject to Rule 415(a)(1)(viii) (business combination transactions) and may be subject to Rule 415(a)(1)(i) (secondary offerings). *See* Sec. Act. Rel. 6,579, 32 SEC Dock. 1, 312, 1,317 (1985).

Form F-2 filings except for specified rights offerings, dividend or interest reinvestment plans, and securities offered upon the conversion of outstanding securities or upon the exercise of warrants require the registrant's latest filings on Form 20-F to comply with Item 18.[22] The primary difference in the disclosure requirements of Forms F-3 and F-2 is that Form F-2 requires the latest Form 20-F not only to be incorporated by reference, but also to be delivered to potential investors.[23]

Form F-1 is the residual form. It may be employed by any foreign private issuer eligible to use Form 20-F. Each registrant filing on Form F-1 must furnish the information required by Part I of Form 20-F, including Item 18, with the exception of rights, dividend or reinvestment plans, or securities upon the conversion of outstanding securities or upon the exercise of warrants, which may instead use Item 17.[24]

There is also a special form, F-6 for American depositary receipts (ADRs).[25]

22. Both Forms F-3 and F-2 also have no-default eligibility requirements, *See, e.g.*, Form F-2 Instruction C to eligibility requirements.

23. Form F-2 also has special instructions, comparable to the requirements in Form F-3, for specified rights offerings, dividend or interest reinvestment plans and securities offered upon the conversion of outstanding securities or upon the exercise of warrants; successor registrants and majority-owned subsidiaries. *See* Form F-2, General Instructions I.D-F.

24. Similarly where form F-3 permits incorporation by reference of any Form F-6, Form F-2 provides, "The registrant may incorporate by reference and deliver with the prospectus any form F-6 . . . ." Form F-2, Item 12.

Initially exchange offers could be registered only on form F-1. *See* Sec. Act Rels. 6,360, 24 SEC Dock. 3, 14 (1981) (proposal); 6,437, 26 SEC Dock. 964, 979 (1982) (adoption). Effective July 1, 1985, the Commission adopted Form F-4 for securities issued by foreign private issuers in: (1) transactions specified in Rule 145 (*e.g.*, reclassification, mergers, consolidations, and transfers of assets); (2) mergers in which the applicable law would not require the solicitation of the votes or consents of all security holders in the company being acquired; (3) exchange offers for securities of the issuer or another entity; (4) reoffers and resales of securities registered on Form F-4. "Form F-4 extends the principles of integrated disclosure to all business combination registration statements." Sec. Act Rel. 6,579, 32 SEC Dock. 1312, 1, 313 (1985) (adoption); *see also* Sec. Act Rel. 6,535, 30 SEC Dock. 584 (1984) (proposal). Thus, registrants eligible to use Form F-3 may incorporate Form 20-F by reference; if eligible to use Form F-2, they must deliver the latest annual report on Form 20-F. *See* Form F-4, Items 10–13.

Form F-4 may be used also by domestic and foreign private issuers not eligible to use Form 20-F when they are involved in international business combinations. Form F-4, General Instruction C.1(d), directs the registrant to Form S-4 for the information to be provided when such a company is being acquired.

25. Regarding Form F-6, *see* Sec. Act Rels. 6,438, 26 SEC Dock. 1,016 (1982) (proposal); 6,459, 27 SEC Dock. 602 (1983) (adoption); *see generally* SEC Staff Report, *supra* note 3, at II-80–II-86; J. Stevenson & W. Williams, *supra* note 8; Securities Underwriting, *supra* note 3, at 415–22; Royston, *The Regulation of American Depositary Receipts: Americanization of the International Capital Markets*, 10 N.C.J. Int'l L. & Com. Reg. 83 (1985); Moxley, *The ADR: An Instrument of International Finance and a Tool of Arbitrage*, 8 Vill. L. Rev. 19 (1962); Tomlinson, *Federal Regulation of Secondary Trading in Foreign Securities*, 32 Bus. Law. 463 (1977); Note, *SEC Regulation of American Depositary Receipts: Disclosure, Ltd.*, 65 Yale L. J. 861 (1956); Item 202(f), Reg. S-K. By 1983 when Form F-6 was adopted there were close to 450 issues represented by ADR trading or for which the ADR mechanism had been established. Mostoff & Spencer, *supra* note 3, at 7.

