

INTERNATIONAL COOPERATION IN SECURITIES LAW ENFORCEMENT^{*/}

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INTRODUCTION

Globalization and technological advances affecting financial markets facilitate both cross-border flow of capital and cross-border flow of fraud. As a result, regulators must be able to gather and share information with their regulatory partners world-wide to detect, investigate and prosecute fraud effectively. As outlined below, successful international cooperation requires initiatives on two levels: 1) domestically – jurisdictions must have domestic legislation enabling them to cooperate across borders; and 2) internationally – jurisdictions with limited or no ability to cooperate across borders must be provided, through international efforts, with incentives to endorse and implement information sharing.

I. THE SEC’S APPROACH TO INTERNATIONAL ENFORCEMENT COOPERATION

The SEC has broad domestic authority to gather information on behalf of foreign securities regulators. The SEC shares that information through a variety of formal and informal mechanisms. This approach facilitates foreign securities authorities’ ability to enforce their domestic laws and benefits the SEC’s enforcement program as well. Indeed, our experience demonstrates that the more you share information, the more likely it is that you will receive information.¹ The SEC’s positive experiences in this regard are highlighted by the increasing number of international enforcement cases that the SEC has brought based on information obtained from foreign regulators.

A. Domestic Authority to Gather and Share Information with Foreign Securities Regulators

The SEC has broad-ranging authority to investigate and prosecute securities fraud and to use its investigatory powers on behalf of its foreign counterparts. Section 21(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) permits the SEC, in its discretion, to provide assistance “without regard to whether the facts stated in the request would constitute a violation of the laws of the United States.” In deciding when to exercise its discretion, the SEC must consider: (1) whether the foreign authority has agreed to provide reciprocal assistance; and (2) whether compliance with the request would prejudice the public interest of the United States.

The SEC’s power to assist foreign securities authorities is as broad as the SEC’s domestic investigative power. The SEC may seek voluntary production of information and documents on behalf of a foreign regulator. The SEC also has the power to compel

¹ Each year the SEC makes a large number of requests for assistance to foreign jurisdictions and receives a larger volume of requests in return. In fiscal year 2003, SEC staff made 309 requests for assistance to foreign regulators and responded to 344 requests from abroad. In fiscal year 2004, SEC staff made approximately 330 requests for assistance to foreign regulators and responded to approximately 340 requests from abroad.

information and documents from individuals (whether regulated by the SEC or not), brokerage firms, banks, telephone companies, Internet service providers, and other third parties.

The reality in a global market is that for a jurisdiction to ensure that it has an effective domestic enforcement regime, the jurisdiction must provide as well as receive international cooperation. Many jurisdictions have recognized this necessity and have enacted domestic legislation enabling their securities regulators to obtain and share information with foreign counterparts. The International Organization of Securities Commissions (“IOSCO”) embraced this principle in adopting the “Objectives and Principles of Securities Regulations” (the “IOSCO Core Principles”), which set out a list of 30 principles which give practical effect to IOSCO’s three key objectives: protecting investors; ensuring fair, efficient and transparent markets; and reducing systemic risk. The IOSCO Core Principles also call for strong enforcement cooperation and information sharing among regulators.

In the wake of the events of September 11, 2001, IOSCO undertook to further enhance the information sharing critical to the successful investigation and prosecution of cross-border securities violations. The result was the adoption of a Multilateral Memorandum of Understanding (“MMOU”) in May 2002. The key provisions of the MMOU focus on two essential elements of cross-border enforcement cooperation. First, the MMOU specifies the particular types of information a signatory may be asked to provide, such as client identification information, brokerage records, and information from a signatory’s files. Second, the MMOU requires the confidentiality of information provided, while allowing information to be used for compliance with the securities laws, investigations and enforcement proceedings, surveillance or enforcement activities of self regulatory organizations, and assistance in criminal prosecutions. The MMOU is open to IOSCO members who demonstrate their legal authority to comply with the MMOU’s key provisions. Currently, there are 26 signatories to the MMOU. IOSCO invites members that do not currently have the authority to meet the MMOU’s requirements to represent their commitment to seek and obtain the necessary legislative changes. The SEC was among the first group of IOSCO members to accede to the MMOU in the fall of 2002.

B. Mechanisms for Sharing Information

The SEC shares information with foreign regulators through a variety of mechanisms, including the MMOU and bilateral Memoranda of Understanding (“MOUs”). The SEC has entered more than 30 MOUs with foreign authorities.² (See attached list). The MOUs provide a framework for information sharing. In negotiating an MOU, the SEC and the foreign authority learn a great deal about their respective interests, needs and capabilities. Each MOU is designed to fit the particular circumstances of the foreign market and the powers of the SEC’s foreign counterpart. MOUs generally reflect an understanding between the SEC and a foreign regulator as to

² The SEC is increasingly relying on the IOSCO Multilateral MOU, described above, as a framework for information sharing and as a predicate for bilateral MOUs with foreign jurisdictions.

the framework for requests, the use of the information sought and provided, and maintaining the confidentiality of that information.

The existence of an MOU, however, is not a prerequisite for the SEC to cooperate with foreign authorities regarding enforcement matters. Indeed, the SEC frequently cooperates with foreign regulators with whom it has no MOU by relying on its informal contacts. Cooperation through informal contact is often a useful way for regulators to share information, and demonstrates the benefits of a flexible approach to obtaining information. The SEC has used such informal channels effectively in a variety of places, including Austria, Guernsey and the Isle of Man. The SEC also uses a variety of other mechanisms to facilitate information sharing, including making requests to foreign criminal authorities through mutual legal assistance treaties (“MLATs”) administered by the U.S. Department of Justice (“DOJ”).

The most important element in determining whether cooperation is possible (whether through formal or informal channels) is the underlying legal authority of securities regulators to obtain and provide information.³ Another key element in information sharing is the ability of the receiving authority to maintain the confidentiality of the information provided. In the United States, the Freedom of Information Act (“FOIA”) provides for public access to agency records. Recognizing that FOIA could make foreign regulators wary of sharing information with the SEC, the SEC sought and obtained express confidentiality protection for foreign records under Section 24(d) of the Exchange Act. Pursuant to Section 24(d), the SEC cannot be compelled under FOIA to disclose records obtained from a foreign securities authority if the foreign authority has “in good faith determined and represented to the Commission that public disclosure of such records would violate the laws applicable to that foreign authority.”

The ability to use foreign information for routine regulatory and enforcement purposes is another key element in any information sharing arrangement. Accordingly, information supplied to the SEC by foreign authorities must be available for use in SEC investigations and civil or administrative proceedings. The SEC requires that the foreign authority also accede to the SEC’s sharing of the information with its fellow U.S. regulators, such as self regulatory organizations and DOJ, as necessary.

To combat financial crimes effectively, regulators in all jurisdictions must be able to pass information on to criminal authorities if criminal action is warranted. Cooperative relationships between securities regulators and criminal authorities are a feature common to virtually all jurisdictions. For example, the SEC may provide information obtained through foreign authorities to DOJ for criminal proceedings. The SEC may refer a matter to DOJ for investigation, and DOJ may conduct its criminal investigations parallel to the SEC’s civil investigations. Information shared between DOJ and the SEC make investigations and prosecution of these parallel matters more efficient and effective.

³ As noted above, the SEC’s legal authority is found in Section 21(a)(2) of the Exchange Act.

C. Asset Freezes and Repatriation of Assets

The SEC has increasingly investigated and prosecuted matters involving violations of the U.S. federal securities laws where property connected to the violations is located abroad. When the assets are outside of the United States, obtaining an asset freeze becomes considerably complicated, and the SEC is also faced with determining how the assets can be repatriated for return to victims. The property sought by the SEC to be preserved and/or repatriated mainly consists of funds and assets in bank and brokerage accounts.

On some occasions, in jurisdictions where a foreign counterpart has the authority to preserve property on behalf of the SEC, the SEC has received assistance from the foreign counterpart successfully. In other jurisdictions, the SEC has been able to preserve property by making a request to foreign authorities pursuant to an MLAT. Finally, the SEC also has initiated private actions in foreign courts to preserve property.

With regard to repatriation, on occasion, the SEC has been able to obtain the agreement of the defendant or the defendant's financial institution to send the property back to the United States to satisfy a judgment received by the SEC or a settlement negotiated with the SEC. On other occasions, the SEC has filed a proceeding as a plaintiff in the foreign court to have the court recognize the U.S. judgment.

As an example, in *SEC v. AramisSoft, et al.*, a company insider utilized several banks to secretly liquidate hundreds of millions of dollars in AramisSoft stock and transfer the proceeds of insider trading outside of the United States. Approximately \$180 million of proceeds from the fraudulent stock sales were deposited in bank accounts in the Isle of Man in the names of two asset protection trusts. Together with the U.S. criminal authorities, the SEC requested the Isle of Man Attorney General to obtain a restraint order freezing the funds held on behalf of the trusts in the bank accounts. A restraint order was entered and the SEC has intervened in the case as an "affected person" to preserve the interests of defrauded investors. The Trustees have challenged the right of the U.S. authorities to the funds in the bank accounts. Substantial litigation in the Isle of Man over the disposition of the proceeds of the fraud continues as well as litigation in connection with related U.S. forfeiture actions.

Another matter, *SEC v. A.C.L.N. Ltd., et al.*, also involved insider trading as well as market manipulation and other offenses by the company's principals. The SEC has obtained freezes of proceeds of fraud totaling approximately \$45 million in bank accounts in four European countries. This includes approximately \$24 million in Denmark (assisted by the Danish public prosecutor), \$2.9 million in Luxembourg (by SEC filing civil proceedings), \$2.5 million in the Netherlands (by SEC filing civil proceedings), and \$16 million in Monaco (assisted by the Monegasque criminal authorities). To date, the SEC has repatriated monies frozen in the Netherlands, and is working to repatriate other assets to the United States for distribution to aggrieved investors worldwide.

D. Enforcement Cases

The following recent cases illustrate further the substantial degree of cooperation that the SEC enjoys with its foreign counterparts, and the significance of that cooperation to the SEC's enforcement program:

- *SEC v. Koninklijke Ahold N.V. ("Royal Ahold")*. On October 13, 2004, the SEC filed a complaint against Royal Ahold, a Dutch company, and three of its former top executives, alleging fraud and other violations. The SEC brought a related administrative proceeding against a former member of Royal Ahold's supervisory board and audit committee. The SEC's complaint alleged that, as a result of the fraudulent inflation of promotional allowances at U.S. Foodservice, Royal Ahold's wholly-owned U.S.-based subsidiary, the improper consolidation of joint ventures through fraudulent side letters, and other accounting errors and irregularities, Royal Ahold's SEC filings materially overstated net income, operating income and net sales. The SEC simultaneously settled the case against Royal Ahold and three of the defendants. The SEC and Dutch authorities cooperated extensively on this matter and Dutch proceedings are still underway.
- *SEC v. Royal Dutch Petroleum Company and The "Shell" Transport and Trading Company*. On August 24, 2004, the SEC entered into a settled enforcement action against Royal Dutch Petroleum Company, a Dutch corporation headquartered in the Hague, and The "Shell" Transport and Trading Company, plc, an English corporation, headquartered in London. The companies consented to a cease-and-desist order finding violations of the antifraud, internal controls, record-keeping and reporting provisions of the U.S. securities laws, in connection with their overstatement of 4.47 billion barrels of previously reported proved hydrocarbon reserves. The companies agreed to pay \$1 disgorgement and a \$120 million penalty in the related civil action filed by the SEC in U.S. District Court in Houston. The SEC cooperated extensively with the U.K. Financial Services Authority and the Netherlands Authority for the Financial Markets on this matter.
- *SEC v. One or More Unknown Purchasers of Call Options for the Common Stock of InVision Technologies, Inc.* On April 2, 2004, the U.S. District Court for the Southern District of New York issued a Preliminary Injunction continuing a freeze of about \$2.7 million in the accounts of certain Unknown Purchasers of the Call Options of InVision Technologies, Inc. The SEC's complaint alleges that the frozen funds resulted from suspicious trading of InVision call options in the days immediately prior to a March 15, 2004 joint announcement by General Electric Company ("GE") and InVision. This announcement stated that GE had agreed to acquire InVision in an all-cash transaction valued at approximately \$900 million, or \$50 per share of InVision common stock. The SEC cooperated on this matter with the International Securities Exchange, the U.K. Financial Services Authority, and the Italian securities regulator, the Commissione Nazionale per la Società e la Borsa ("Consob").

- *SEC v. Parmalat Finanziaria S.p.A.* The SEC filed a complaint against Parmalat, an Italian company, on December 30, 2003, alleging that the company fraudulently offered \$100 million of unsecured Senior Guaranteed Notes to U.S. investors by materially overstating the company's assets and materially understating its liabilities. The SEC worked with regulators on related enforcement matters in various jurisdictions around the world, including the Italian Consob.
- *SEC v. Vivendi Universal.* In September 2003, the SEC made an application under the Sarbanes-Oxley Act of 2002 seeking a temporary order compelling Vivendi, a foreign private issuer domiciled in France, to place in escrow a \$23 million payment to the company's former CEO, Jean-Marie Messier, pending an SEC investigation into possible securities laws violations. On December 23, 2003, the SEC settled an enforcement action against Messier in which he agreed to relinquish his claim to the \$23 million payment and to pay a civil money penalty of \$1 million and disgorgement of \$1. The disgorgement and penalty amounts are being paid to defrauded investors. The SEC cooperated with the French securities authority, the Autorité des marchés financiers, on this matter.

II. INTERNATIONAL MULTILATERAL ENFORCEMENT INITIATIVES TO EXPAND INFORMATION SHARING

International multilateral initiatives play an important role in raising the standard of information sharing on a global scale. Indeed, they can help securities regulators obtain the necessary domestic legal authority to share information with foreign securities regulators. As discussed below, the SEC supports and participates in many such initiatives, and these, in turn, enhance the SEC's ability to obtain information.

A. IOSCO Initiatives

IOSCO has fully endorsed information sharing among securities regulators worldwide, with the MMOU serving as the international benchmark for information sharing standards. IOSCO has also employed a variety of vehicles, such as resolutions, core principles and work programs, to establish a framework for information sharing on which its members can build to strengthen their securities laws.

1. IOSCO MOU Principles

In 1991, in light of the need for cooperation in enforcement matters, IOSCO adopted "Principles of Memoranda of Understanding." The Principles represent a consensus among securities regulators about key tools that should be available to regulators for fighting securities fraud. These principles have been referred to time and again as IOSCO members developed bilateral and regional MOUs. They include core provisions on obtaining and sharing information, and on confidentiality and use of information that is shared. In particular, the MOU Principles endorse:

- The provision of assistance without regard to whether the type of conduct under investigation would be a violation of the laws of the requested authority;
- Use of full domestic powers to execute requests for assistance, including obtaining documents, testimony, and conducting inspections;
- The importance of protecting the confidentiality of the information provided; and
- The right to use the information for enforcement investigations, actions and proceedings.

2. IOSCO Resolutions on Cooperation

In addition to the MOU Principles, IOSCO members adopted a series of resolutions designed to affirm IOSCO members' commitment to cooperation in 1986, 1989 and 1994. In 1997, IOSCO took these Resolutions one step further with its "Resolution on Principles for Record Keeping, Collection of Information, Enforcement Powers and Mutual Cooperation to Improve the Enforcement of Securities and Futures Laws" ("1997 Enforcement Resolution").

The 1997 Enforcement Resolution marked the first time that IOSCO's focus turned to improving the maintenance and collection of information as a critical part of international cooperation. The 1997 Enforcement Resolution was a product of IOSCO members' recognition that there were significant differences in the ability of members to maintain, collect and share non-public information. The 1997 Enforcement Resolution thus addresses the importance of comprehensive record keeping and collection of information, as well as strong enforcement powers, in the context of mutual assistance and cross-border cooperation. In 1998, IOSCO's full membership incorporated the 1997 Enforcement Resolution into the IOSCO Core Principles.

B. Financial Action Task Force Initiatives on Money Laundering

Offshore jurisdictions with inadequate supervision, limited disclosure obligations, and poor international cooperation tend to be havens for securities violators and the proceeds of their illegal transactions. These jurisdictions pose significant impediments to international cooperation. The Financial Action Task Force on Money Laundering ("FATF")⁴, an inter-governmental anti-money laundering organization in which the SEC participates, has been tackling issues associated with these jurisdictions, including non-cooperation. FATF has developed criteria for defining a jurisdiction as "non-cooperative" in the fight against money laundering, and, in June 2000, identified 15 such jurisdictions. Since the start of this initiative, FATF has periodically updated its list, removing jurisdictions that have addressed regulatory deficiencies regarding cooperation and information sharing, and adding jurisdictions that FATF has identified as having critical deficiencies in their anti-money laundering systems or a demonstrated unwillingness to cooperate in anti-money laundering efforts.

⁴ Money laundering violations and securities violations are often intertwined as securities fraud may be a predicate offense for money laundering.

In June 2003, FATF issued a revised version of its comprehensive guidelines to combat money laundering. These “Forty Recommendations on Anti-Money Laundering” are viewed internationally as a major tool in the global fight against money laundering and predicate offenses, such as securities fraud. Significant changes to the Forty Recommendations include an enhancement of cross-border information sharing obligations and the expansion of customer due diligence measures.

C. Financial Stability Forum Initiative on Offshore Financial Centers

The SEC participates in the Financial Stability Forum (“FSF”), which works to advance international financial stability. Progress by offshore financial centers (“OFCs”) in strengthening their regulatory, supervisory, cooperation and information exchange arrangements has been promoted by the FSF. In May 2000, the FSF encouraged OFCs to undertake needed reforms and asked the International Monetary Fund (“IMF”) to establish an assessment program that would ensure progress on a continuing basis. Virtually all of the 42 jurisdictions that the FSF identified as having offshore financial activities have undergone an initial assessment by the IMF. Since the FSF March 2004 meeting, six OFCs have published their IMF assessment reports, bringing the total published reports to 32. Of the remaining 10 jurisdictions, all but one have committed to publish, and are expected to do so shortly.

Additionally, the FSF continues to work with the IMF and others, notably IOSCO, to encourage particular OFCs to address prudential shortcomings and to improve cooperation and exchange of information practices, relying on the full range of assessment options. In this regard, IOSCO’s Technical Committee recently approved a project to examine whether and to what degree “under-regulation” and “non-cooperation” in OFCs can pose problems for effective market oversight and identifying jurisdictions with which members have experienced recent and significant problems in obtaining cooperation for enforcement investigations.

CONCLUSION

As geographic and national barriers to capital-raising fall, so must barriers to investigating and prosecuting securities fraud. The SEC is pursuing myriad avenues for enforcing U.S. securities laws in a world where fraudsters may be operating anywhere. The SEC will continue to provide information in as many circumstances as appropriate to its foreign counterparts with the hope that doing so will continue to foster reciprocity for the benefit of U.S. investors.

**MULTILATERAL MEMORANDUM OF UNDERSTANDING
CONCERNING CONSULTATION AND COOPERATION
AND THE EXCHANGE OF INFORMATION**



INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

MAY 2002

PURPOSE

The signatories to this IOSCO Multilateral Memorandum of Understanding:

Considering the increasing international activity in the securities and derivatives markets, and the corresponding need for mutual cooperation and consultation among IOSCO Members to ensure compliance with, and enforcement of, their securities and derivatives laws and regulations;

Considering the events of September 11, 2001, which underscore the importance of expanding cooperation among IOSCO Members;

Desiring to provide one another with the fullest mutual assistance possible to facilitate the performance of the functions with which they are entrusted within their respective jurisdictions to enforce or secure compliance with their laws and regulations as those terms are defined herein,

Have reached the following understanding:

DEFINITIONS

For the purposes of this IOSCO Multilateral Memorandum of Understanding:

1. "Authority" means those regulators listed in Appendix A, who, in accordance with the procedures set forth in Appendix B, have signed this Memorandum of Understanding.
2. "Requested Authority" means an Authority to whom a request for assistance is made under this Memorandum of Understanding.
3. "Requesting Authority" means an Authority making a request for assistance under this Memorandum of Understanding.
4. "Laws and Regulations" mean the provisions of the laws of the jurisdictions of the Authorities, the regulations promulgated thereunder, and other regulatory requirements that fall within the competence of the Authorities, concerning the following:
 - a. insider dealing, market manipulation, misrepresentation of material information and other fraudulent or manipulative practices relating to securities and derivatives, including solicitation practices, handling of investor funds and customer orders;
 - b. the registration, issuance, offer, or sale of securities and derivatives, and reporting requirements related thereto;
 - c. market intermediaries, including investment and trading advisers who are required to be licensed or registered, collective investment schemes, brokers, dealers, and transfer agents; and
 - d. markets, exchanges, and clearing and settlement entities.

5. "Person" means a natural or legal person, or unincorporated entity or association, including corporations and partnerships.

MUTUAL ASSISTANCE AND THE EXCHANGE OF INFORMATION

6. General Principles regarding Mutual Assistance and the Exchange of Information

- (a) This Memorandum of Understanding sets forth the Authorities' intent with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with the respective Laws and Regulations of the jurisdictions of the Authorities. The provisions of this Memorandum of Understanding are not intended to create legally binding obligations or supersede domestic laws.
- (b) The Authorities represent that no domestic secrecy or blocking laws or regulations should prevent the collection or provision of the information set forth in 7(b) to the Requesting Authority.
- (c) This Memorandum of Understanding does not authorize or prohibit an Authority from taking measures other than those identified herein to obtain information necessary to ensure enforcement of, or compliance with, the Laws and Regulations applicable in its jurisdiction.
- (d) This Memorandum of Understanding does not confer upon any Person not an Authority, the right or ability, directly or indirectly to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding.
- (e) The Authorities recognize the importance and desirability of providing mutual assistance and exchanging information for the purpose of enforcing, and securing compliance with, the Laws and Regulations applicable in their respective jurisdictions. A request for assistance may be denied by the Requested Authority:
 - (i) where the request would require the Requested Authority to act in a manner that would violate domestic law;
 - (ii) where a criminal proceeding has already been initiated in the jurisdiction of the Requested Authority based upon the same facts and against the same Persons, or the same Persons have already been the subject of final

punitive sanctions on the same charges by the competent authorities of the jurisdiction of the Requested Authority, unless the Requesting Authority can demonstrate that the relief or sanctions sought in any proceedings initiated by the Requesting Authority would not be of the same nature or duplicative of any relief or sanctions obtained in the jurisdiction of the Requested Authority.

- (iii) where the request is not made in accordance with the provisions of this Memorandum of Understanding; or
- (iv) on grounds of public interest or essential national interest.

Where a request for assistance is denied, or where assistance is not available under domestic law, the Requested Authority will provide the reasons for not granting the assistance and consult pursuant to paragraph 12.

7. Scope of Assistance

- (a) The Authorities will, within the framework of this Memorandum of Understanding, provide each other with the fullest assistance permissible to secure compliance with the respective Laws and Regulations of the Authorities.
- (b) The assistance available under this Memorandum of Understanding includes, without limitation:
 - (i) providing information and documents held in the files of the Requested Authority regarding the matters set forth in the request for assistance;
 - (ii) obtaining information and documents regarding the matters set forth in the request for assistance, including:
 - contemporaneous records sufficient to reconstruct all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to these transactions;
 - records that identify: the beneficial owner and controller, and for each transaction, the account holder; the amount purchased or sold; the time of the transaction; the price of the transaction; and the individual and the bank or broker and brokerage house that handled the transaction; and

- information identifying persons who beneficially own or control non-natural Persons organized in the jurisdiction of the Requested Authority.
- (iii) In accordance with Paragraph 9(d), taking or compelling a Person's statement, or, where permissible, testimony under oath, regarding the matters set forth in the request for assistance.
- (c) Assistance will not be denied based on the fact that the type of conduct under investigation would not be a violation of the Laws and Regulations of the Requested Authority.

8. Requests For Assistance

- (a) Requests for assistance will be made in writing, in such form as may be agreed by IOSCO from time to time, and will be addressed to the Requested Authority's contact office listed in Appendix A.
- (b) Requests for assistance will include the following:
- (i) a description of the facts underlying the investigation that are the subject of the request, and the purpose for which the assistance is sought;
 - (ii) a description of the assistance sought by the Requesting Authority and why the information sought will be of assistance;
 - (iii) any information known to, or in the possession of, the Requesting Authority that might assist the Requested Authority in identifying either the Persons believed to possess the information or documents sought or the places where such information may be obtained;
 - (iv) an indication of any special precautions that should be taken in collecting the information due to investigatory considerations, including the sensitivity of the information; and
 - (v) the Laws and Regulations that may have been violated and that relate to the subject matter of the request.
- (c) In urgent circumstances, requests for assistance may be effected by telephone or facsimile, provided such communication is confirmed through an original, signed document.

9. Execution of Requests for Assistance

- (a) Information and documents held in the files of the Requested Authority will be provided to the Requesting Authority upon request.
- (b) Upon request, the Requested Authority will require the production of documents identified in 7(b)(ii) from (i) any Person designated by the Requesting Authority, or (ii) any other Person who may possess the requested information or documents. Upon request, the Requested Authority will obtain other information relevant to the request.
- (c) Upon request, the Requested Authority will seek responses to questions and/or a statement (or where permissible, testimony under oath) from any Person involved, directly or indirectly, in the activities that are the subject matter of the request for assistance or who is in possession of information that may assist in the execution of the request.
- (d) Unless otherwise arranged by the Authorities, information and documents requested under this Memorandum of Understanding will be gathered in accordance with the procedures applicable in the jurisdiction of the Requested Authority and by persons designated by the Requested Authority. Where permissible under the Laws and Regulations of the jurisdiction of the Requested Authority, a representative of the Requesting Authority may be present at the taking of statements and testimony and may provide, to a designated representative of the Requested Authority, specific questions to be asked of any witness.
- (e) In urgent circumstances, the response to requests for assistance may be effected by telephone or facsimile, provided such communication is confirmed through an original, signed document.

10. Permissible Uses of Information

- (a) The Requesting Authority may use non-public information and non-public documents furnished in response to a request for assistance under this Memorandum of Understanding solely for:
 - (i) the purposes set forth in the request for assistance, including ensuring compliance with the Laws and Regulations related to the request; and

- (ii) a purpose within the general framework of the use stated in the request for assistance, including conducting a civil or administrative enforcement proceeding, assisting in a self-regulatory organization's surveillance or enforcement activities (insofar as it is involved in the supervision of trading or conduct that is the subject of the request), assisting in a criminal prosecution, or conducting any investigation for any general charge applicable to the violation of the provision specified in the request where such general charge pertains to a violation of the Laws and Regulations administered by the Requesting Authority. This use may include enforcement proceedings which are public.
- (b) If a Requesting Authority intends to use information furnished under this Memorandum of Understanding for any purpose other than those stated in Paragraph 10(a), it must obtain the consent of the Requested Authority.

11. Confidentiality

- (a) Each Authority will keep confidential requests made under this Memorandum of Understanding, the contents of such requests, and any matters arising under this Memorandum of Understanding, including consultations between or among the Authorities, and unsolicited assistance. After consultation with the Requesting Authority, the Requested Authority may disclose the fact that the Requesting Authority has made the request if such disclosure is required to carry out the request.
- (b) The Requesting Authority will not disclose non-public documents and information received under this Memorandum of Understanding, except as contemplated by paragraph 10(a) or in response to a legally enforceable demand. In the event of a legally enforceable demand, the Requesting Authority will notify the Requested Authority prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available. The Requesting Authority will use its best efforts to protect the confidentiality of non-public documents and information received under this Memorandum of Understanding.
- (c) Prior to providing information to a self-regulatory organization in accordance with paragraph 10(a)(ii), the Requesting Authority will ensure that the self-regulatory organization is able and will comply on an ongoing basis with the confidentiality provisions set forth in paragraphs 11(a) and (b) of this Memorandum of Understanding, and

that the information will be used only in accordance with paragraph 10(a) of this Memorandum of Understanding, and will not be used for competitive advantage.

12. Consultation Regarding Mutual Assistance and the Exchange of Information

- (a) The Authorities will consult periodically with each other regarding this Memorandum of Understanding about matters of common concern with a view to improving its operation and resolving any issues that may arise. In particular, the Authorities will consult in the event of:
 - (i) a significant change in market or business conditions or in legislation where such change is relevant to the operation of this Memorandum of Understanding;
 - (ii) a demonstrated change in the willingness or ability of an Authority to meet the provisions of this Memorandum of Understanding; and
 - (iii) any other circumstance that makes it necessary or appropriate to consult, amend or extend this Memorandum of Understanding in order to achieve its purposes.
- (b) The Requesting Authority and Requested Authority will consult with one another in matters relating to specific requests made pursuant to this Memorandum of Understanding (e.g., where a request may be denied, or if it appears that responding to a request will involve a substantial cost). These Authorities will define the terms herein in accordance with the relevant laws of the jurisdiction of the Requesting Authority unless such definition would require the Requested Authority to exceed its legal authority or otherwise be prohibited by the laws applicable in the jurisdiction of the Requested Authority. In such case, the Requesting and Requested Authorities will consult.

13. Unsolicited Assistance

Each Authority will make all reasonable efforts to provide, without prior request, the other Authorities with any information that it considers is likely to be of assistance to those other Authorities in securing compliance with Laws and Regulations applicable in their jurisdiction.

FINAL PROVISIONS

14. Additional Authorities

Additional IOSCO members may become Authorities under this Memorandum of Understanding in accordance with the procedures set forth in Appendix B. New Authorities may be added under this Memorandum of Understanding by signing Appendix A.

15. Effective Date

Cooperation in accordance with this Memorandum of Understanding will begin on the date of its signing by the Authorities. The Memorandum of Understanding will be effective as to additional Authorities as of the date of that Authority's signing of Appendix A.

16. Termination

- (a) An Authority may terminate its participation in this Memorandum of Understanding at any time by giving at least 30 days prior written notice to each other Authority.
- (b) If, in accordance with the procedures set forth in Appendix B, the Chairmen of the Technical, Emerging Markets and Executive Committees (the "Committee of Chairmen") determine, following notice and opportunity to be heard, that there has been a demonstrated change in the willingness or ability of an Authority to meet the provisions of this Memorandum of Understanding, as set forth in paragraph 12(a)(ii), the Committee of Chairmen may, after consultation with the Chairman of the relevant Regional Committee, terminate that Authority's participation in this Memorandum of Understanding, subject to a possible review by the Executive Committee.
- (c) In the event that an Authority decides to terminate its participation in this Memorandum of Understanding, cooperation and assistance in accordance with this Memorandum of Understanding will continue until the expiration of 30 days after that Authority gives written notice to the other Authorities of its intention to discontinue cooperation and assistance hereunder. If any Authority gives a termination notice, cooperation and assistance in accordance with this Memorandum of Understanding will continue with respect to all requests for assistance that were made, or information provided, before the effective date of notification (as indicated in the notice but no earlier than the date the notice is sent) until the Requesting

Authority terminates the matter for which assistance was requested.

- (d) In the event of the termination of an Authority's participation in the Memorandum of Understanding, whether under the provisions of 16(a) or 16(b), information obtained under this Memorandum of Understanding will continue to be treated confidentially in the manner prescribed under Article 11 and cooperation under this Memorandum of Understanding will continue among the other Authorities.

APPENDIX A

List of Signatories

APPENDIX B

Procedures Under the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

I. Application to Become a Signatory to the MOU

- (a) All governmental regulatory bodies that are Ordinary or Associate Members of IOSCO are eligible to apply to participate in the MOU at any time. Applications should be submitted to the IOSCO Secretary General.
- (b) All applicants must provide a complete response to the questionnaire, which is included in Part IV of this Appendix B, and provide copies of their supporting laws, rules and regulations as indicated in the questionnaire. Responses should identify and explain the applicant's legal authority to meet the specific MOU provisions cited in the questionnaire, which are essential to mutual assistance and the exchange of information in order to successfully enforce securities and derivatives laws.
- (c) Responses to the questionnaire will be verified by the Technical Committee's Standing Committee 4 and the Emerging Market Committee's Working Party 4 ("screening group"), with administrative support provided by the Secretary General. The screening group will establish verification teams that include members with substantial expertise in enforcement of securities and derivatives laws, as well as expertise in cross border information sharing. The screening group has discretion to invite other IOSCO members to participate in the verification teams.
- (d) The verification of the questionnaire responses will be limited to verification that the responses accurately reflect the legal authority of members to comply with the specific MOU provisions cited in the questionnaire based on the laws, rules and regulations cited in the responses. Based on their review of the questionnaire responses, the verification teams will make specific recommendations to the screening body concerning the ability of the applicant to comply with each MOU provision cited in the questionnaire.
- (e) The screening group will make recommendations concerning its verification of applicant responses to a decision making group. Prior to making any negative recommendation on an application, the screening group will notify the applicant in writing, identifying the specific MOU provisions for which the applicant lacks legal authority. The applicant will have an opportunity, upon request, to be heard by the screening group.
- (f) The decision-making group will be comprised of the Chairmen of the Technical, Emerging Markets, and Executive Committees ("Committee of Chairmen"). Together, this group, after consultation with the Chairman of the relevant Regional Committee, will decide whether to accept or reject applications to become an MOU signatory based on the screening group's recommendations.

Prior to making any negative decision, the decision making group will notify the applicant in writing, identifying the specific MOU provisions for which the applicant lacks legal authority. The applicant will have an opportunity, upon request, to be heard by the decision-making group.

- (g) Upon decision by the decision-making group of the applicant's legal authority to meet the MOU provisions cited in the questionnaire, as described in I(f) above, the applicant will be invited by IOSCO to be a signatory. Appendix A will contain the names and signatures of all Authorities to the MOU and will be maintained and updated by the IOSCO Secretary General. The responses of applicants that are so invited to be signatories will be posted on the IOSCO members-only website.
- (h) Decisions of the Committee of Chairmen shall be made under the authority of the Executive Committee. However, an applicant dissatisfied with the decision of the Committee of Chairmen may, by written notice to the Secretary General, request that the decision be reviewed by the Executive Committee. Such request will be referred by the Secretary General to the next meeting of the Executive Committee to be held at least thirty days following receipt of the request and shall be accompanied by such material and be dealt with under such procedures as the Executive Committee may from time to time decide. The Executive Committee may confirm the original decision of the Committee of Chairmen or may substitute a new decision or otherwise deal with the request as it considers fit.
- (i) An applicant notified of a negative decision pursuant to I(f) and I(h) above, may re-apply to become a signatory, in accordance with the procedures in Part II(e)-(g) below, once it obtains the legal authority that IOSCO has determined is lacking.