An ADR is a negotiable receipt, usually issued by a United States bank, certifying that a stated number of shares of a foreign private issuer have been deposited in the bank or in its foreign affiliate or correspondent.[26] Form F-6 is available if: (1) the ADR holder may withdraw the deposited securities at any time (subject to a few mechanical exceptions); (2) the deposited securities are offered pursuant to a 1933 Act registration or in transactions that would be exempt if effected in the United States; and (3) the issuer of the deposited securities reports under the 1934 Act (or the securities qualify for the insurance company exemption in § 12(g) (2)(G). Because the underlying security will be either registered on another 1933 Act form or exempt from registration, the disclosures required by Form F-6 are terse. Essentially all that needs to be provided is a description of the ADR as specified by Item 202(f) of Regulation S-K, an explanation whether the foreign issuer furnishes public reports under Rule 12g3-2(b) or the periodic reporting requirements of the 1934 Act and certain specified exhibits and undertakings.[27]

26. The Commission's Office of International Corporate Finance has explained:

> There are three major benefits usually claimed for the ADR mechanism: ease of transfer, reduction of the problems of bearer certificates, and increased availability of information on the issuer of the foreign securities. The increased transferability stems from the status of the depositary or its nominee as the record or legal owner of the deposited securities and the performance by the depositary, for set fees, of services for the ADR holders. Rather than submission for transfer in a foreign country under time consuming and unfamiliar transfer procedures, transfer of the ownership of the deposited securities is made by transfer of the ADRs on the books of the depositary. Foreign inheritance taxes and probate in foreign courts can be avoided if ADRs, rather than the foreign shares, are held. Problems arising under foreign exchange controls are similarly mitigated.
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> Frequently, foreign securities are in bearer form so a list of shareholders cannot be maintained. The collection of dividends illustrates how ADRs are used to overcome the inherent difficulties of bearer certificates. Declarations of dividends are announced by publication in a newspaper in the foreign country which probably is in a foreign language. . . . Obviously, it would be virtually impossible for an individual investor in the U.S. to monitor dividend declarations and collect dividends under this procedure. Moreover, even if the investor could collect the dividend, it would be paid in a foreign currency. . . . The use of ADRs can eliminate these problems. A major U.S. bank (the "Depositary Bank") will issue ADRs upon the deposit of the foreign shares and maintain a registry of ADR holders. A foreign branch or correspondent of the depositary bank watches for dividend declarations, collects dividends (the bearer certificates usually are physically held in the foreign country), converts the dividends to U.S. currency, and remits the dividend to the ADR holder.
>
> Another major advantage claimed for the ADR mechanism is the increased availability of information on the issuer of the foreign securities and its activities. Some foreign issuers are reluctant to deal or communicate directly with U.S. investors basically because of concerns of liability under the federal securities laws. . . . As the record or legal owner, the depositary bank or its foreign nominee will receive such notices. Even if the foreign shares are in bearer form, the depositary bank, because of its foreign relationships, is in a better position to obtain such information. . . .

SEC Office on Int'l Corp. Fin. Memorandum on American Depositary Receipts (ADRs) 1–2 (Sept. 1983).