II. Commitment to Become a Signatory

- (a) Members that do not have the legal authority to meet all the MOU provisions cited in the questionnaire, may nonetheless complete the questionnaire, and voluntarily express in their responses, where appropriate, that they are committed to seeking the legal authority necessary to enable them to do so.
- (b) All completed questionnaires will be reviewed in the same manner set forth in I(c) and (d) above. Such review will be limited to verification that the laws, rules, and regulations submitted support the member's legal authority to meet the MOU provisions cited in the questionnaire.
- (c) The screening group will notify the members in writing of the specific MOU provisions for which the member lacks legal authority.
- (d) Members that complete the questionnaire as provided for in Part II(a) above or that receive notification of a negative decision as provided for in Part I(f) above, may express to IOSCO their commitment to obtain the legal authority to meet all the MOU provisions cited in the questionnaire. Such members will be listed in an attachment to this Appendix B. This list will be maintained and updated

by IOSCO's Secretary General. The responses of such members, with their consent, will be posted on the IOSCO members-only website.

- (e) After obtaining the legal authority identified as lacking during the verification process, a member may apply to become a signatory to the MOU by: (1) submitting an updated response to the questionnaire identifying changes to the legal authority previously identified as lacking; and (2) confirming the continued accuracy of all other information previously submitted in response to the questionnaire.
- (f) The legal authority submitted in accordance with II(e)(1) will be verified in accordance with the procedures referenced in I(c) to I(g).
- (g) Upon verification of the legal authority submitted in accordance with II(e)(1), an applicant will be invited by IOSCO to be a signatory and to sign Appendix A of the MOU. The updated responses of such applicants will be posted on the IOSCO members-only website.

III. Monitoring of the Operation of the MOU

- (a) In order to ensure the effective monitoring of the operation of the MOU, signatories will update as appropriate their responses posted on the IOSCO members-only website.
- (b) The MOU provides, in paragraph 12(a), for periodic consultation about certain significant, enumerated matters of common concern to the MOU signatories with a view to improving operation of the MOU. Such consultations will be conducted by the MOU signatories ("monitoring group"), with administrative support provided by the Secretary General. The monitoring group may establish procedures, in consultation with the Executive Committee, to facilitate their periodic consultations. Such procedures will include written notice to signatories of the issues to be considered during consultations, and an opportunity to be heard and respond. The monitoring group may obtain the assistance of other IOSCO bodies in performing its consultation and recommendation functions.
- (c) The monitoring group has discretion to consider and recommend a range of possible options to encourage compliance in the event that a signatory demonstrates a change in its willingness or ability to meet the standards of the MOU provisions. The options might include: Providing a period of time for the signatory to comply; full peer review of a signatory that may not be in compliance; public notice of non-compliance; suspension of a signatory from MOU participation; or termination from the MOU participation as provided in the MOU (section 16(b)).
- (d) If further action is necessary as a result of such consultations, the consultation group will forward recommendations to a decision-making group comprised of the Chairman of the Technical, Emerging Markets and Executive Committees. The decision-making group will consider the signatory group's recommendations and, where appropriate, take action.

- (e) If the IOSCO decision-making body determines, following notice and an opportunity to be heard, that there has been a demonstrated change in the willingness or ability of a signatory to meet the provisions of the MOU, as provided in paragraph 12(a)(ii) of the MOU, the decision-making body will notify the signatory of the determination and provide the signatory with a written explanation of the determination. The decision-making group will establish procedures to provide the signatory with an opportunity, upon request, to be heard and seek review of the determination. Upon a final determination, the decision-making body may take action to encourage the signatory's compliance with the MOU, or where appropriate, the decision-making body may terminate the signatory's participation in the MOU as provided in paragraph 16(b) of the MOU.
- (f) Decisions of the decision-making body shall be made under the authority of the Executive Committee. In case of a decision of termination, an applicant dissatisfied with the decision of the decision-making body may, by written notice to the Secretary General, request that the decision be reviewed by the Executive Committee. Such request will be referred by the Secretary General to the next meeting of the Executive Committee to be held at least thirty days following receipt of the request and shall be accompanied by such material and be dealt with under such procedures as the Executive Committee may from time to time decide. The Executive Committee may confirm the original decision of the decision-making body or may substitute a new decision or otherwise deal with the request as it considers fit.
- (g) Any decision involving an amendment to the MOU requires a unanimous recommendation from the signatories to the MOU.

IV. Questionnaire

GENERAL INSTRUCTIONS:

The responses and the accompanying material (including laws, rules and regulations) should be provided in one of the four official languages of IOSCO (English, French, Spanish or Portuguese).

The following questions ask for information indicating your ability to comply with the provisions of the IOSCO Multilateral Memorandum of Understanding cited below. Please provide a complete response to each question, and copies of the laws, rules and regulations that support each response.

Responses to the questionnaire should be sent to the IOSCO Secretary General.

Completed questionnaires will be reviewed by in a manner authorized by IOSCO.

QUESTIONS:

1. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you, or a separate governmental body in your jurisdiction, to obtain:
 - (a) contemporaneous records sufficient to reconstruct all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to those transactions;
(as required by Paragraph 7(b)(ii) of the MOU)
 - (b) records for securities and derivatives transactions that identify:
 - (1) the client:
 - i: name of the account holder; and
 - ii. person authorized to transact business;
 - (2) the amount purchased or sold;
 - (3) the time of the transaction;
 - (4) the price of the transaction; and
 - (5) the individual and the bank or broker and brokerage house that handled the transaction.
(as required by Paragraph 7(b)(ii) of the MOU)
 - (c) information located in your jurisdiction identifying persons who beneficially own or control non-natural persons organized in your jurisdiction.
(as required by Paragraph 7(b)(ii) of the MOU)
2. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you, or a separate governmental body in your jurisdiction, to take or compel a person's statement, or, where permissible, testimony under oath.
(as required by Paragraph 7(b)(iii) of the MOU)
3. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you to provide to foreign authorities:
 - (a) the information identified in 1(a) above;
 - (b) the information identified in 1(b) above;
 - (c) the information identified in 1(c) above;
 - (d) the information obtained through the powers described in 2 above; and
 - (e) information and documents held in your files.
(as required by Paragraph 7(b)(i) of the MOU)
4. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you to provide the information and documents referenced in 3 above to foreign authorities in response to requests concerning the following:

- (a) insider dealing, market manipulation, misrepresentation of material information and other fraudulent or manipulative practices relating to securities and derivatives, including solicitation practices, handling of investor funds and customer orders;
 - (b) the registration, issuance, offer, or sale of securities and derivatives, and reporting requirements related thereto;
 - (c) market intermediaries, including investment and trading advisers who are required to be licensed or registered, collective investment schemes, brokers, dealers, and transfer agents; and
 - (d) markets, exchanges, and clearing and settlement entities.
(as required by Paragraph 7 of the MOU)
5. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you to provide assistance referenced in 4 above to a foreign authority, regardless of whether you have an independent interest in the matter.
(as required by Paragraph 7 of the MOU)
6. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that require maintenance of the following information and documents (including the period of time for which such information or documents are required to be maintained):
- (a) information identified in 1(a) above;
 - (b) information identified in 1(b) above; and
 - (c) information identified in 1(c) above.
(as required by Paragraph 7 of the MOU)
7. Please identify and explain (and provide copies of) any domestic secrecy or blocking laws, rules and regulations that relate to the collection for, or provision to, foreign authorities of:
- (a) the information identified in 1(a) above;
 - (b) the information identified in 1(b) above;
 - (c) the information identified in 1(c) above;
 - (d) the information identified in 2 above; and
 - (e) the information identified in 3(e) above.
(As required by Paragraph 6(b) of the MOU)

8. Please identify and explain (and provide copies of) any specific or general provisions of your laws, rules and regulations which restrict or limit the following uses by foreign authorities of information and documents identified above in 1(a)-(c), 2 and 3(e) provided by you:
- (a) for the purpose of ensuring compliance with (including investigation of potential violations of) laws and regulations related to:
 - (1) 4(a) above;
 - (2) 4(b) above;
 - (3) 4(c) above; and
 - (4) 4(d) above.
 - (b) for the purpose of conducting a civil or administrative enforcement proceeding, assisting in a self-regulatory organization's surveillance or enforcement activities or assisting in a criminal prosecution.
(As required by Paragraph 10(a) of the MOU).
9. Please identify and explain (and provide copies of) any general or specific provisions of your laws, rules and regulations that provide for the confidentiality of:
- (a) requests for assistance made to you by foreign authorities, the contents of such requests, and any matters arising under such requests, including consultations between or among the authorities, and unsolicited assistance; and
(As required by Paragraph 11(a) of the MOU)
 - (b) documents and information received from foreign authorities.
(As required by Paragraph 11(b) of the MOU)

Attachment to Appendix B

List of members committed to becoming signatories to the IOSCO Multilateral Memorandum of Understanding concerning consultation and cooperation and the exchange of information.

APPENDIX C

FORM FOR DRAFTING REQUESTS FOR INFORMATION
This request is being made pursuant to the provisions of the IOSCO MOU concerning consultation and cooperation and the exchange of information.
Description of the facts underlying the investigation: <ul style="list-style-type: none">➤ <i>entities/individuals involved and whether regulated or not by the Requesting Authority</i>➤ <i>type of scheme</i>➤ <i>location of investors</i>➤ <i>location of affected markets and whether regulated or not by the Requesting Authority</i>➤ <i>timeframe of the suspected misconduct</i>➤ <i>nature of the suspected misconduct</i>➤ <i>location of assets</i>➤ <i>chronology of relevant events</i>
Describe how the information requested will assist in developing the investigation.
Description of uses for which assistance is sought, if other than in accordance with the provisions of the MOU.
Description of the information needed or assistance sought (e.g., <i>account opening documents, periodic account statements, trade confirmations, etc.</i>).
Time period for which documents should be gathered.
Information useful for identifying the relevant documents (e.g., <i>account number, name, address, date of birth of account holder, names of entities believed to control the accounts</i>).
Information useful for identifying the individual(s) from whom statements are needed (e.g., <i>name, address, date of birth of individual, telephone number</i>).
Sources of information (e.g., <i>regulated individuals and entities, investors, knowledgeable insiders</i>).

Preferred form in which information should be gathered.
Indication of wish to participate in any interview.
Special precautions.
Dates of previous requests in this matter.
Laws and regulations: <ul style="list-style-type: none"> ➤ <i>provisions of the securities or derivatives laws that may have been violated</i> ➤ <i>brief description of the provisions</i> ➤ <i>explanation of how the activities being investigated may have constituted violations of such provisions</i>
Responsibility for administering and enforcing the securities or derivatives laws.
Desired time for a reply.
Preferred manner in which information is to be transmitted (e.g., <i>telephone, courier, e-mail, computer disk and format</i>).
Contact information : <ul style="list-style-type: none"> ➤ <i>name of contact</i> ➤ <i>telephone and fax numbers</i> ➤ <i>e-mail address</i>
Other relevant information.

PRINCIPLES FOR MEMORANDA OF UNDERSTANDING

Technical Committee

International Organization of Securities Commissions

Released at the XVI th Annual Conference - September 1991 - Washington, D.C.

DES OPERATIONS DE BOURSE
Service de l'Inspection

PREAMBLE

The International Organization of Securities Commissions ("IOSCO") has long recognized the impact of internationalization on the enforcement of domestic securities and futures laws and the corresponding need for cooperation among securities and futures regulators in enforcement matters. In 1986, IOSCO adopted a resolution calling for its member organizations to provide reciprocal assistance in obtaining information pertaining to market oversight and the prevention of fraud.

The Technical Committee established Working Party n^o 4, the Working Party on Enforcement and the Exchange of Information, to facilitate multilateral efforts to enhance international cooperation in securities and futures matters. The Working Party is composed of 14 delegations representing 10 countries¹. The group thus represents different types of securities and futures markets regulators and includes authorities with a wide range of powers.

For the past two years the Working Party has centered its efforts on the study of issues related to the exchange of information, for investigative purposes, between administrative authorities regulating securities and futures markets. In November 1990, the Technical Committee released a report by Working Party n^o 4, entitled "Report addressing the difficulties encountered while negotiating and implementing Memoranda of Understanding ("MOUs")² (the "1990 Report").

¹ The Working Party's members includes the Australian Securities Commission the Ontario Securities Commission, and the Commission des Valeurs Mobilières du Québec of Canada the Commission des Opérations de Bourse of France; the Ministry Of. Finance of Germany; the Commissione Nazionale per la Società e la Borsa of Italy; the Securities Bureau of Ministry of Finance Of Japan; the Stichting Toezicht Effectenverkeer of the Netherlands; the Swiss Bankers Association, and the Federal Department for Foreign Affairs of Switzerland; the Department of Trade and Industry and the Securities and Investments Board of the United Kingdom; the Securities and Exchange Commission, and the Commodity Futures Trading Commission of the United States of America.

² The term "MOU" has become a generic term commonly used to refer to a bilateral or multilateral understanding that facilitates cooperation between securities and futures regulators.

MOUs are statements of intent which do not impose legally binding obligations on signatories. As such, they have no power to overcome domestic laws and regulations, nor do they affect other channels of cooperation, such as mutual assistance in criminal matters. The strength of MOUs, however, is that they facilitate the exchange of information by accommodating the differences between regulators and by responding to changing legal environments.

The 1990 Report was intended to help signatories focus on the areas of potential difficulties that should be analyzed and discussed in the negotiation process. It identified and discussed various issues which arise in connection with the development and implementation of MOUs. In March 1991, the Working Party proposed to build on the work done in the 1990 Report¹ and to develop a comprehensive set of ten Principles that identify the specific components necessary for an optimal MOU.

The Principles contained in this Report provide a blueprint for use by securities and futures regulatory authorities in developing MOUs with their foreign counterparts. The Principles (shown in bold type) generally are short and are complemented by a few lines of comments that explain their meaning and implications. The Working Party believes that the 1990 Report and the Principles set out in this Report together provide substantial guidance regarding the terms and operation of MOUs.

In preparing the Principles, the Working Party worked to develop a consensus among regulators about provisions that should be included in MOUs in order to develop effective tools for fighting fraud and other abuses in the securities and futures markets. That consensus was possible¹ despite differences between the various regulators' legal and regulatory regimes, in large part because of the unanimous agreement about the need for international cooperation to maintain safe and secure market

The Principles set high standards and goals to be incorporated into MOUs in a broad range of securities and futures matters. The Working Party recognizes that, in some cases, the differing laws and regulatory structures of various countries currently may preclude the implementation of some elements of the Principles.

The Working Party hopes that the Principles contained herein will stimulate efforts to further develop and enhance international cooperation and thereby protect the integrity of the world's securities and futures markets.

1. SUBJECT MATTER

MOUs should provide that investigatory assistance will be granted without regard to whether the type of conduct under investigation would be a violation of the laws of the

Requested Authority unless the Requested Authority is not permitted to provide assistance where the type of conduct under investigation would not be a violation of the laws of the Requested Authority.

In 1989, the Technical Committee endorsed a resolution calling for member organizations to enter into MOUs on information sharing in which they would undertake to provide each other with information on a reciprocal basis, without regard to whether the matter under investigation would be a violation of the laws of the Requested Authority. Most of the existing MOUs cover the broad range of subject matters supported by the Technical Committee. By providing in an MOU for a broad range of matters for which assistance will be provided, each Authority is assured that it will receive as much assistance as possible with respect to all matters falling within its jurisdiction.

If a Requested Authority is not able to provide assistance with respect to matters which would not constitute violations within its own state without breaching its domestic legislation, the Requested Authority should consider recommending that appropriate amendments be made to this legislation to enable the assistance to be given, if it has the power to make such recommendations.

2. CONFIDENTIALITY

An MOU should provide that an Authority that receives information pursuant to an MOU request will protect the information with the highest possible level of confidentiality which, at a minimum, should provide that the information will be treated with the same level of confidentiality that is given to similar information that it collects in investigations of possible domestic violations. In addition, an MOU should provide the Requested Authority with the opportunity to identify the level of confidentiality that it expects to be attached to information that it transmits pursuant to an MOU request.

The primary purpose of MOUs is to provide information for use in investigations, which are, in most instances, non-public inquiries. In fact, most securities and futures regulators are subject to domestic laws and regulations governing the confidential treatment of information. The confidentiality requirements, however, vary by country and it is possible that the procedures of one authority for maintaining confidentiality will not be consistent with the disclosure or confidentiality provisions of its foreign counterparts. This, in turn, may lead to restrictions on the requested authority's ability to transmit information.

It may be possible to overcome differences between the confidentiality requirements and procedures of the authorities by including confidentiality provisions in the MOU that satisfy the

needs of both authorities. In certain instances, however, legislative action may be required to increase the level of confidentiality to encourage the widest possible exchange of

3. IMPLEMENTATION PROCEDURES

In a mutually agreeable form, the signatories to an MOU should describe the procedures that they will follow in making and executing requests for information pursuant to the MOU; those procedures should be consistent with both signatories' legal requirements or impediments.

One of the main purposes of an MOU is to create a framework of procedures for exchanging information between regulators. Therefore, it is important that the parties to an MOU clearly set out the manner in which requests will be made and executed.

4. THE RIGHTS OF PERSONS SUBJECT TO AN MOU REQUEST

The fact that an investigation is conducted on behalf of a foreign authority pursuant to an MOU request should not alter the legal rights and privileges granted to persons in the State of the Requested Authority.

Because it is essential that the legal rights and privileges of witnesses be protected, the signatories to an MOU should make sure that the means of executing a request is consistent with the laws, methods and requirements of the Requested Authority. When the laws and policies of the requested authority provide a range of options, requests should be executed in the manner most consistent with the needs of the requesting authority.