27. *See* Sec. Act Rels. 6,438, 26 SEC Dock. 1,016 (1982) (proposal); 6, 459, 27 SEC Dock. 602 (1983) (adoption). Rule 174(a) "No prospectus need be delivered if the registration for it is on Form

II. Simultaneous Offerings in the United States and Abroad

If the present trend toward internationalization of the securities markets continues,[28] it ultimately will become commonplace for securities simultaneously to be distributed in the United States and abroad.[29] As a first step toward the encouragement of multinational securities offerings, the Commission in February 1985 published a summary of a staff survey comparing the distribution systems

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F-6." The signature instructions to Form F-6 state simply that "The legal entity created by the agreement for the issuance of ADRs shall sign the registration statement as registrant." And the form provides specifically that the depositary is not to be deemed an issuer or a person controlling the issuer notwithstanding its signing the registration statement in the name of the altogether fictitious "entity." This altogether laudable demonstration of administrative flexibility means that nobody has the liability of an "issuer" under § 11 so far as Form F-6 is concerned. If, however, the issuer of the deposited securities sponsors the ADR arrangement, the registration statement must be signed by the issuer and specified others.

28. In February, 1985, the Commission requested public comment on a release entitled Facilitation of Multinational Securities Offerings, Sec. Act Rel. 6, 568, 32 SEC Dock. 707 (1985); *see also* Sec Ex. Act Rel. 21, 958, 32 SEC Dock. 1, 241, 1, 251, (1985); SEC, Interim Staff Report on Internationalization of the Securities Markets, 1986-1987 Fed. Sec. L. Rep. (CCH)

84, 037 (Interim Progress Report Oct. 9, 1986); SEC Staff Report, *supra* note 3.

The Commission's February 1985 release observed:

> Among the factors which some believe may contribute to the internationalization of the world capital markets include: the abandonment of U.S. investment controls; the advent of floating exchange rates; relaxation of foreign exchange controls; efforts by corporations and investors to diversify funding and investment sources; the recent repeal of the withholding tax on interest paid to foreign holders of United States bonds; interest rate differentials; the relatively long period of peace and prosperity for the developed countries; and new technology in the areas of transportation and communications. One example of this trend is the increasing number of companies whose securities are traded on domestic and foreign exchanges. A recent article identified approximately 236 issuers as have an active international trading market in their equity securities. [*Citing* Yassukovich, The Rise of International Equity, Euromoney, May 1984 at 63.] According to this article, a company with an active international trading market must have daily active trading outside its home market. Of the 236 issuers identified, 84 are U.S., 49 are Japanese, 17 are German, 16 Australian, 13 British, 12 Canadian, 10 Swedish, 7 South African, 5 Swiss, 2 Italian, 2 Belgian, 2 New Zealanders and 4 from Hong Kong. France, Denmark, Norway, Singapore and Malaysia each had one issuer identified by the article as having an internationally traded security.

Sec. Act Rel. 6,568, 32 SEC Dock. 707, 707-708 (1985); *see also* SEC Staff Report, *supra* note 3, at II-7–II-8.

29. The Commission's February 1985 release cited three examples of simultaneous offerings in the United States and abroad:

> In 1983, two Canadian companies, Alcan Aluminum and Bell Canada Enterprises, each offered equity issues simultaneously in the United States, Canada and Japan. In 1984, British Telecommunication made an initial public offering of over 3 billion ordinary (common) shares with an equivalent U.S. dollar offering price of 4.5 billion dollars in the United Kingdom, Japan, Canada and the United States.

Sec. Act Rel. 6,568, 32 SEC Dock. 707, 708 (1985); *see also* Harmon & Greene, *International Finance*, in 18th Ann. Inst. on Sec. Reg. ch. 14 (S. Friedman, C. Nathan & H. Pitt eds. 1987);

and statutory and regulatory requirements of the United Kingdom and certain provinces of Canada with those in the United States for foreign issuers registering securities on Form F-1.[30]

The staff survey found several material differences:

1. Canada[31] and the United States were reported to have similar underwriting methods. At that time, neither the United Kingdom nor Canada generally pro-

Wolfram & Bennet, *Multinational Offerings: A United States Perspective after British Telecommunication, British Gas and British Airways*, 2 COLUM. BUS. L. REV. 339 (1987); Liftin, *Recent Developments in the International Securities Field*, in 17TH ANN. INST. ON SEC. REG. ch. 4 (S. Friedman, C. Nathan & H. Pitt eds. 1985); Donnelly, *The Perils of Multimarket Offerings*, EUROMONEY, Oct. 1984 at 106; Curtin, *Now It's Grown Up, It's Fierce*, EUROMONEY, June 1984 at 64; Nathan, *Special Problems Arising as a Result of Trading in Multiple Markets*, 4 J. COMP. CORP. L. & SEC. REG. 1 (1982); Miles, *Constraints on Broker-Dealers Operating Outside Their Home Country*, 4 J. COMP. CORP. L. & SEC. REG. at 36; 19 Sec. Reg. & L. Rep. (BNA) 1,398 (1987).