Authorities negotiating information-sharing agreements may find it useful to examine the scope and implications of other agreements or treaties between the states of the signatories so that, among other things, they can ensure that the citizens of the signatory countries receive similar guarantees and protections.

5. CONSULTATION

MOUs should contain a provision in which the Authorities agree to consult on relevant issues that arise during the operation of the MOU. Moreover, authorities should consult frequently to discuss developments or proposals likely to affect the other Authority's interests or the available means for cooperation.

Since MOUs are designed to facilitate assistance, and not to create overly formal relations between the signatory authorities, they should contain a provision on consultations. Such a provision could specify circumstances under which it would assist the operation of the MOU to consult, such as where assistance may be or has been denied, and may also provide for consultation when requested by a signatory. By consulting about, for example, a denial of a request for assistance, the Requested Authority may be able to identify certain assistance that it is able to provide, and the Requesting Authority may benefit from learning more about why assistance was denied.

Such consultations also may promote cooperation and avoid misunderstandings and conflicts in situations involving:

- unforeseen circumstances
- overlapping jurisdiction, and
- changes in one authority's laws or procedures.

6. PUBLIC POLICY EXCEPTION

An MOU should provide that the Requested Authority maintains the right to refuse to provide assistance in instances where the provision of assistance would violate the public policy of its state. The concept of public policy would include issues affecting sovereignty, national security, or other essential interests.

Although it is optimal for the scope of an MOU to be as broad as possible, there may be limited instances where, notwithstanding the fact that a request falls within the scope of the MOU, providing assistance would be contrary to the public policy of the state of the Requested Authority. For this reason MOUs should provide a mechanism for dealing with this potential conflict so that the Requested Authority will be able to rely on a public policy exception to the MOU in denying assistance.

7. TYPES OF ASSISTANCE

MOUs should provide that the Authorities will take all reasonable steps to ensure that they can utilize their full domestic powers to execute requests for assistance. The available assistance should include, where the Requested Authority has such powers, obtaining documents and the statements or testimony of witnesses, granting access to the Requested Authority's non-public files, and conducting inspections of regulated

entities.

Both before and since the Technical Committee's 1989 resolution on information-sharing, several member organizations have obtained the authority to use their full domestic powers to compel the production of documents and statements or testimony on behalf of foreign authorities. In the absence of such authority, a Requested Authority may be limited to providing only information that it can obtain voluntarily or from public files in response to a request for assistance. Since law violators may refuse to produce incriminating information on a voluntary basis, and legal impediments may prevent an innocent intermediary from voluntarily providing information, the Requesting Authority may be unable to obtain critical information at the investigative stage of a matter if production of such information cannot be compelled by the Requested Authority.

Therefore, the ability to compel production of documents and statements or testimony on behalf of a foreign authority greatly enhances the value of MOUs. Authorities that do not have such an ability should take all reasonable steps, including considering recommending amendments to their legislation, where they have such power to recommend, to remove impediments that keep them from utilizing their full domestic powers for providing assistance to foreign authorities.

9. PARTICIPATION BY THE REQUESTING AUTHORITY

MOUs should provide that, to the extent permitted by the laws and policies of the Requested Authority, the Requesting Authority may be permitted to participate directly in the execution of a request for assistance.

Participation by the Requesting Authority, to the extent permitted by the laws and policies of the State of the Requested Authority, may be desirable to ensure that resources are used effectively in executing requests for assistance.

For example, in executing an MOU request that involves document review and/or the questioning of witnesses, a high degree of familiarity with the investigative record may be necessary in order to elicit the necessary information from witnesses and documents. In many cases, MOU requests are preceded by complex, long-term investigations by the Requesting Authority and the files of the investigation may include far more information than can reasonably be included in a particular MOU request. In such cases, the Requested Authority should consider permitting the persons most familiar with the investigative record to assist in the execution of the request.

10. COST-SHARING

MOUs should provide that, under certain circumstances, the Requested Authority can, if it deems it necessary, initiate a process for having the Requesting Authority share the costs of providing assistance that are incurred by the Requested Authority.

Requests for assistance may involve extensive use of investigative resources by the Requested Authority. Sharing costs may be appropriate where the cost of a particular request is substantial or where a substantial imbalance has arisen in the cumulative costs incurred by the signatories. Therefore, to minimize the burden that such investigations might place on the Requested Authority, an MOU should provide a mechanism by which the Requesting Authority may be asked to reimburse the Requested Authority for extraordinary costs. An MOU also should provide that the Authorities will consult about the handling of costs in such cases.

COMPOSITION OF I.O.S.C.O. - WORKING PARTY N°4

Jean-Pierre MICHAU	CHAIRMAN	COMMISSION DES OPERATIONS DE BOURSE
AUSTRALIAN SECURITIES COMMISSION		Stephen MENZIES
BUNDESMINISTER DER FINANZEN		Georg WITTICH
COMMISSION DES OPERATIONS DE BOURSE		Christian DURAND
COMMISSION DES VALEURS MOBILIERES DU QUEBEC		Claude SAINT-PIERRE
COMMISSIONE NAZIONALE PER LE SOCIETA E LA BORSA		Carlo BIANCHERI
COMMODITY FUTURES TRADING COMMISSION		Dennis KLEJNA
DEPARTMENT OF TRADE AND INDUSTRY		Graeme REID
ONTARIO SECURITIES COMMISSION		Larry WAITE
SECURITIES AND EXCHANGE COMMISSION		Michael MANN

SECURITIES BUREAU OF THE MINISTRY OF FINANCE

Jun-ichi NAITO

SECURITIES AND INVESTMENT BOARD

Jeremy ORME

STICHTING TOEZICHT EFFECTENVERKEER

Paul MULDER

SWISS BANKERS ASSOCIATION

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Alexis LAUTENBERG

Organisation internationale des commissions de valeurs
International Organization of Securities Commissions
Organización Internacional de Comisiones de Valores
Organização Internacional das Comissões de Valores



Guidance on Information Sharing

Introduction and Recommendations

PURPOSE:

The Technical Committee is issuing this event-specific Guidance on Information Sharing ("Guidance") to facilitate information sharing by Market Authorities during periods of Market and / or Firm crisis.

DEFINITIONS

In this paper, the following terms have the meanings set forth below:

1. "Customer" refers to a person or other entity, including an affiliated entity, on whose behalf a Firm engages in investment services business, or for whom a firm carries an account, subject to supervision by a Market Authority. The precise definition of Customer varies from one jurisdiction to another.

2. "Event Types I, II and III":

Event Type I: Financial crises at a Firm in one jurisdiction with potential to adversely affect Markets, Firms and / or Customers in other jurisdictions.

Event Type II: A major market move caused by (1) unanticipated adjustments in fundamental supply and demand factors, or (2) hostilities or political actions.

Event Type III: Unusual price movements or market volatility in a particular security or derivative traded on a Market or by regulated Firms which is related to a security or derivative traded on other Markets.

3. "Firm" refers to an entity whose investment business activities are

subject to supervision by a Market Authority. Investment business includes securities and derivatives business.

4. "Market Authority" refers to an entity in a particular jurisdiction which has statutory or regulatory powers with respect to the exercise of regulatory functions over Firms and / or Markets in the jurisdiction. Depending upon the jurisdiction, a Market Authority may be a regulatory body, a self-regulatory organization, and / or a Market.

5. "Market" refers to facilities for trading securities and / or derivative products. The term includes the clearinghouse or clearing facilities for a Market.

6. "Requested Authority" refers to a Market Authority to which a request for information has been made.

7. "Requesting Authority" refers to a Market Authority that has made a request for information.

I. Introduction and Recommendations

Purpose and Background

1. This Guidance is intended to provide non-prescriptive practical guidance to Market Authorities for sharing information during periods of Market and / or Firm crisis by (1) identifying in advance the types of core information which Market Authorities would need to be able to obtain and be prepared to share in order to assist in assessing and managing the impact of a Market and / or Firm crisis (see Addendum A), (2) explaining the relevancy of this information, and (3) providing illustrations of the types of questions which Market Authorities may use to request information from another authority (see Addendum B).

2. This Guidance builds upon prior IOSCO work on information sharing, as reflected in reports on Principles for Memoranda of Understanding (September 1991), Mechanisms to Enhance Open and Timely Communication Between Market Authorities of Related Cash and Derivative Markets During Periods of Market Disruption (October 1993), Resolution on Commitment to Basic IOSCO Principles of High Regulatory Standards and Mutual Cooperation and Assistance (1994), Report on Cooperation Between Market Authorities and Default Procedures (March 1996) and Client Asset Protection (August 1996).

3. The Technical Committee also emphasizes the role of transparency of market mechanisms in assessing and addressing Firm and Market crises. In this regard, reference is made to the following IOSCO reports which

recommend disclosure of market mechanisms that may become important to Market Authorities during a crisis: Report on Cooperation Between Market Authorities and Default Procedures (March 1996) and Disclosure Framework for Securities Settlement Systems (April 1997).

4. This paper does not address the universe of information which Market Authorities may find relevant for supervisory purposes. Rather, it focuses on the information which Markets Authorities may need to share during a Market and / or Firm crisis.

5. This Guidance reflects the experiences of Technical Committee members in identifying information needs concerning Markets and / or Firms, and the specific inquiries which have been made by various members under relevant information sharing arrangements or otherwise to address Market and / or Firm events.

6. These experiences suggest that core information can be identified which likely would need to be accessed and shared by Market Authorities to assist in assessing and addressing the impact of Market and / or Firm events. The Technical Committee believes that facilitating the sharing of core information should be viewed as an essential element of a Market Authority's emergency preparedness planning and of addressing a crisis.

7. This report identifies three generic types of Market and / or Firm events: Type I (Firm financial crisis), Type II (market-wide volatility) and Type III (unusual price movements or Market volatility in a particular security or derivative). This event-specific structure is intended to alert Market Authorities to contexts in which they may need to share information.

8. The discussion of each event includes a discussion of the relevancy of particular core information. The discussion is intended to assist a Requested Authority in understanding in advance why a Requesting Authority with a concern affecting a Market and / or Firm may have an interest in particular information and thereby expedite information sharing during a period of crisis.

9. While this format provides a useful organizing methodology, the specific events and the associated information are not mutually exclusive or exhaustive. Actual events will present unique factual circumstances and raise different regulatory concerns.

Recommendations

10. The Technical Committee encourages Market Authorities to take all

appropriate steps to have prompt access to the core information and to be able to share such information with relevant Market Authorities through appropriate channels.

11. Specifically, the Technical Committee recommends that:

- Market Authorities maintain or have access to the core information enumerated in Addendum A of this report and be in a position to share it in the event of a Market and / or Firm crisis;
- Market Authorities undertake assessments of whether they maintain or have access to the core information and take steps in advance to secure the availability of such information;
- Market Authorities take steps in advance to clarify whether they are able to share such core information and the conditions under which such information may be shared, including those relating to confidentiality concerns; and
- Where obstacles to information sharing exist, Market Authorities take affirmative steps, within the scope of their powers, to encourage the removal of such obstacles.

In so doing, the Technical Committee recognizes that a Market and / or Firm crisis can adversely affect the ability to generate or to produce accurate and timely information. If the crisis is the result of fraud or operational failure, the quality of information may be compromised.

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Preliminary Considerations

Part II

12. It is of critical importance that Requesting and Requested Authorities have a clear understanding of and agreement on what information is sought and what is supplied and the use to which it will be put. For example, where a request is made for the "largest" exposures on a market, both Market Authorities should clearly understand the basis for determining such exposures and whether the data will be provided on a gross or net basis, and whether hedging positions will be taken into account.

13. The task of assessing and responding to a Market and / or Firm crisis can strain the resources available to Market Authorities. Therefore, Requesting Authorities should consider alternative sources of information, and prioritize and focus information requests to the Requested Authority.

14. Conversely, the Requested Authority should be sensitive to the needs of the Requesting Authority for information necessary to address the same or collateral events in or affecting a Market or Firm subject to the Requesting Authority's jurisdiction.

15. In some jurisdictions, the requested information may be in the possession of one or more authorities. For example, the prudential regulation of Firms may be the responsibility of an authority other than the authority responsible for secondary Markets. In those circumstances, the authorities should use best efforts to develop cooperative mechanisms to access relevant core information.

16. There may be legal and / or practical reasons which prevent the exchange of information in some jurisdictions or legal conditions which must first be met. For example, in some jurisdictions information which discloses the positions and funds of individual Customers may not be

available under relevant bank secrecy and similar laws. Most jurisdictions require that confidential information concerning certain types of Market or Firm specific information be given confidentiality treatment by the Requesting Authority similar to that accorded by the Requested Authority.

17. In order to avoid unnecessary delays, the Requested Authority should pass on portions of the requested information as they become available and consult on procedure as appropriate.

18. Finally, although this Guidance does not imply any notice obligation, where an authority believes that events affecting a Market and / or Firm subject to its jurisdiction may affect adversely Markets and / or Firms in another jurisdiction, it should consider whether it would be appropriate to notify relevant Market Authorities of such Market and / or Firm event.

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Core Information Which May Need to be Shared During Specific Market or Firm Events

Part III

19. The purpose of the following discussion under the three scenarios is to identify the types of core information which may be relevant to share during specific events (Event Types I (Firm financial crisis), II (market-wide volatility) and III (unusual price movements or Market volatility in specific securities or derivatives). This discussion is not meant to limit the applicability of core information to any single event, nor is the discussion of relevant information intended to be exclusive or exhaustive.

20. For example, a Market drop related to an external event (*e.g.*, Type II) also could cause a financial crisis at one or more Firms (Type I). Conversely, events at a major Market participant could have severe Market effects, triggering regulatory concerns on the Markets on which the participant or its affiliates is trading. In either case, some of the same core information may be relevant to assist in assessing and managing the response to the event.

A. Event Type I: Financial crises at a Firm in one jurisdiction with potential to impact Markets, Firms and / or Customers in other jurisdictions. (e.g., Barings Plc.)¹

Relevant Core Information

- information on crisis Firm (*i.e.*, an organizational "map" or chart of entity and affiliates);
- financial resources / financial status of crisis Firm (*i.e.*, capital, liquidity, trading positions, counterparty exposures);

- details of any significant margin calls made and not satisfied or mark to market settlement exposures at clearing houses;
- status of Customer positions, funds and assets held by crisis Firm (e.g., whether non-affiliate Customer positions are segregated from firm positions and whether such positions have been frozen);
- legal, regulatory, and other actions being taken or which may be taken under contingency plans or otherwise to address the crisis.

Discussion

21. A crisis at an identified Firm may have effects in another jurisdiction. For example, a Firm in the jurisdiction of the Requesting Authority may clear and / or trade through the crisis Firm and trading losses by a Firm in one Market may affect the financial integrity of its affiliates in other markets. Moreover, where a Firm is in default, counterparties in a number of Markets may be adversely affected and Market participants may be subject to assessments to cover the defaulting Firm's obligations.

22. The Requesting Authority may need to request information to determine whether Customers, Firms and / or Markets subject to its jurisdiction are affected by the financial crisis at the Firm, and to consider appropriate action.

23. Accordingly, the Requesting Authority may need to obtain information on the organizational structure and financial status of the Firm in crisis, including how its resources would be affected by price moves, the instruments it is trading, and / or the status of Customer positions, funds and assets held by the Firm.

B. Event Type II: A major Market move caused by: (1) unanticipated adjustments in fundamental supply and demand factors (e.g., 1987 Market crash,² tin crisis of 1985, the 1994 Mexican Peso crisis), or (2) major hostilities or political actions (e.g., Persian Gulf War and Iraqi oil embargo)

Relevant Core Information

- Firms with the largest exposures on the Market;
- details of any significant margin calls made and not

satisfied or mark to market settlement exposures at clearing houses;

- legal, regulatory, and other actions being taken or which may be taken under contingency plans or otherwise to address the crisis;
- trading data such as trading volume, short selling and program trading transactions;

aggregate Market data, such as open interest of related products;

- aggregate margin and liquidity facilities (e.g., lines and letters of credit, guarantee deposits with clearing organizations, etc.) available to the Market.

Discussion

24. Major price movements and Market volatility can have effects on other Markets and / or Firms. For example, Firms in many jurisdictions may be trading on the affected Market, a Firm could be affected by the default of a foreign affiliate, and trading halts in one Market may cause a shift of trading to another Market trading the same or a related product.

25. The Requesting and Requested Authorities may need to share information to ascertain the potential impact of the event, including its dimensions and the Firms / Customers and the financial instruments affected by the event, and to develop approaches to minimize adverse effects.

26. Accordingly, identifying the Firms with the largest exposures on the affected Market may permit the Requesting Authority to ascertain whether any of its Firms are affected, directly or through affiliates, and whether any of its Markets may be affected by financial or operational concerns at such Firms.

27. Thus, these inquiries are directly related to the Requesting Authority's prudential oversight of its regulated Firms. Where problem Firms are identified, questions illustrated in Event Types I and III may follow.

28. Other questions are directed to ascertaining the nature of the problem and what specific steps have been or will be taken by the Market Authority to address the problem. Questions concerning risk management analyses, settlement delays, margin calls and daily pays / collects will permit the Requesting Authority to gauge the magnitude of the problem, as well as to

assess the potential exposure of clearing Firms.

C. Event Type III: Unusual price movements or Market volatility in a particular security or derivative traded on a Market or by regulated Firms which is related to a security or derivative traded on another Market (e.g., Sumitomo Corporation) ³

Relevant Core Information

- Firms / Customers controlling or owning the largest long / short positions in the relevant securities or derivatives;
- concentration and composition of positions in the relevant securities or derivatives, including Firm positions and Customer positions, both on organized Markets and in the OTC markets;
- characteristics of related instruments, such as terms of the underlying cash market instrument or physical commodity, procedures for delivery or cash settlement, and deliverable supply of the relevant cash market instrument or physical commodity.