30. Form F-1 is discussed *supra* at note 16.

31. Canadian securities offering law is described in greater detail in, SEC STAFF REPORT, *supra* note 3, at III-139–III-158, IV-44; INTERNATIONAL CAPITAL MARKETS AND SECURITIES REGULATION *supra* note 3 at ch. 4; V. ALBOINI, SECURITIES LAW AND PRACTICE (3 vols. 1984); FRASER'S HANDBOOK ON CANADIAN COMPANY LAW (H. Sutherland, D. Horsley & J. Edmiston eds. 7th ed. 1985); D. DRINKWATER, PROBATE PLACEMENTS IN CANADA (1985); Proposals for a Securities Market Law for Canada (Dep't of Consumer & Corp. Affairs 3 vols. 1979); J. WILLIAMSON, SECURITIES REGULATION IN CANADA (1960 & 1966 Supp.); D. JOHNSTON, CANADIAN SECURITIES REGULATION (1977); Weinstein, *Securities Law in Canada; Quebec, a Case Study*, 21 INT'L LAW. 169 (1987); LaRochelle, Brunet & Simmonds, *Continuing Securities Reform in Canada: Amendments to Quebec's Act*, 11 CAN. BUS. L. J. 147 (1986); Rodier, *Prospectus Disclosure under the Proposed Securities Act in Ontario: Problems in a Changing Environment*, 23 U.W. ONT. L. REV. 21 (1985); LaRochelle, Pepin & Simmonds, *Bill 85, Quebec's New Securities Act*, 29 MCGILL L. J. 88 (1983); *Proposals for a Securities Market Law for Canada: Symposium Issue*, 19 OSGOODE HALL L. J. 329 (1981); Emerson, *Vendor Beware: The Issue and Sale of Securities Without a Prospectus under the Securities Act, 1978 (Ont.)*, 57 CAN. BAR. REV. 195 (1979); V. ALBOINI, ONTARIO SECURITIES LAW (1980); Simmonds, *Proposals for a Securities Market Law for Canada: A Review*, 3 J. COMP. CORP. L. & SEC. REG. 31 (1981); Simmonds, *Of Prospectuses and Closed Systems: An Analysis of Some Present and Proposed Legislation in Canada and the United States*, 19 OSGOODE HALL L. J. 28 (1981); Emerson, *Towards an Integrated Disclosure System for Ontario's Securities Legislation*, 10 OSGOODE HALL L. J. 1 (1972).

In theory, the Canadian constitutional system is the reverse of the American with respect to the separation of powers: all powers not specifically granted to the provinces are reserved to the federal government. *See* P. HOGG, CONSTITUTIONAL LAW OF CANADA (1977); Livingston, *Abolition of Appeals from Canadian Courts to the Privy Council*, 64 HARV. L. REV. 104 (1950). With the exception of regulation by the federal Superintendent of Financial Institutions of Federally chartered banks, insurers and trust and loan companies begun in 1987, *see* Wall St. J., Apr. 28, 1987 at 30, col. 2, there is no comprehensive Canadian Federal securities regulation. Instead, the ten provinces and two territories of Canada each have separate securities administrators. The most important provincial legislation is the 1978 Ontario Statute, Ont. Rev. Stat. 1978, ch. 47, which is the model for legislation in Alberta, Alta. Rev. Stat. 1,970, ch. 333, as amended; British Columbia, B.C. Rev. Stat. 1,979, ch. 380, as amended; Manitoba, Man. Rev. Stat. 1,978, ch. S-42. Atlantic provinces, in contrast, still model their legislation on the predecessor statute in Ontario. *See* Ont. Rev. Stat. 1945, ch. 22; N.B. Rev. Stat. 1973, ch. S-6; N.S. Rev. Stat. 1967, ch. 280; P.E.I. Rev. Stat. 1974, ch. S-4; Nfld. Rev. Stat. 1970, ch. 349. The province of Quebec adopts features of both systems. *See* Que. Rev. Stat. 1977, ch. V-1.