Discussion

29. Where there are cross-listings of securities or derivatives or other relationships between instruments or products in different Markets, or overlap between the delivery specifications of the underlying cash market instrument or physical commodity, or overlapping delivery points of derivatives traded on different Markets, unusual price movement or Market volatility in one Market may affect the price formation in another Market.

30. In such circumstances, the Requesting Authority may seek to obtain information to assess the degree to which unusual price movements in the related Markets may be related to large concentrations of positions held in one or more Markets.

31. Once a potential effect on areas subject to its jurisdiction has been identified, the Requesting Authority may seek information on the composition of the Markets in relevant products, including the Firms / Customers controlling or owning the largest long / short positions and the scope of the deliverable supply of the relevant cash market instrument or physical commodity.

32. The initial relevant inquiry thus will pertain to the composition of the

Market. Information about the identity of the Firms / Customers with the largest exposures in the relevant security or derivative may lead to further inquiry to determine (1) whether one or more entities are acting in a concerted manner and (2) identities of related Firms that may be affected financially.

Endnotes:

1. See *Windsor Declaration* (May 17, 1995) and *Final Report of Windsor Co-Chairmen of the May 1995 Windsor Meeting to the Technical Committee of IOSCO* (August 1996).
2. *Report of The Presidential Task Force on Market Mechanisms* (January 1988) submitted to the President of the United States, the Secretary of the Treasury and the Chairman of the Federal Reserve Board.
3. See *London Communiqué* (November 26, 1996).

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Addenda

ADDENDUM A

CORE INFORMATION

Core information which Market Authorities should be prepared to share in order to assist in assessing and managing the impact of a Market or Firm crisis.

Firm Information

- information on crisis Firm (*i.e.*, an organizational "map" or chart of entity and affiliates);
- financial resources / financial status of crisis Firm (*i.e.*, capital, liquidity, trading positions, counterparty exposures);
- details of any significant margin calls made and not satisfied or mark to market settlement exposures at clearing houses.

Customer Information

- status of non-affiliate Customer positions, funds and assets held by crisis Firm (*e.g.*, whether such Customer positions are segregated from firm positions and whether such positions have been frozen).

Market Information

- concentration and composition of positions in the relevant securities or derivatives, including Firm positions and Customer positions, both on organized Markets and in the OTC markets;
- Firms / Customers controlling or owning the largest long / short positions on the Market;
- Firms with the largest exposures on the Market;

- characteristics of related instruments, such as terms of the underlying cash market instrument or physical commodity, procedures for delivery or cash settlement, and deliverable supply of the relevant cash market instrument or physical commodity;
- trading data such as trading volume, short selling and program trading;
- aggregate Market data, such as open interest of related products;
- aggregate margin and liquidity facilities (e.g., lines and letters of credit, guarantee deposits with clearing organizations, etc.) available to the Market.

Emergency Procedures

- legal, regulatory, and other actions being taken or which may be taken under contingency plans or otherwise to address the crisis.

ADDENDUM B

ILLUSTRATIVE INQUIRIES

Illustrations of the types of questions which a Market Authority may use to request information from another Market Authority in order to assess and manage the impact of a Market or Firm crisis.

As noted above, the specific events and the associated information are not mutually exclusive or exhaustive. For example, under Event Type II, once specific Firms / Customers and derivatives / derivative groups have been targeted for heightened surveillance or further inquiry, the types of information described under Event Types I (as to Firms) and III (as to concentration of positions) may be among the types of information which may need to be shared. Actual events will present unique factual circumstances and raise different regulatory concerns.

A. Event Type I: Financial crises at a Firm in one jurisdiction with potential to impact Markets, Firms and/or Customers in other jurisdictions. (e.g., Barings Plc.)

Inquiries

1. What actions, if any, have been taken in the jurisdiction of the Requested Authority to address the crisis at the Firm?
2. Does the Firm carry accounts of Customers located in the jurisdiction of

the Requesting Authority? If so, who are they and what type of account is each such account? On which Markets does the Firm trade for these Customers, what derivatives is it trading and who are the brokers which carry the accounts? Does the Firm have any accounts with Firms located in the jurisdiction of the Requesting Authority? If so, what type of accounts and with which Firms?

3. Provide a world-wide organizational map or chart of the affected Firm. Please identify (a) Markets (other than those in the jurisdiction of the Requesting Authority) of which the Firm is a member, and (b) whether the Firm is affiliated with any Firm located in the jurisdiction of the Requesting Authority, or if the information is readily available from other sources, such other sources.

4. Provide information on the Firm's financial status [*e.g.*, does the Firm have significant margin calls it needs to meet and, to the best knowledge of the Requested Authority, will it be able to do so (*i.e.*, sufficiency and type of margin, nature of margin delivery facility, status of credit lines, whether Firm has drawn on available credit lines, and other liquidity facilities or resources); whether the Firm's positions have been reconciled with the clearing houses and other brokers with which it has accounts; and Firm's current capital position in relation to any requirement].

5. Has the Firm or Market Authority conducted any risk management analyses (*i.e.*, stress tests / what if analyses) regarding how the Firm's resources would be affected by price moves or settlement delays? If so, what are the conclusions?

6. If an insurance, compensation or similar plan exists to protect Customer assets in part or in full, whether private or governmental, please provide details. Is the Firm in compliance with relevant client money protection rules? How much is required to be protected, how much is available and where are such accounts maintained? How much is on deposit with clearing houses and other brokers, how are such deposits carried (*e.g.*, commingled or separate accounts) and in what form are such deposits (*e.g.*, Government securities or cash)?

7. If client money protection rules apply, does the Firm carry the accounts of any affiliated entities? If so, are such accounts carried as non-affiliate Customer or proprietary accounts for client money/segregation purposes?

8. If the Firm is unable to continue in business, are arrangements being made to transfer Customers' positions, funds and assets to solvent Firms or otherwise to liquidate the Firm's assets? If so, please describe.

9. If in the course of addressing the crisis the Requested Authority becomes aware of any information that the Requested Authority believes could affect adversely the financial viability of any Firms regulated by the Requesting Authority, the Requested Authority should consider whether it would be appropriate to inform the Requesting Authority of such information.

10. Key dates when funds are due or payable, such as important settlement dates, maturities of major funding arrangements, planned public announcements, or dates related to administration, receivership or other proceedings.

11. To the best of the knowledge of the Requested Authority, extent to which shareholder or other support or buy-out options or contingency procedures are available.

B. Event Type II: A major Market move caused by: (1) unanticipated adjustments in fundamental supply and demand factors (e.g., 1987 Market crash, tin crisis of 1985, the 1994 Mexican Peso crisis), or (2) major hostilities or political actions (e.g., Persian Gulf War and Iraqi oil embargo)

Inquiries

1. Identify the Firms which have the "largest" Customer and Firm trading exposures, consistent with guidance in paragraph 16 above, and their positions.

2. Have any Firms, whether or not among the largest Firms, been identified by a Market Authority as having operational or financial problems such as but not limited to: margin call deficiencies or late payments, unusually large draws on credit lines, any delays in the settlement process, failures by Firms to respond to instructions, declarations of defaults, required transfers of Customer positions, violation of any required capital requirements, shortfalls in Customer funds? Provide details.

3. Has a Market Authority conducted any risk management analyses of the potential effect of price moves or settlement delays on Firms and / or on the clearing organization? If so, please provide details.

4. Have any actions, including emergency actions, been taken by any Market Authority (including, for example, triggering of alerts, circuit breakers, changes in position limits, trading restrictions or changes in margin)?

5. What are the significant dates (e.g., settlement dates or final delivery dates) for the affected derivatives or transactions?
6. Where the settlement bank is not a Central Bank, is there any reason to question the ability or intent of settlement banks to make payments?

C. Event Type III: Unusual price movements or Market volatility in a particular security or derivative traded on a Market or by regulated Firms which is related to a security or derivative traded on another Market (e.g., Sumitomo Corporation)

Inquiries

1. Identify the Firms which have the "largest" Customer and Firm trading exposures consistent with guidance in paragraph 16 above, and their positions.
2. Do any Firms / Customers own or control a large position in relevant securities and derivatives, whether on organized Markets, in the OTC Markets or on forward Markets?
3. If the concern is with a possible disorderly Market, further questions would address the characteristics of the underlying product, e.g., the supply of the product available for delivery under the relevant derivative, who are the principal beneficial owners of the underlying stocks or deliverable supplies, and what are their delivery intentions or obligations?
4. Does the Requested Authority have reason to believe that one or more Firms / Customers with large positions in the relevant security or derivative acting alone or in concert are a significant cause of the unusual price movements or Market volatility?

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Taking Stock of Information Sharing in Securities Enforcement Matters

Felice B. Friedman, Elizabeth Jacobs and Stanley C. Macel, IV

INTRODUCTION

This paper¹ takes stock of information sharing in securities enforcement matters. It provides an overview of past experiences regarding information sharing, summarises current practice, and discusses possible directions for information sharing in the future.

Globalisation has made fraud an international phenomenon. Regulators, however, continue to be circumscribed by their national borders. The challenge for regulators is to transcend their national boundaries to combat global securities fraud, and thereby protect their domestic investors. The development of information-sharing legislation and arrangements has enabled regulators both to investigate cases and to successfully prosecute fraudsters and has been an effective means to combat global securities fraud.

The evolution of these information-sharing mechanisms has taken time, as differing legal systems and approaches to jurisdiction, confidentiality and privacy have had to be bridged. The cooperative mechanisms available today are far better than the mechanisms available ten or 15 years ago. Today, arrangements such as Memoranda of Understanding (MOUs) and other administrative agreements have become the vehicles of choice for sharing information on a regulator-to-regulator basis. Efforts to enhance information sharing are being given new, broader political support, as well, through multinational initiatives by the International Organization of Securities Commissions (IOSCO), the G7 Finance Ministers, the Financial Stability Forum and the Financial Action Task Force (FATF). These initiatives have spurred a new generation of assistance laws, particularly in 'offshore' and formerly 'non-cooperative' jurisdictions.

The effects of the events of 11th September, 2001 on securities markets underscored the importance of international cooperation among regulators. In the aftermath of the attacks securities regulators cooperated — perhaps more than ever before. Regulators were in touch on a daily basis to exchange regulatory and enforcement information, and consulted with

one another about the regulatory relief they were considering.

These events underscore the importance of international cooperation, and provide a good vantage point for both looking backward and forward to take stock of information sharing among securities regulators.

INFORMATION SHARING IN THE PAST

SEC practice in the 1980s

The development of information sharing among securities regulators can be traced back to the 1980s, when there was a tremendous amount of merger and acquisition activity in US markets. During this time, the US Securities and Exchange Commission (SEC) initiated several investigations involving suspicious, and possibly illegal, insider trading conducted in US markets through accounts located outside the USA. One of the SEC's early cases involving information sharing was *SEC v. Tome*,² known as the *St Joe* case, discussed below.

The St Joe case and obstacles to information sharing

The *St Joe* case involved substantial trading in the common stock and options of St Joe Minerals Corporation shortly before the announcement by Joseph E. Seagram & Co. of a proposed tender offer for St Joe shares. The *St Joe* case demonstrates the combative approach and crude tools that the SEC had to use in these early days to obtain information from abroad.³

In 1981, persons trading through accounts at a Swiss bank, Banca della Svizzera Italiana (BSI), purchased over 100,000 shares of St Joe stock the day before the Seagram tender offer was announced. Based on the suspicious circumstances of the trading, the SEC alleged that these 'unknown' persons had traded on inside information. Even without being able to identify the traders or establish whether in fact they had been tipped by company insiders or others with advance knowledge of the transaction,

the SEC was able to obtain a temporary restraining order from a US Federal District Court, freezing the profits derived from the transactions in BSI's accounts at a bank in New York, thus preventing their transfer outside the USA.⁴

The SEC filed a motion with the US court, asking the court to compel BSI to disclose the identities of its customers who had engaged in the alleged insider trading. BSI refused, arguing that the trading had been on behalf of accounts located at BSI's Swiss entity, and disclosure would violate Swiss secrecy laws. The court stated, however, that 'a foreign law's prohibition of discovery is not decisive' of how a US court must rule on an order to compel discovery.⁵ The court applied a balancing test, weighing the importance of the information about the clients' identities versus the national interests of the states affected if the court were to order a disclosure prohibited by their laws. The court concluded that the identities of the clients should be disclosed, reasoning that 'it would be a travesty of justice for a foreign company to invade American markets, violate American laws if they were indeed violated, withdraw profits and resist accountability for itself and its principals for the illegality by claiming their anonymity under foreign law'.⁶ The court went on to note that compelling discovery was 'required to preserve our [the USA's] vital national interest in maintaining the integrity of the securities markets against violations committed and/or aided and assisted by parties located abroad'.⁷ Accordingly, the US court ruled in favour of the SEC and ordered BSI to disclose its customers' identities, or risk being subjected to severe contempt sanctions. Before the court order was signed, BSI obtained a waiver of the Swiss secrecy laws from its customers and disclosed the identities of its clients.

As a result of the disclosure, the SEC learned that several Panamanian corporations in which Giuseppe B. Tome had an interest had purchased the St Joe securities. Tome had close personal ties to the Chairman of Seagram, Edgar Bronfman, and had obtained inside information without Bronfman's knowledge and used it for his personal advantage. The court enjoined Tome from future violations of the securities laws and ordered disgorgement of over \$4m in illegal profits.⁸

The *St Joe* case illustrates the significant obstacles that the SEC encountered in the 1980s in obtaining information from outside the USA to investigate violations of US securities laws.⁹ Clear mechanisms or

pathways for sharing information between securities regulators did not exist. Authorities lacked legislation to protect the confidentiality of non-public information that was shared, and, just as importantly, lacked practice in dealing with the many issues raised by requesting and providing assistance. In addition, many countries predicated their willingness to provide assistance on the satisfaction of dual illegality or dual criminality requirements.¹⁰ In the early 1980s, many countries, including Switzerland, had not yet prohibited insider trading; this fact, coupled with the requirement of dual illegality or dual criminality, meant that they lacked the legal ability and competence to assist the SEC in such cases, allowing their own countries to become hospitable, if unwitting, hosts to fraudsters.¹¹

The *St Joe* case involved issues of the SEC's access to information about the persons responsible for suspicious trading. In *St Joe*, the SEC was able to freeze the illegal trading profits before they had been transferred abroad, thus making it easier to enforce the court's freeze order and secure the proceeds of the fraud. The SEC faced a more difficult challenge and continues to face difficulties, when the proceeds of wrongdoing are located outside the USA. The *Wang & Lee* case presented an early example of such difficulties.¹²

*SEC v Wang & Lee*¹³ and Asset Tracing

In 1988, Stephen Wang, a junior market analyst at a New York investment banking firm, provided inside information concerning potential takeover deals involving 25 corporate clients of his employer to Fred Lee, a Hong Kong-based investor. Lee traded on non-public information using nominee accounts in the USA and overseas, making a profit of over \$19m. In June 1988, Lee testified in response to SEC questioning that he had illegally purchased the securities. On that same day, however, he instructed US banks and brokerage firms to transfer his funds to Hong Kong.

Concerned about Lee's efforts to move assets, the SEC filed an action in US Federal District Court alleging that Wang had violated the US federal securities laws by providing insider information to Lee, and that in July 1988 Lee had traded on the information through a series of nominee accounts. The SEC asked the court to issue an asset freeze and restraining order against both Wang and Lee, based on Lee's ongoing attempts to remove his illicit profits from the USA. The freeze order was served on the

New York branch of Standard Chartered Bank, a UK-headquartered bank with branches in both New York and Hong Kong, where Lee had or controlled accounts.¹⁴

Almost immediately following the issuance of the US court's freeze order, Lee demanded that Standard Chartered's Hong Kong branch release his funds and threatened to sue the bank if it failed to comply with his demand. Based on these developments, the SEC requested that the US court issue an anti-suit injunction, prohibiting the defendants from bringing an action anywhere in the world to obtain assets that were the subject of the suit. Lee refused to comply, and, instead, applied to the Supreme Court of Hong Kong for a declaration that the US court order freezing his assets had no effect in Hong Kong, and, therefore, did not restrain the bank from complying with his demand for payment.

Meanwhile, the SEC asked the US court to require Standard Chartered to pay Lee's allegedly ill-gotten gains into the US court's registry for safekeeping. The SEC argued that, in view of Lee's attempts to obtain control over the assets, it was necessary to sequester the funds in the US court's registry to protect the defrauded investors. Standard Chartered contended that the court had no jurisdiction to require payment of funds held in its Hong Kong branch. The court, nonetheless, issued a 'sequestration order' in August 1988, directing Standard Chartered to pay the monies into the court's account. The bank complied, but appealed the decision.

While the appeal was pending, the Hong Kong court ruled that Lee was not entitled to the funds.¹⁵ The court sympathised with Lee's argument that Standard Chartered's Hong Kong branch was a separate entity from its New York branch and thus could not be contractually obligated to honour the US court's anti-suit injunction.¹⁶ Nevertheless, the Hong Kong court concluded that, because the bank had actual knowledge that misappropriated funds were located in the accounts, Standard Chartered's Hong Kong branch could be holding the funds as a constructive trustee for the benefit of investors.