vided for "shelf registration." Underwriting methods in the United Kingdom were strikingly different from those used in the United States and Canada.[32]

2. Substantial differences exist among the United Kingdom, Canada, and the United States with respect to required disclosure relating to the nature and character of the issuer, its business and its management.[33]

In addition to the provincial statutes, there is an overlay of interprovincial cooperation:

> Several policy statements have been adopted uniformly by most jurisdictions in Canada. Of particular interest for American corporations who want to sell their securities is National Policy Number One. To facilitate the acceptance of an issue in more than one province, and to provide for uniformity of administration, the administrators of the provinces have agreed upon a procedure whereby the issuer or his underwriter may select after having made the necessary filings with the provincial authorities, a principal jurisdiction with which all dealings are made. The principal jurisdiction receives and transfers from all other jurisdictions efficiencies, therefore saving the issuer or his underwriter from having to deal with several jurisdictions at the same time, except for the purpose of filing or operating proper authorization.

Securities Problems Relative to the United States and Canadian Business Transactions: A Panel, 31 Bus. Law. 801, 813–814 (1976).

32. The SEC Staff Summary explained (footnotes omitted):

> The United Kingdom uses two principal methods of offering securities — the offer by subscription and the offer by tender. In the former, the offering price is set and solicitations from the public are sought on the day the offering is publicly announced by printing the entire prospectus and subscription forms in nationally circulated newspapers and furnishing copies to brokers and the public generally-- the "impact day." After a short subscription period (typically three to fourteen days), the applications are sorted, allotments are made and the amounts to be taken by the brokers and the public are announced — the "allotment day." In the offer by tender, the same prospectus publication procedures apply except that on impact day a minimum tender price is announced and tenders at or above the minimum tender price are solicited. Shares for which applications are accepted will all be sold at the same price — the "striking price."
>
> In the United Kingdom, preliminary prospectuses are not generally used and the contents of the prospectus are not generally available to the public until after its publication in nationally circulated newspapers and statistical services. Unlike the United States and Canada where offers, but not sales, can be made in the "waiting" period, offers in the United Kingdom are not made prior to the date the prospectus is published.
>
> In addition to differences in methods of underwriting securities, the review process in the United Kingdom is substantially different than in the United States and Canada and is primarily accomplished by the London Stock Exchange, rather than independent governmental agencies.

Sec. Act. Rel. 6,568, 32 SEC Dock. 707, 709-710 (1985).

Regarding securities offerings in the United Kingdom, *see also* SEC Staff Report *supra* note 3, at III-89–III-118, IV-45–IV-46; International Capital Markets and Securities Regulation, *supra* note 3, at ch. 6; L. Gower, Principles of Modern Company Law (4th ed. 1979); G. Morese, Palmer's Company Law (22nd ed. 1976); Benston, *Accounting Standards in the United States and the United Kingdom: Their Nature, Causes and Consequences*, 28 Vand. L. Rev. 235 (1975); Knauss, *Securities Regulation in the United Kingdom: A Comparison with United States Practice*, 5 Vand. J. Transnat'l L. 47 (1971).

33. For example, all three countries require disclosure of the nature of the issuer's business. In the

3. Basic differences exist among the United Kingdom, Canada, and the United states in each jurisdiction's generally accepted accounting principles[34] and in the requirements to reconcile financial statements of foreign issuers.[35]

4. Comparatively the United States has the most comprehensive liability provision concerning the sale of securities.[36]

United States, Regulation S-K provides specific guidelines as to what should be disclosed. In the United Kingdom and Canada, however, only a general instruction is given (*e.g.*, "describe the issuer's business") without providing further guidance as to the specific facts which may be material to an understanding of the issuer's business (*e.g.*, backlog of customer orders or sources and availability of raw materials). Other notable differences among the jurisdictions surveyed include, but are not limited to: "variations in the requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations; disclosure of industry segment data; and disclosure of management's business experience, remuneration, and its beneficial ownership of securities of the issuer." Sec. Act. Rel. 6,568, 32 S.E.C. Dock. 707, 710 (1985).

In the United Kingdom a prospectus must contain the information specified by the Secretary of State, who may defer to the rules of an approved exchange. At the least, a prospectus must contain all information that investors would reasonably require "for the purpose of making an informed assessment of— (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and (b) the right attaching to those securities." *See generally* Financial Services Act 1986, ch. 60 § § 162–163; G. MORSE, COMPANY LAW chs. 7, 22, 23 (12th ed. 1983); L. GOWER, PRINCIPLES OF MODERN COMPANY LAW chs. 13–16, 21 (4th ed. 1979); Knauss, *supra* note 32, at 47.

34. The SEC staff survey noted, "Some of the principle accounting differences among the three countries involved the accounting treatment of research and development costs; industry segment and geographic financial information; foreign currency translations; and interest costs associated with long-term construction and inventories." Sec. Act Rel. 6,568, 32 SEC Dock. 707, 710 (1985). *See generally* SEC STAFF REPORT *supra* note 3, at ch. IV.

British requirements concerning accounting records are in companies Act 1985, ch. 6, §§ 221–262. *See generally* G. MORSE, *supra* note 33, at ch. 22.

The International Accounting Standards Committee (IASC), since its founding in 1973, included in its membership accounting bodies in 66 countries. SEC STAFF REPORT, *supra* note 3, at IV-21 to IV-23. "To say at this point that the IASC has developed a comprehensive body of accounting principles would be an overstatement, but IASC standards do treat many complex measurement and reporting issuer." Thomas, *International Harmonization — Recent Developments in the Pursuit of Comparability in General Purpose Reports of Multinational Enterprises*, 38 BUS. LAW. 1,397, 1,402–1,403 (1983). *See also, Acceptable Global GAAP Still Far Off, Audit Rules Moving Ahead, Sampson Says*, 19 Sec. Reg. & L. Rep. (BNA) 529 (1987).

35. On reconciliation of foreign issuer financial statements to United States requirements, see *supra* notes 13–15 and accompanying text. The United States and Canada have arranged a more informative reconciliation:

> The United States and Canada require a discussion to be included which explains the differences between the significant accounting principles applied and gives a quantitative assessment of the effect of these differences. The United Kingdom does not require reconciliation to United Kingdom GAAP, provided that financial statements are presented in accordance with International Accounting Standards Committee ("IASC") requirements. Both United States and Canadian GAAP meet IASC standards.

SEC. Act Rel. 6,568, 32 SEC Dock. 707, 710 (1985).

36. Under Section 11 of the Securities Act and the liability provisions in Quebec and Ontario, issuers are absolutely liable for false or misleading statements contained in prospectuses. Persons

The Commission then requested comments on two conceptual approaches which would encourage multinational securities offerings.

The first, or reciprocal approach, would require an agreement among the United Sates, Canada, and the United Kingdom (and potentially could be expanded to other jurisdictions) to adopt a system by which an offering document used by an issuer in its own country would be accepted for offerings in each of the other countries on the assumption that certain minimum standards were met.[37] The primary advantage of the reciprocal approach is its simplicity. It basically accepts the offering documents of each of the participating countries. The basic disadvantage, particularly to United States investors, is that it might provide less information than Commission enforcement of its current foreign issuer forms.