Despite the Hong Kong court ruling, the US litigation continued with Standard Chartered arguing that it could be subject to double liability in both the USA and Hong Kong. Several parties, including the UK government, filed 'friend of the court' briefs supporting the bank's appeal. The US Court of Appeals never ruled on these issues, however, because in 1989 the SEC reached a settlement agreement with

Lee, whereby he agreed to disgorge \$19m in profits and pay a \$1.5m civil penalty.

While the *Wang & Lee* case was an early example of global securities enforcement, it nevertheless presented many of the difficult issues that securities regulators face today. Information sharing is only the beginning of the story. Securities regulators continue to confront jurisdictional issues and need to develop better methods to secure assets overseas.

Policy developments

The experiences — and frustrations — in obtaining information from overseas during the early 1980s highlighted for the SEC the necessity of addressing more broadly the impact of globalisation on US markets. In 1988, the SEC issued for the first time a policy statement on internationalisation of the securities markets, setting forth the philosophical underpinnings of its approach to cooperation. This early policy statement was accompanied by the adoption of information-sharing legislation in the USA, the subsequent adoption of similar legislation elsewhere, and the negotiation of arrangements for sharing information with several foreign authorities.

1988 Policy Statement¹⁷

The SEC's 'Policy Statement on Regulation of International Securities Markets' noted that fair and honest markets, a key feature of effective regulation, are best achieved through adequate regulation against abusive sales practices, prohibitions against fraudulent conduct, and high levels of enforcement cooperation. The statement emphasised that international cooperation is necessary to ensure fair markets, and called on regulators to 'forge a network of . . . information sharing arrangements that are effective from an enforcement standpoint and sensitive to national sovereignty concerns'.¹⁸ The SEC built on the 1988 Policy Statement in encouraging securities regulators in IOSCO to expand their ability to cooperate with one another. Its success in developing an IOSCO consensus on this issue is reflected in the IOSCO Resolution on Cooperation, which was adopted in 1989.¹⁹

SEC Information-sharing provision, s. 21(a)(2)²⁰

In order to fully implement the 1988 Policy Statement, the SEC needed new legal tools. Indeed, the SEC could not provide assistance to its foreign counterparts without a firm legal foundation.

Consequently, prior to issuing the policy statement, the SEC went to the US Congress to seek broad information-sharing powers.

Section 21(a)(2) of the Securities Exchange Act of 1934 was part of the Insider Trading and Securities Fraud Enforcement Act of 1988.²¹ Section 21(a)(2) gives the SEC the legal authority to conduct investigations, including compelling the production of documents and testimony, on behalf of foreign securities authorities. It provides that, upon request from a foreign securities authority, the SEC may conduct a formal investigation, without regard to whether the facts stated in the request constitute a violation of US law.²²

The SEC must take into account two considerations in deciding whether to provide assistance to a foreign securities authority under s. 21(a)(2). The statute requires that the SEC consider both 'reciprocity' (ie whether the authority requesting assistance has agreed to provide reciprocal assistance to the SEC) and whether the provision of assistance by the SEC would prejudice the US public interest. This structure emphasises Congress's intent to create a strong incentive for other countries to provide the SEC assistance, while affording the Commission a great deal of flexibility to provide assistance to others.²³

Section 21(a)(2) sets the framework for international enforcement cooperation in which the SEC now engages on a daily basis. Key aspects of the provision include:

- the use of broad domestic powers on behalf of foreign authorities;
- the ability to assist a wide range of authorities; and
- the absence of a dual illegality or dual criminality provision.

Use of broad domestic powers: Section 21(a)(2) gives the SEC the authority to use its comprehensive powers to investigate suspected securities violations, including obtaining and sharing information using its compulsory powers, if necessary. Comprehensive powers include the ability to obtain information from both real persons and legal entities, whether regulated or unregulated. The information that may be obtained covers a wide variety of documents and testimony, including, for example, brokerage records; bank account records; telephone records; credit card account records; hotel and airline records; and records

from internet service providers (ISPs), which are with increasing frequency the subject of SEC subpoena orders.

Ability to assist a wide range of authorities: When providing information internationally, the SEC does not distinguish among the types of uses to which the information may be put by foreign authorities. That is, the information may be used by foreign authorities in an administrative, civil, or criminal law enforcement context. Under different legal systems, authorities charged with investigating and prosecuting securities fraud vary widely, and may include securities regulators, finance ministries, banking commissions, investigating magistrates or public criminal prosecutors. As a result, the SEC's assistance legislation provides that the SEC can assist a 'foreign securities authority'.²⁴ The term is defined broadly as 'any foreign government, or any governmental body or regulatory organisation empowered by a foreign government to administer or enforce its laws as they relate to securities matters'.²⁵ The term, therefore, could include independent regulatory agencies, criminal authorities, and those self-regulatory organisations that 'enforce' or 'administer' securities laws.

Absence of a dual illegality or dual criminality provision: Significantly, s. 21(a)(2) expressly allows the SEC to obtain information on behalf of a foreign securities authority, even if the SEC has no independent interest in the matter, and even if no unlawful activity occurred in the USA. In other words, there is no 'dual illegality' requirement as a prerequisite for the SEC to provide assistance. There is also no 'dual criminality' requirement; pursuant to s. 21(a)(2), the SEC can obtain and share information even if the activity, had it occurred in the USA, would not have violated US law. In other words, the SEC can obtain the information even if the type of conduct under investigation by the foreign securities authority would not violate US securities laws.

The SEC was acting with enlightened self-interest in seeking a statutory basis for assisting foreign authorities that did not depend on the existence of comparability between US and foreign securities laws. The SEC recognised that, in order to be more certain of its ability to obtain information from its foreign counterparts, it had to give them more concrete assurances that the SEC could assist them in return. The legislative history recognises this fact. The Report from the Congressional Committee that

accompanied the proposed legislation states as follows:

'The legislation does not require that the matter under investigation would constitute a violation of U.S. law if it had occurred here. Such a dual criminality requirement would inhibit the Commission's ability to be responsive to foreign requests. Moreover, because U.S. securities laws are broader than those in most other countries, the imposition of a dual criminality requirement by other countries could seriously restrict the Commission's ability to obtain assistance from foreign countries in many cases.'²⁶

The approach taken by the SEC in s. 21(a)(2) is still effective today. In a global market where securities regulators operate within different legal and regulatory systems, dual illegality and dual criminality requirements by their very nature interfere with and impede domestic securities enforcement. Dual illegality and dual criminality requirements hinder securities regulators' ability to conduct thorough investigations, with the result that investors' funds can be secreted or dissipated and perpetrators escape unpunished.

Several jurisdictions, including France, the UK, Australia and Ontario²⁷ adopted information-sharing legislation shortly after the SEC adopted s. 21(a)(2).²⁸ Many others followed thereafter. In fact, statutory provisions allowing for exchange of information have become the foundation for the free flow of information between securities regulators.

Development of information-sharing MOUs

Based in large part on its new statutory ability to obtain and share information on behalf of foreign securities authorities, the SEC began to develop information-sharing arrangements, generally known as memoranda of understanding (MOUs), with key foreign counterparts, as Congress had envisioned.²⁹ These MOUs grew out of informal case-by-case understandings that facilitated the production of foreign-based information. They are formal written arrangements indicating the parties' intent to provide assistance to each other regarding obtaining and sharing information. They contain detailed provisions on use and confidentiality of information. To date, the SEC has entered into over 30 such arrangements with foreign regulatory authorities.³⁰ While these

MOUs have proved useful, they have been so only because the parties possess both the underlying legal authority, as well as the willingness, to cooperate.

As the SEC began to discuss its new legislation with its foreign counterparts, it became apparent that those regulators would not share non-public information with the SEC — even if they were legally permitted to do so — without assurances from the SEC that the information would remain confidential. They were concerned in particular about the information being disclosed pursuant to requests from third parties under the US Freedom of Information Act (FOIA).³¹ As a result, the SEC sought and obtained authority from Congress to provide additional protection from disclosing information obtained from foreign authorities in response to a FOIA request. The International Securities Enforcement Cooperation Act of 1990,³² a key part of which is codified at s. 24(d) of the Securities Exchange Act of 1934, provides a limited exception from FOIA. This provision expressly allows the SEC to keep confidential information it obtains from a foreign securities authority, even in the face of a FOIA request. Section 24(d) provides in part:

'The Commission shall not be compelled to disclose records obtained from a foreign securities authority if (1) the foreign securities authority has in good faith determined and represented to the Commission that public disclosure of such records would violate the laws applicable to that foreign securities authority, and (2) the Commission obtains such records pursuant to (A) such procedure as the Commission may authorise for use in connection with the administration or enforcement of the securities laws, or (B) a memorandum of understanding.'

This exception is in addition to the other exemptions to production of information that might apply under FOIA or otherwise.

Providing confidentiality protections to non-public information obtained from a foreign regulator does not, however, prevent the SEC from using the information in investigations or proceedings. Section 24(d) does not prevent the SEC from using non-public information in actions it brings in US courts or in administrative proceedings. Such use generally includes providing a defendant in an action with reasonable access to relevant information. Disclosure to the opposing parties in the litigation or administrative

proceeding, however, is not the equivalent of making the information broadly public.

Using criminal channels for information sharing

While s. 21(a)(2) permitted the SEC to develop regulator-to-regulator information sharing arrangements, the SEC did not limit itself solely to administrative channels. Concurrently with developments in regulator-to-regulator cooperation, the US Department of Justice was entering into information-sharing agreements with foreign criminal authorities known as Mutual Legal Assistance Treaties (MLATs). The SEC recognised that MLATs could be a useful avenue for obtaining information, particularly in jurisdictions where the SEC did not have a regulatory counterpart, or where only criminal authorities could provide access to critical information, such as bank account records.

The SEC has been able to take advantage of MLATs because US securities laws give rise to both civil and criminal violations. Therefore, while the SEC is not a criminal authority and cannot itself criminally prosecute violations of US securities laws, the SEC consults, coordinates and must share information with the US Department of Justice. Indeed, in recognition of this fact Congress gave the SEC the specific statutory authority to forward a matter to the Justice Department.³³ Thus, the SEC has worked with the Department of Justice to expand the scope of MLATs to include SEC investigations.

MLATs continue to be a useful route for the SEC to obtain information from abroad. In a globalised market there will continue to be different approaches to regulating securities activity. While the scope of authority of securities regulators continues to expand, in some jurisdictions, only criminal authorities have access to certain types of information that can be critical to a securities fraud investigation. Allowing multiple gateways for information sharing ensures that critical information can be obtained by authorities that need it for investigations and prosecutions.

INFORMATION SHARING IN THE PRESENT

Markets have changed tremendously since the 1980s. They have become truly global, in no small part due to the evolution of electronic communications and

the Internet. With the click of a mouse, individuals can access websites from all over the world and research and trade securities from their living rooms. Technology now permits people to trade using the screens on their mobile phones, transferring funds with the push of a button. But the same technological forces that facilitate trading also can facilitate fraud. Virtual 'boiler rooms' no longer require banks of phones or hundreds of brokers making cold calls; one person and a modem will do. In this global Internet environment, s. 21(a)(2) and its foreign progeny provide a strong statutory infrastructure for combating international securities fraud.

At the same time that information-sharing arrangements are maturing and being used effectively to combat fraud, new challenges to information sharing have become apparent. In some jurisdictions, there have been legal actions raising questions about the scope of regulatory powers or assistance, or the confidentiality and use of the information that is shared. In addition, there have been political hurdles. While in many countries information sharing with foreign securities regulators has become almost routine, others continue to lack the ability or willingness to share information for securities enforcement purposes. Multilateral approaches have been undertaken in response.

Legal challenges to information-sharing legislation

Many jurisdictions have adopted information-sharing legislation and information-sharing practices, demonstrating a widespread recognition that information sharing is an integral part of enforcing domestic securities laws and protecting domestic securities markets.³⁴ While each jurisdiction's legal system is unique, and assistance statutes therefore are not identical, many of these information-sharing laws provide for powers similar to those of the SEC.

In many countries, information-sharing statutes have faced — and survived — legal challenges.³⁵ These statutes generally have been upheld, and the cases collectively have reaffirmed the information-sharing approach to global securities enforcement.³⁶ In one recent legal challenge, however, the court dramatically limited the powers of the domestic securities regulator to share information with its foreign counterparts, thus raising issues about the effectiveness of that securities regulator's enforcement programme.³⁷

The Elsig Bailey decision

In October 1998, the SEC filed an action in the US Federal District Court alleging that insider trading had occurred in the USA, through European banks, in the options and equities of Elsig Bailey Process Automation NV ('Elsig Bailey') during the weeks immediately prior to an announcement of a tender offer for Elsig Bailey by a Swiss-Swedish company, ABB Asea Brown Boveri Ltd.³⁸ With the assistance of European securities authorities, the SEC was able to obtain significant investigative information, including that one of the traders was a company insider, sufficient to persuade the US court to issue a preliminary injunction and freeze order.³⁹

In late 1998, the SEC requested the assistance of the Swiss Federal Banking Commission (SFBC) in obtaining bank records to identify persons controlling accounts at a Swiss bank through which suspicious trading had occurred prior to the acquisition of Elsig Bailey. The account holders appealed the SFBC's decision to provide the records to the SEC.⁴⁰ On 1st May, 2000, the Swiss Federal Court held that the SFBC could not provide the information to the SEC without further assurances from the SEC about its ability to maintain the confidentiality of the information provided.⁴¹ Following the receipt of written assurances from the SEC, the SFBC again decided to turn the information over to the SEC. Again, the account holders appealed and, on 20th December, 2001, the Swiss Federal Court again ruled that the information could not be passed to the SEC.⁴²

The Swiss Federal Court held that the SEC's assurances of confidentiality regarding the information were not sufficient to satisfy the requirements of Swiss law.⁴³ The court based its decision on Article 38 of the Swiss Federal Law on Securities Exchanges and Trading, which contains conditions on the transfer of non-public information to foreign securities regulators.⁴⁴ These conditions include restrictions on use (eg information must be used exclusively for the direct oversight of the securities market) and further transfer (eg the recipient may transfer the information to another regulatory agency only with prior approval, and cannot use the process to circumvent established procedures in criminal matters).⁴⁵ The Swiss court determined that, with respect to transfers of information to the SEC, the conditions of Article 38 were not met. Its determination was based largely on concerns about the SFBC's ability to maintain control over the information.⁴⁶ It held that, because the information provided to the SEC

could be accessible to the 'wider public' because of the public nature of US court proceedings and discovery practices, the SEC — and therefore the SFBC — could not maintain control over the information consistent with Article 38.⁴⁷

In the decision, the Swiss court did not distinguish between disclosure and use. It did not recognise that use of the information in court proceedings — which after all is the very purpose for which information is requested — is different than disclosure of information in breach of confidentiality protections. This is a key distinction in assuring the ability of securities regulators to use information obtained from their foreign counterparts. Without the ability to use the information to prosecute securities fraud — whether administratively, civilly or criminally — the purpose of information sharing is defeated, the cooperative framework established by securities regulators to fight global securities fraud becomes ineffective, and securities regulators would be forced to resort to other methods to police their markets, including, perhaps, the combative techniques of the 1980s.

The SFBC recognised the significant adverse impact of the Swiss court's decision on the SFBC's ability to supervise its securities markets. Following the Swiss court decision, the SFBC issued a press release announcing its decision to seek corrective legislation to grant administrative assistance to foreign securities regulators.⁴⁸ The SFBC recognised that current 'Swiss legislation setting the conditions for the SFBC to cooperate with foreign supervisory authorities in matters of insider trading and stock market offences are inadequate for achieving its own objectives'.⁴⁹ As the Director of the SFBC Secretariat, Daniel Zuberbuehler, noted in a recent news article, 'If you cannot cooperate with the main securities regulator in the world, with the biggest capital market, under this new law [Switzerland's 1997 assistance legislation], then the new law is flawed and has to be changed. And we are motivated to get that through.'⁵⁰

*The Global Securities decision*⁵¹

In contrast to the Swiss decision, perhaps the most resounding recent victory for information sharing among securities regulators was the *Global Securities* matter. In that decision, the Canadian Supreme Court rejected a challenge to the information-sharing arrangement between the British Columbia Securities Commission (BCSC) and the SEC.⁵²

In June 1996, the SEC requested the BCSC to provide information from Global Securities Corporation ('Global') concerning, among other things, Global's trading in the USA. Based on s. 141(1)(b) of its Securities Act, the BCSC ordered Global to produce the information.⁵³ Global refused to produce some of the materials, claiming that s. 141(1)(b) was beyond the scope of British Columbia law because it did not relate to conduct within British Columbia. The BCSC filed an action in the British Columbia Supreme Court to compel Global to produce the records, and Global filed a petition with the court seeking a declaration that s. 141(1)(b) was ultra vires.

While the British Columbia Supreme Court supported Global's viewpoint, the Supreme Court of Canada reversed the lower court decision on appeal.⁵⁴ The court found that s. 141(1)(b) helped enforce British Columbia's securities laws by facilitating reciprocal cooperation with foreign jurisdictions and that, since the BCSC was responsible for securities regulation within British Columbia, it was within the BCSC's authority to provide assistance to foreign regulators. The court emphasised the 'indispensable nature of interjurisdictional cooperation among securities regulators today'.⁵⁵ It also found that one of the main purposes of s. 141(1)(b) is to obtain 'reciprocal cooperation from other securities regulators, thus enabling the [BCSC] to carry out its domestic mandate effectively'.⁵⁶ The court further noted that the law helped to uncover misconduct by British Columbia registrants abroad, and thus served the BCSC's 'legitimate concern with ensuring that domestic registrants are "honest and of good repute"'.⁵⁷ For these reasons, the court concluded, the statute was within the scope of British Columbia law.

This decision recognised an important concept — that for a jurisdiction to ensure that it has a comprehensive domestic enforcement regime, it must provide, as well as receive, international cooperation.⁵⁸

Increased international multilateral focus

Just as in the late 1980s the SEC used a policy approach to lay the foundation for information sharing, in the late 1990s, as information sharing expanded, the SEC continued to use policy initiatives to support its enforcement work and expand the universe of information sharing. Multilateral groups supported information sharing and were able, where appropriate, to apply high-level political

pressure for change in markets that were viewed as recalcitrant, in order to prevent the sheltering of fraudsters and their assets.

The following multilateral groups have worked to promote information-sharing practices, policies and procedures in recent years:

- IOSCO, regarding information sharing and record keeping for securities regulators;
- G7, regarding both cross-border and cross-sectoral information sharing;
- FATF, regarding information sharing as part of anti-money laundering initiatives;
- the Financial Stability Forum (FSF), in its work on financial stability; especially regarding the threat to financial stability posed by offshore financial centres; and
- the Organization for Economic Cooperation and Development (OECD), regarding its work on the misuse of corporate vehicles.

The SEC has used these international groups to advocate broad information sharing among foreign authorities. The key elements of the SEC's strategy has been the development of projects that: (a) expanded information sharing through endorsing approaches similar to those embodied in ss 21(a)(2) and 24(d) of the Securities Exchange Act; and (b) ensured that not only were mechanisms for providing assistance available, but also that the critical information to be provided would be available.

IOSCO

The SEC is a member of IOSCO and has actively used IOSCO as an avenue for expanding international information sharing. IOSCO has developed many programmes to encourage its members⁵⁹ to share public and non-public information and to cooperate with one another. The SEC has helped to craft and support these projects.

*IOSCO MOU Principles:*⁶⁰ In 1991, in light of the need for cooperation in enforcement matters, IOSCO adopted 'Principles of Memoranda of Understanding'. The principles represent a consensus among securities regulators about key tools that should be available to regulators for fighting securities fraud. These principles have been referred to time and time again as IOSCO members developed bilateral and regional MOUs with one another.⁶¹ They include core provisions on obtaining and shar-

ing information, and on confidentiality and use of information that is shared. In particular, the MOU Principles endorse:

- the provision of assistance without regard to whether the type of conduct under investigation would be a violation of the laws of the requested authority;
- use of full domestic powers to execute requests for assistance, including obtaining documents, testimony, and conducting inspections;
- the importance of protecting the confidentiality of the information provided; and
- the right to use the information for enforcement investigations, actions and proceedings.

IOSCO resolutions on cooperation: In addition to the MOU Principles, IOSCO members adopted a series of resolutions designed to affirm IOSCO members' commitment to cooperation, in 1986, 1989 and 1994.⁶² In 1997, IOSCO took these resolutions one step further with its 'Resolution on Principles for Record Keeping, Collection of Information, Enforcement Powers and Mutual Cooperation to Improve the Enforcement of Securities and Futures Laws' ('1997 Enforcement Resolution').⁶³

The 1997 Enforcement Resolution was a product of IOSCO members' recognition that there were significant differences in the ability of members to maintain, collect and share non-public information. IOSCO recognised that, no matter how able and willing to share information a regulator is, it is not useful if the information that needs to be shared does not in fact exist or cannot be obtained by the regulator. The 1997 Enforcement Resolution thus addresses the importance of comprehensive record keeping and collection of information, as well as strong enforcement powers, in the context of mutual assistance and cross-border cooperation. It identifies the need to maintain beneficial ownership information for public companies, as well as records for bank and brokerage accounts. This marked the first time that IOSCO's focus turned to improving the maintenance and collection of information as a critical part of international cooperation. The 1997 Enforcement Resolution was adopted by IOSCO's full membership and was incorporated in 1998 into IOSCO's Objectives and Principles of Securities Regulation.⁶⁴

IOSCO work in response to 11th September: In October 2001, IOSCO created a special project team to

explore actions securities regulators should take in view of the events of 11th September and their aftermath.⁶⁵ This new IOSCO task force, in which the SEC staff participated, focused on policies and practices securities regulators should adopt in order to expand cooperation and information sharing in global markets. Its goal was to expand information sharing to encompass securities regulators from all jurisdictions. Through this group, IOSCO is now seeking to turn its previous resolutions on cooperation from aspiration to reality, and to find a means to help those members who still are unable to cooperate and share information with their foreign counterparts to obtain the legal ability and resources to do so. As a result of these efforts, in May 2002 IOSCO endorsed a multilateral MOU.⁶⁶

G7 Principles

Regulatory efforts to promote information sharing received a boost following the Asian financial crisis when, in 1998, Finance Ministers and other policy makers turned their attention to information sharing as a means to enhance supervision and raise supervisory standards. International regulatory groups such as IOSCO and the Basle Committee on Banking Supervision used this high-level political support to promote information sharing among their members.

In May 1998, the G7 Finance Ministers⁶⁷ adopted Ten Key Principles for Information-Sharing.⁶⁸ These principles, which are largely based on the IOSCO MOU Principles,⁶⁹ encourage regulatory authorities to have the power to compel information on behalf of other supervisors, both on a domestic and international level. The G7 Principles also address the need for use of the information in investigations and proceedings, and the importance of maintaining the confidentiality of any non-public information that is shared.

The first set of G7 Principles was followed a year later by a second set of Ten Key Principles that focuses on information sharing between regulators and law enforcement authorities.⁷⁰ The G7 Finance Ministers sought to improve the exchange of information between financial regulators and law enforcement authorities in cases involving serious financial crime and regulatory abuse. The second set of G7 Principles endorses domestic and international cooperation between regulators and law enforcement authorities, and specifically promotes direct cross-sectoral exchanges.

These two sets of G7 Principles have helped advance cooperation. They provide political support for efforts to promote information sharing — whether between financial regulators of the same type, between securities regulators and banking supervisors, or between financial regulators and criminal authorities. This kind of broad cooperation is critical to securities enforcement in a global market. In some countries, for example, securities fraud may be solely a criminal violation, and regulators may be required to turn over any information they have regarding such violations only to the domestic criminal authorities. Moreover, once a matter is referred to criminal authorities, the ability for a regulator to provide cooperation and information to other securities regulators may be restricted. These limitations unduly hamper enforcement investigations by securities regulators.

Initiatives of the FSF and the FATF

The FSF and the FATF both have recently engaged in initiatives to improve information sharing — the FSF in regard to financial stability and the FATF in regard to anti-money laundering policy. The SEC worked closely with other US government agencies, including the US Treasury and the US Federal Reserve Board, on both of these initiatives.

Offshore Financial Centers (OFCs) and non-cooperative jurisdictions have long been a challenge for SEC enforcement investigations. At times, SEC investigators would trace the proceeds of a fraud or obtain leads, whether from US sources or those abroad, only to discover that the accounts that had engaged in illegal activity were located in OFCs or non-cooperative jurisdictions from which the SEC could not obtain information. Difficulties identifying accounts and accountholders were exacerbated when international business corporations (IBCs) were involved.⁷¹ The SEC recognised that both the FSF and the FATF initiatives could lead to enormous benefits in the fight against securities fraud, and improve the SEC's ability to obtain information for its enforcement investigations.

The FSF focused on 'problematic' OFCs, ie those that are unable or unwilling to comply with key regulatory standards or that offer little or no cooperation to foreign authorities. The FSF viewed such OFCs as weak links in the supervision of an increasingly integrated financial system. Ultimately, problematic OFCs could threaten the stability of the global financial system.

The FSF broke new ground when in May 2000 it released a list identifying those OFCs perceived to have weak supervision and to be non-cooperative. The 'list' was created as a mechanism for prioritising assessments of OFCs' adherence to international standards, including standards of information sharing and cooperation. The SEC had successfully urged that the issue of cooperation, ie the ability and willingness of an OFC to share information with foreign authorities, be a critical element in determining whether an OFC was 'problematic'.

Concurrently with the FSF work on OFCs, the FATF began to look into non-cooperative jurisdictions. In the late 1990s, an increasing number of developed countries became concerned with the role played by 'rogue' jurisdictions in relation to financial crime and money laundering. The reigning perception was that these jurisdictions were neither willing nor able to assist in the international effort to combat money laundering. The FATF was thus tasked by the G7 Finance Ministers with defining the criteria that render a jurisdiction non-cooperative, identifying non-cooperative jurisdictions and formulating countermeasures.

The SEC worked with the US government delegation to the FATF⁷² to ensure that regulations mandating customer identification by financial institutions and laws authorising local authorities to compel financial records and share them with their foreign counterparts were key factors included in determining whether a jurisdiction was deemed 'non-cooperative'. The FATF published the first true 'blacklist',⁷³ which it continues to update;⁷⁴ a jurisdiction's removal from the list is contingent upon it having addressed regulatory deficiencies regarding cooperation and information sharing. There was a large degree of overlap between the FSF list and the initial FATF list; 11 of the 15 jurisdictions originally identified as 'non-cooperative' by the FATF were recommended for assessment by the FSF.

The corporate vehicles project of the OECD

With a broad international consensus supporting international information sharing, and a new focus on OFCs, international policy makers turned their attention to ensuring that the information to be shared in fact existed.

The FSF was particularly concerned about the misuse of corporate vehicles⁷⁵ for money laundering, financial fraud and market manipulation. Such

misuse may occur more readily and go undetected in countries where there is no requirement either to disclose, or to provide to authorities upon request, information regarding the ownership of the corporate vehicle. Accordingly, the FSF asked the OECD to study the problem of the misuse of corporate vehicles and to focus on the ability of authorities to obtain and share information about their beneficial ownership and control.

The OECD released its Report on the Misuse of Corporate Vehicles for Illicit Purposes in April 2001.⁷⁶ This report reflects three fundamental tenets, which had been laid out by the SEC. It states that, in order to successfully combat and prevent the misuse of corporate vehicles for illicit purposes: (i) all jurisdictions, including OFCs, must establish effective mechanisms for maintaining information on beneficial ownership and control of corporate vehicles; (ii) systems for maintaining such information must be effectively supervised; and (iii) authorities in all jurisdictions must be able to obtain and share such information with their domestic and foreign counterparts.

Recent developments in information-sharing legislation

The initiatives discussed above are producing remarkable change. As a result of the work of the FSF, the FATF and the OECD, many OFCs and formerly non-cooperative jurisdictions are taking substantial steps to improve their supervisory and cooperation practices. A number of countries have adopted new information-sharing legislation, allowing regulators to compel the production of a wide range of information, including bank account records, on behalf of foreign securities authorities. In addition, several countries are in the process of developing avenues for cooperation that did not exist previously. Recent improvements in legislation involving international cooperation include the following:

- Jersey amended its Financial Services law to enhance its regulator's ability to obtain and share information from both regulated and non-regulated entities with foreign regulators;⁷⁷
- Turks & Caicos Islands amended its Monetary Authority's law to allow for the sharing of information such as bank records with foreign regulators;⁷⁸

- Bermuda recently amended its Monetary Authority's law in a similar manner;⁷⁹
- Mexico recently amended its law so that the Mexican securities authority (Comision Nacional De Valores) can share bank account information with foreign regulators;⁸⁰
- the British Virgin Islands passed international assistance legislation that allows its Monetary Authority to compel information from both regulated and non-regulated entities on behalf of foreign regulators;⁸¹
- the Cayman Islands passed international assistance legislation that allows its Monetary Authority to cooperate with foreign regulators, including the power to compel information from both regulated and non-regulated entities on behalf of foreign regulators;⁸² and
- Singapore passed an information-sharing law that grants its Monetary Authority cooperation powers, including conducting investigations on behalf of foreign regulators and compelling information from third parties.⁸³

In addition, a number of OFCs are undergoing assessments of their supervisory systems by the IMF.⁸⁴ But this is only a start. Sustained progress will require actual implementation of the new standards and ongoing cooperation in practice.

THE WAY FORWARD

Opportunities for increased enforcement cooperation

Information sharing in international securities matters has advanced substantially in the past two decades. The benefits of and need for information sharing have been recognised at the highest political levels. Legislation, rules and regulations now govern the process for information exchange in many jurisdictions, including those once deemed 'non-cooperative'.

Nevertheless, impediments to information sharing remain. For example, excessive restrictions on cross-sectoral information sharing continue to exist. In addition, some jurisdictions retain dual illegality or dual criminality requirements. Others restrict the kinds of uses to which the information can be put. Some securities authorities may not be able to obtain key information such as bank records or less

traditional, but increasingly important information, such as records from internet service providers.

In order to fight the ever-evolving methods of perpetrating securities fraud, it is necessary to broaden information sharing in enforcement matters to achieve true 'cooperative enforcement'. Enhanced cooperation can also serve to reduce the jurisdictional frictions that may occur between regulators when responding to securities fraud conducted through a virtually borderless Internet. The cases discussed below represent new ways in which 'cooperative enforcement' can be achieved.

Securities regulators too must develop enforcement approaches that enable them to act in 'real time' in a world where fraud can occur and funds can cross sovereign boundaries almost instantaneously. In addition, regulators can build on the political support for information sharing to help advance broader cross-border cooperation.

Swifter and more creative cooperative efforts

Real time enforcement cooperation in the global Internet economy requires that existing mechanisms for information sharing be used more creatively and quickly. Regulators need to work with their foreign counterparts to identify matters that deserve priority and work to develop approaches that will yield rapid responses. They must make better use of technology and expand their approach to cooperation. The following recent examples of cooperative efforts between regulators demonstrate the benefits that can be achieved through creative and comprehensive enforcement cooperation.

The Rentech case:⁸⁵ Cooperation in bringing simultaneous US civil and Australian criminal actions

In May 1999, Steven G. Hourmouzis and Wayne J. Loughnan, both Australian residents, falsely touted the stock of Rentech, Inc., a Colorado company, through the Internet, by sending millions of unsolicited 'spam' e-mail messages to individuals worldwide (including the USA and Australia), and posting false messages about Rentech on various Internet message boards. Some of the false messages, which were made to appear as though written by analysts, predicted a 900 per cent increase in the value of the stock. The touting caused the price of Rentech stock, listed on Nasdaq, to double from an average price of \$0.45 the previous month to a

closing price of \$0.875 on the first day of trading after the touts. The touting enabled Hourmouzis and Loughnan to sell 65,000 shares of Rentech stock into the inflated market for approximately \$14,000 in profits.

SEC staff contacted the Australian Securities and Investments Commission (ASIC) regarding the spam emails and message board postings. Both authorities immediately began investigating the case. Each was able to obtain important information that contributed to the other's investigation; without this cooperation, it is likely that neither authority's action would have been possible. The SEC was able to obtain information about the defendants' trading in Rentech shares during the period that they were posting the false information. ASIC was able to seize the computer hard drives of Hourmouzis and Loughnan, which contained information about the fraud.

Because of their open and continuous communication, both Commissions were able to share information quickly and effectively and achieve a comprehensive and effective resolution. On the basis of information provided by ASIC, the SEC was able to connect the Internet messages to the Australian defendants and obtain a preliminary injunction from a US Federal District Court.⁸⁶ The SEC subsequently obtained permanent injunctions against the defendants, as well as an order for disgorgement.⁸⁷ ASIC criminally prosecuted the defendants.⁸⁸ Hourmouzis was sentenced to two years in prison in 2000, and Loughnan was given a suspended two-year sentence in May 2001.

In developing the parallel actions, the SEC and ASIC needed to coordinate very closely. For example, the SEC decided to forego seeking penalties in the US case when it learned that such penalties could potentially subject the ASIC prosecution to a claim of 'double jeopardy'. Instead, the SEC sought and obtained an order requiring the defendants to cease and desist from violating the securities laws, and to disgorge unlawfully obtained profits.

The Oeschle actions:⁸⁹ Enforcement cooperation regarding actions across markets

In August 2001, the SEC brought and settled administrative actions against two individuals, Andrew Parlin and Angelo Iannone, and their respective former employers, Oeschle International Advisors, a US investment adviser specialising in international

stocks, and ABN-AMRO, a US broker-dealer, in connection with a scheme to artificially increase the closing price of at least five securities. On several occasions during 1998, Parlin and Iannone attempted to pump up the value of Oeschle's portfolio by purchasing a large volume of foreign securities during the final minutes of trading on the last day of each quarter, in a practice known as 'marking the close'. They purchased the stocks, which included shares of major international corporations (eg Renault, Volkswagen, Banca di Roma, British Biotech and the ADRs of Pohang Iron and Steel) at the end of each quarter in an attempt to boost the value of the portfolio at the time it was calculated. Neither Oeschle's nor ABN Amro's compliance systems detected their employees' improper trading. The scheme was initiated in the USA and carried out in a range of overseas markets.

In its investigation, the SEC obtained information from French, German, Italian and UK securities regulators. The broad information gathering enabled the SEC to reconstruct the similar trading pattern that was used in each market. As the case evolved, the SEC consulted with the foreign authorities so that all concerned could make informed decisions about the evidence needed, the evidence available, and the most effective use of resources for each authority. This case — and the companion investigations and actions overseas⁹⁰ — demonstrate the importance of securities regulators being able to take action where illegal conduct occurs across markets yet still affects local investors. It also demonstrates that the SEC will use its cooperative relationships with its foreign counterparts to punish those in the US who export their misconduct abroad.