The alternative, common prospectus approach, would require all three countries to agree on disclosure standards for an offering document that could be used in two or more of the participating countries.[38] This approach, by harmonizing disclosure standards, would likely result in greater standardization than the reciprocal approach, permitting greater ease of comparability of information between companies from different countries. On the other hand, it is uncertain that a multinational agreement could be negotiated and how it would handle such questions as the review of filed documents (that is, whether a document filed in two or more jurisdictions would be reviewed in each jurisdiction or only one).

In October 1986, the Commission published an interim staff report on "Internationalization of the Securities Markets" in which it was reported, "although

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other than the issuer may rely on a due diligence defense. In British Columbia, the issuer bears no absolute liability. The U.K.'s liability provisions are similar, except that issuers, as well as others, may rely on a defense of reasonable belief. This defense does not, *per se*, require a reasonable investigation of the facts supporting such statements. All three countries have antifraud protections and each provided for rescission or damages.

A substantial number of civil lawsuits based on securities violations are brought in the United States, and the courts have broadly construed the anitfraud provisions in favor of investors. In contrast, very few civil lawsuits are filed in Canada or in the United Kingdom. This may be partly due to the lack of class actions in certain provinces of Canada and the United Kingdom.

Even if the Commission takes steps to facilitate multinational offerings, the broad application of the United States' liability provisions and the frequency of securities litigation may have a deterrent effect on foreign issuers seeking access to the capital markets in United States.

Sec. Act. Rel. 6,568, 32 SEC Dock. 707, 710–711 (1985).

Liability provisions in connection with a prospectus in the United Kingdom are in Companies Act 1985, ch. 6, § § 66–70; *See* INTERNATIONAL CAPITAL MARKETS AND SECURITIES REGULATION, *supra* note 3. at § § 6.10–14; G. MORSE, *supra* note 33, at chs. 7, 19–20; L. GOWER, *supra* note 33, at chs. 16, 24–26.

37. The Commission offered as illustrative minimum standards a requirement that a foreign issuer file with the Commission the offering documents used in its own country with an additional facing page and signature page. The purpose of these additional pages would be to subject the foreign issuer to liability provisions applicable to domestic to issuers, notably including § 11 of the Securities Act.

38. The Commission here also would need to adopt minimal rules to ensure the applicability of the federal securities liability provisions. *See* Sec. Act Rel. 6,568, 32 SEC Dock. 707, 711 (1985).

many [of the 70 commentators of the Commission's February 1985 release] believed the common prospectus to be the ideal approach, the majority of the commentators favored the reciprocal approach . . . [because of] the ease of implementation." Nonetheless, the interim report emphasized potential problems in pursuing either approach. It was unclear, for example, how the Commission should modify its accounting standards, and the timing or nature of its review process in a multinational system. It was similarly unclear what securities would be eligible for a multinational registration system.[39]

In its July 1987 final report on Internationalization of the Securities Markets, it was reported that, "[a]s an initial, experimental effort the Commission is developing a proposal for reciprocal disclosure for the registration of specified securities."[40]

In a very real sense, thus, the role of United States securities regulation in the simplest aspect of internationalization is far from resolved.

III. This Symposium

The purpose of this symposium is to explore not only how a system of reciprocal disclosure for new issues might be implemented, but also several other aspects of the merging international securities trading order.

The first article in this symposium, by SEC Commissioner Aulana L. Peters, and counsel Andrew Feldman, introduces the structure of international securities markets. They highlight that concomitant with the internationalization of securities trading are two other significant developments; first, the erosion of the distinctions between the securities industry and other financial industries, and second, the increased institutionalization of securities trading. The authors conclude the article by exploring certain of the implications of these developments for international securities regulation.

SEC General Counsel Daniel L. Goelzer, Anne Sullivan, and Robert Mills then significantly amplify the institutional framework introduced by Peters and Feldman in their canvass of current bilateral and multilateral agreements. In their piece, they describe United States regulation of the initial distribution of securities, including exempt distributions; registration and disclosure modifications for foreign issuers; bilateral initiatives concerning broker-dealers, international quotation mechanisms, trading linkages, and international clearance and settlement; enforcement of United States securities regulation, as well as the efforts of several international organizations such as the Organization for Economic Cooperation and the European Economic Community to better harmonize multilateral securities regulation.

39. SEC, Interim Staff Report on the Internationalization of the Securities Markets, 1986-87 Fed. Sec. L. Rep. (CCH) ¶ 84,037 at 88,296–97 (1986). *See also* 18 Sec. Reg. & L. Rep. (BNA) 1,435 (1986).

40. SEC Staff Report, *supra* note 3, at III-324 to III-325, IV-48 to IV-54.

Professor Norman S. Poser skillfully elaborates a case study on "the strong underlying forces" which tend toward harmonization of national securities regulatory structures. Until quite recently, the London Stock Exchange enforced a "single capacity" rule which required each stock exchange member or member firm either to be a broker (one who trades only for the accounts of customers) or a "jobber," in this country, dealer (one who trades for one's own account). Fearful of becoming a financial backwater if it retained fixed brokerage commission rates after the United States ended such rates in 1975, the United Kingdom in its October 1986 "Big Bang" simultaneously ended fixed rates and, for the first time, permitted firms to act in the dual capacity of broker and dealer. Only in this fashion, it was reasoned, could the United Kingdom successfully encourage the formation of British financial conglomerates that could compete in the international securities markets and, at the same time, attract non-British firms to trading on the London Exchange. As a regulatory matter, this meant the United Kingdom also adopted the United States-style "Chinese Wall" to prevent securities brokers from trading on the basis of nonpublic information provided to dealers, typically in their function as underwriters. Poser focuses his conclusion on the difficulties with enforcing a "Chinese Wall" system of segregation. He strongly suggests that the levelling of national investor protection mechanisms involves a trade-off between reduced transaction costs on the one hand, and reduced investor protection on the other.

If, by internationalization of the securities markets, what we mean is one global 24-hour a day securities trading system for all securities above various threshold criteria, then a key impediment to evolving to this "one world" model of securities trading will be the existence of substantial national differences in securities regulation. In Professor Barbara Ann Banoff's article, striking differences between the law proscribing insider trading in the United States and the United Kingdom, and the total non-enforcement of a quite similar proscription *on paper* of insider trading in Japan, is explored. She implicitly poses the provocative question, can we effectively integrate national securities markets when "inside traders . . . get rich in Japan, and go to jail in the United States." Necessarily, her paper also provides a useful caution. Internationalization will not occur merely because of similar paper proscriptions, but also requires similar patterns of law enforcement.

Internationalization can mean a good deal less than a unitary super-national securities market. Charles Thelen Plambeck explores the law of international taxation and banking to identify analogous systems of international "harmonization." As he writes, "The experience of banking indicates that the best framework for cooperation is not a rigid system which binds each member nation but a loose, aspirational system operating with informal consultations. International banking authorities do not strive towards the creation of one supernational banking authority. The national authorities instead seek to achieve harmonization of the present forms of supervision, international cooperation between supervisory authorities and, as a result of the implementation of the principle of consolidation, supervision that transcends the national borders." Plambeck's useful article does not, however, address the extent to which taxation and banking are necessarily more "national" than securities trading. Each nation will have its own system of taxation. Banking, to a greater extent than securities trading, necessarily will be linked to the type of national fiscal policies that in this country are coordinated by the Federal Reserve Board. But, nothing, at this point, prevents a company operating solely in the United States from selling its securities solely abroad. Thus, it well may be, that international securities trading can go somewhat further than taxation and banking in terms of global "integration." Nonetheless, the larger point made by Plambeck may ultimately prove to be the more significant one. "One worldism" in international securities trading may prove to have roughly the same utility as the counterpart movement in international politics. The appropriate focus of international securities regulation should be on those "second-best" or partial means of accommodation which best balance individual nation's interests in investor protection and capital formation with the international economy's pressures for reduction of transaction costs.