The Exchange Bank and Trust investigations: Harnessing technology

More effective enforcement also will depend on a better use of technology to extend resources. The SEC and the British Columbia Securities Commission (BCSC) recently developed a joint investigative database that illustrates the benefits of working together bilaterally.

In April 2000, the SEC filed an action against a Los Angeles tree trimmer, Stephen C. Sayre, alleging that he illegally masqueraded as a financial analyst and illegally traded in the stock of a publicly traded company that he recommended, eConnect.⁹¹ Through his company, Independent Financial Reports, Inc. (IFR), Sayre twice issued recommendations through

a wire service, which were later disseminated more widely over the Internet, to buy shares in eConnect. These recommendations did not disclose Sayre's holdings in the company. In connection with its action, the SEC obtained an asset freeze against Sayre and other related entities. The SEC's investigation traced over \$940,000 in fraudulent proceeds to an account held at a bank in Vancouver, Canada, in the name of Exchange Bank and Trust (EBT), a purported foreign private bank licensed in Nauru and operating in St Kitts and Nevis.

At the SEC's request, the BCSC froze the EBT account, which turned out to contain over \$18m. The EBT account proved to be a conduit for the proceeds of other stock frauds currently being investigated by the SEC and the BCSC. The SEC and the BCSC established a joint database to facilitate analysis of data relating to the EBT account. Sharing the costs needed to operate the joint database was symbolic of both regulators' commitment to information sharing. Information from the database aided the SEC staff in identifying numerous individuals and entities responsible for other stock manipulations. The SEC brought four cases in October 2001, charging 44 individuals and entities regarding a series of stock manipulations connected to the EBT account, and seeking disgorgement from EBT to help repay over \$30 million in investor losses.⁹²

IOSCO's multilateral work on enforcement cooperation

On a multilateral level, IOSCO has been working on approaches to enhancing cooperation as well. In 2001, IOSCO completed work on the development of investigative strategies for joint and parallel investigations. IOSCO recognised that, when multiple securities regulators have interests in a case, they should communicate with each other up front and on a continuing basis. The work was designed as a guide for securities regulators, laying out the practical issues they should consider in conducting enforcement investigations in instances of multiple jurisdictional interest.⁹³ IOSCO addressed issues such as allocating responsibility for collecting information, methods for sharing information, and permissible uses of information, as well as other practical considerations involved in bringing cross-border enforcement actions.

IOSCO also sought to improve cooperation through its new post-11th September task force. As discussed above,⁹⁴ this work was designed to make

information sharing a reality for a broader universe of IOSCO members. To this end, in May 2002, IOSCO endorsed a multilateral MOU,⁹⁵ which builds on previous IOSCO principles and resolutions to establish an international benchmark for cooperation and information sharing. The key provisions of the MOU focus on the most essential elements of cross-border cooperation: (i) the provision of information critical to the investigation and prosecution of cross-border securities violations; (ii) the protections that are afforded to that information once it has been shared; and (iii) how that information may be used by the requesting authority. Prior to signing, IOSCO member regulators must establish through an objective review process that they have the legal capacity to fulfil the MOU's terms and conditions. This process provides positive incentives for members to raise their national standards regarding international cooperation and information sharing.

Increased multilateral focus addressing securing assets abroad

The current efforts of numerous multilateral groups to improve information sharing, along with new efforts to enhance enforcement cooperation, should lead to more information being shared more directly and more quickly than ever before. Despite the wide political support for information sharing, however, there has not been as great a recognition of the need for international cooperation in securing assets that are the proceeds of cross-border securities fraud. A comprehensive programme to address securing of assets is called for.

To date, cooperation in securing assets located abroad has occurred only on an ad hoc basis.⁹⁶ Mechanisms for preserving and obtaining assets of defrauded investors in cross-border situations can continue to be used and developed in this way. Criminal channels can sometimes be used to obtain asset freezes abroad. In other instances, court-appointed trustee-receivers can secure assets in foreign locations. These efforts, however, may be unsuccessful. They are also highly resource-intensive. International cooperation in securities matters could be harnessed to develop international political support for the creation of mechanisms, similar to those used for information sharing, pursuant to which regulators could assist each other in freezing assets and recovering illicit profits.⁹⁷ An international consensus on asset freezes and recovery is the next

step beyond information sharing. Many securities regulators can cooperate internationally to assist one another in obtaining information to investigate and prosecute violations of their securities laws; regulators now need mechanisms to cooperate and assist one another to secure and recover the proceeds of such violations.

In the end, success in fighting securities fraud will be judged on whether those committing such fraud can hide ill-gotten gains, thereby reaping the financial benefits of wrongdoing, or whether the funds can be recovered for the benefit of investors. As a result, it will become increasingly important to strengthen ties among national authorities that were made to assist in information sharing to include assistance in the recovery of assets, and to build the political will to make this a priority.

REFERENCES

- (1) This paper is based on remarks made by Ms Friedman at a workshop entitled 'The Inside Track: Taking Stock of Information-Sharing in Securities Enforcement Matters' during the 19th Annual Cambridge International Symposium on Economic Crime, 13th September, 2001.
- (2) *SEC v Tome*, 638 F. Supp 596 (SDNY 1986), aff'd, 833 F.2d 1086 (2d Cir. 1987), cert. denied, 108 S Ct 1751 (1988).
- (3) For a description of this and other SEC cases regarding international information sharing in the 1980s, see Mann, M. D., Mari, J. G. and Lavdas, G. (1995) 'Developments in International Securities Law Enforcement and Regulation', *The Int'l Lawyer*, Winter, Vol. 29, pp. 729-873.
- (4) Unpublished Court Order (SDNY, 27th March, 1981), discussed in *SEC v Banca della Svizzera Italiana*, 92 FRD 111, 113 (SDNY 1981); *SEC v Tome*, 638 F. Supp at 625.
- (5) *SEC v Banca della Svizzera Italiana*, 92 FRD at 114.
- (6) *SEC v Banca della Svizzera Italiana*, 92 FRD at 119.
- (7) *Ibid*.
- (8) *SEC v Tome*, 638 F. Supp at 627-628, aff'd, 833 F.2d at 1096.
- (9) See also, *SEC v Certain Unknown Purchasers of Santa Fe Int'l*, 81 Civ. 6553 (WCC) (SDNY, 13th November, 1981); *SEC v Levine*, No. 86 Civ. 3726 (SDNY, 1st July, 1986).
- (10) Jurisdictions having dual illegality requirements require that, in order to share information, an actual violation of their laws must have occurred. Dual criminality requires authorities to provide assistance only to foreign authorities investigating violations recognized in both jurisdictions.
- (11) For example, Switzerland prohibited insider trading in 1988. Swiss Penal Code. Art. 161 (1st July, 1988), available online in French at http://www.admin.ch/ch/l/rs/311_0/a161.html (also available in German and Italian through this site). Germany did not prohibit insider trading until 1994. See Securities Trading Act (*Wertpapierhandelsgesetz (WpHG)*) of 26th July, 1994 (*Federal Law Gazette*, Part I p. 1749) promulgated as Art. 1 of the Second Financial Market Promotion Act (*Gesetz über den Wertpapierhandel und zur Änderung börsenrechtlicher und wertpapierrechtlicher Vorschriften, Zweites Finanzmarktförderungsgesetz*) of 26th July, 1994 (*Federal Law Gazette*, Part I p. 1749), available online at www.bawe.de/english/index_c.htm.
- (12) For a more detailed discussion of securing assets abroad, including a discussion of the *Wang & Lee* case, see Mann,

- M. D., Leder, P. and Jacobs, E. (1992) 'The Establishment of International Mechanisms for Enforcing Provisional Orders and Final Judgments Arising From Securities Law Violations', *Law & Contemp. Probs.*, Autumn, Vol. 55, No. 303.
- (13) *SEC v Wang and Lee*, No. 88 Civ. 4461 (SDNY 1988).
- (14) Typical language in a freeze order is as follows: 'The defendant, and its owners, officers, directors, subsidiaries, agents, servants, employees, attorneys, successors-in-interest, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile transmission or otherwise, and each of them, hold and retain within their control, and otherwise prevent any disposition, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal whatsoever, by themselves or any person or entity under their direct or indirect control, of any proceeds of the sale by defendant of the securities in violation of the registration provisions of the federal securities laws, in whatever form such proceeds may exist and wherever located . . .'
- (15) *Nanus Asia Co., Inc. v Standard Chartered Bank*, (S. Ct. Hong Kong, 22nd September, 1988), available via LEXIS at 1988 HKC 377; 1988 HKC LEXIS 410.
- (16) Additionally, the Hong Kong court was concerned that the US court's injunction and disgorgement order constituted a foreign penal order and was thus unenforceable under Hong Kong law. *Nanus Asia Co., Inc. v Standard Chartered Bank*, 1988 HKC LEXIS 410 at pp. 26, 42–53. See also, *Restatement of the Law, 3d, Foreign Relations Law of the United States, 'Foreign Judgments and Awards, Introductory Note'*, p. 592; § 483, *Reporter's Note 3*, p. 614.
- (17) Policy Statement on Regulation of International Securities Markets, Securities Act Rel. No. 6807, 53 Fed. Reg. 46963, 21st November, 1988.
- (18) *Ibid.*
- (19) IOSCO, 'Resolution On Cooperation' (Executive Committee, June 1989), available online at <http://www.iosco.org/resolutions/index.html>. The 1989 Resolution built on an earlier IOSCO Resolution adopted in 1986 regarding mutual assistance (the 'Rio Declaration'). The Rio Declaration was limited to recommending assistance as established by existing law, while the 1989 Resolution went further in calling on securities authorities to consider new legislation that would allow for assistance 'without regard to whether the matter under investigation would be a violation of the law of the requested authority'.
- (20) Securities Exchange Act of 1934, s. 21(a)(2) [15 USC § 78u(a)(2)].
- (21) The Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA), 100 PL 704, 102 Stat. 4677, 19th November, 1988.
- (22) Section 21(a)(2) provides as follows: 'On request from a foreign securities authority, the Commission may provide assistance in accordance with this paragraph if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws or rules relating to securities matters that the requesting authority administers or enforces. The Commission may, in its discretion, conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States. In deciding whether to provide such assistance, the Commission shall consider whether (A) the requesting authority has agreed to provide reciprocal assistance in securities matters to the Commission; and (B) compliance with the request would prejudice the public interest of the United States.'
- (23) See eg House Report (Energy and Commerce Committee) No. 100–910, at 30, 1988 USCCAN 6043, 6067 (1988) ('the Committee does not expect that the Commission would grant assistance to foreign authorities who would be unwilling to reciprocate to the extent permitted by that authority's domestic law . . .').
- (24) Securities Exchange Act of 1934, s. 21(a)(2), [15 USC § 78(u)(a)(2)].
- (25) Securities Exchange Act of 1934, s. 3(a)50, [15 USC § 78c(a)50].
- (26) HR Rep. 100–910 at 30, 1988 USCCAN at 6067.
- (27) Securities regulation in Canada is conducted at the provincial level.
- (28) See eg France, Law of 2nd August, 1989; the UK, Companies Act, 1989, s. 82(Eng); Australia, Mutual Assistance in Business Regulation Act 1992 (MABRA); and Ontario, Ontario Securities Act, Part VI, s. 11(1)(1994).
- (29) S. Rep. No. 100–461, at 2 (1988).
- (30) A list of the jurisdictions with which the SEC has entered into MOUs is attached at the Appendix.
- (31) Freedom of Information Act (FOIA), 5 USC § 552.
- (32) Pub. L. No. 101–550, 104 Stat. 2713 (codified at scattered subsections of 15 USC §§ 77–80, 780, 789).
- (33) Securities Exchange Act of 1934, s. 21(h)(9)(B), 15 USC § 78(u)(h)(9)(B).
- (34) For a discussion of recent developments in information-sharing legislation, see the penultimate section below.
- (35) See Lesser J. N., Laby, A. B. and Becker, D. M. (2001) 'Recent Developments in SEC Information-Sharing Arrangements', SEC Major Issues Conference, 'Securities Regulation in the Global Internet Economy', November, available online at http://www.law.nwu.edu/depts/contextec/cle/srgie/index_papers.htm.
- (36) See eg *Securities Board of the Netherlands v ING Bank, NV*, 1163/99 SKG (Netherlands Ct App., 2nd March, 2000) at 6.
- (37) See *A, B, C & D v Swiss Banking Commission*, 2A.349/2001/bmt (Pub. L. Division II, 20th December, 2001), ('*Elsag Bailey II*'), affirming *W, X, Y & Z v Swiss Banking Commission*, 2A.355/1999/leb (Pub. L. Division II, 1st May, 2000) ('*Elsag Bailey*').
- (38) *SEC v Euro Security Fund, Coim S.A., and One or More Unknown Purchasers of Call Options and Common Stock of Elsag Bailey Process Automation, NV*, No. 98–Civ-7347 (DLC) (SDNY). Filed 19th October, 1998.
- (39) *Ibid.* See SEC litigation release at <http://www.sec.gov/litigation/litrelases/lr15942.txt>.
- (40) The Swiss account holders challenged the SFBC's decision to provide information to the SEC, arguing that the fact that the SEC's civil enforcement actions allow for the inspection of records, and that the SEC's litigation releases are public, violates Swiss law regarding privacy of information. *Elsag Bailey*, at 1; *Elsag Bailey II*, at 2.
- (41) *Elsag Bailey*, at 15 (Findings, para. 6.b.cc), 19 (Holding).
- (42) *Elsag Bailey II*, at 12 (Holding).
- (43) *Elsag Bailey II*, at 8 (Findings, para. 6.b.aa).
- (44) *Elsag Bailey II*, at 8–9 (Findings, paras 6.b.aa and 6.b.bb).
- (45) *Elsag Bailey*, at 9–10 (Findings, para. 5.b.bb); *Elsag Bailey II*, at 8–10 (Findings, paras 6.b.aa to 6.b.cc).
- (46) *Elsag Bailey II*, at 9 (Findings, para. 6.b.aa).
- (47) *Elsag Bailey II*, at 9 (Findings, para. 6.b.bb).
- (48) SFBC Press Release, 'SFBC opting for modification of legislation on granting administrative assistance to foreign regulators of capital markets', 23rd January, 2002, available online at <http://www.cfb.admin.ch/e/aktuell/m0123-01e.pdf>.

- (49) *Ibid.* at 1. In the press release, the SFBC stated further: 'Swiss law grants protection to customers at a level which is unique in the world . . . They even prevent foreign authorities from taking enforcement action regarding transactions made on their own territory. If, even in a case where there is strong presumption that one is dealing with a perfect insider, applicable laws prevent from exchanging information among regulators, which was the case in the matter the Federal Supreme Court ruled on [Elsag Bailey], such law needs to be amended in response to the international context securities dealers operate in today. An amendment would serve the interests of the Swiss financial market, promoting Switzerland's reputation and its access to international financial markets.'
- (50) Reuters, 'Regulator Shakes Up Swiss Bank Scene', 6th February, 2002, p. 1, available online at Yahoo! Finance, at http://biz.yahoo.com/rf/020206/104276076_9.html.
- (51) *British Columbia Securities Comm'n v Global Securities Corp.*, No. 26887, 2000 Can. Sup. Ct LEXIS 19, (Can. 13th April, 2000) ('Global Securities').
- (52) *Global Securities*, at p. 1.
- (53) *Global Securities*, at pp. 11–12. The statute in question was s. 141(1)(b) of the British Columbia Securities Act, R.S.B.C. ch. 418 (1996)(Can.), which allows the BCSC to provide assistance to foreign (or other provincial) securities regulators.
- (54) *Global Securities*, at p. 36.
- (55) *Global Securities*, at p. 22.
- (56) *Global Securities*, at p. 27.
- (57) *Global Securities*, at p. 28 (citation omitted).
- (58) *Global Securities*, at pp. 26–27. See also, 'Recent Developments in SEC Information-Sharing Arrangements', ref. 35 above, pp. 15–18.
- (59) IOSCO has approximately 97 ordinary members, seven associate members and 58 affiliate members from all kinds of markets.
- (60) Available online at http://www.iosco.org/docs-public/1991-principles_of_memoranda.html.
- (61) IOSCO maintains a list of MOUs among its members, which is available online at <http://www.iosco.org/mou/index.html>.
- (62) IOSCO, *Resolution concerning Mutual Assistance* ('Rio Declaration')(Executive Committee, November 1986); *Resolution on Cooperation* (Executive Committee, June 1989); and *Resolution on Commitment to Basic IOSCO Principles of High Regulatory Standards and Mutual Cooperation and Assistance* (President's Committee, October 1994). These resolutions are available online at <http://www.iosco.org/resolutions/index.html>.
- (63) IOSCO, *Resolution on Principles for Record Keeping, Collection of Information, Enforcement Powers and Mutual Cooperation to Improve the Enforcement of Securities and Futures Laws* (President's Committee, November 1997), available online at <http://www.iosco.org/resolutions/index.html>.
- (64) IOSCO *Objectives and Principles of Securities Regulation* (September 1998), Principles 8–10, available online at <http://www.iosco.org/docs-public/1998-objectives.html>.
- (65) See IOSCO Press Release, *Creation of a Special Project Team*, 12th October, 2001, available online at <http://www.iosco.org/press/presscomm011012.html>.
- (66) IOSCO (2002) 'Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information', President's Committee, May, available online at <http://www.iosco.org>. The MOU is referred to in more depth in the penultimate section of this paper.
- (67) The Group of Seven (G7) is comprised of representatives from Canada, France, Germany, Italy, Japan, the UK and the USA.
- (68) G7 Finance Ministers (1998) *Information Sharing: Ten Key Principles*, May.
- (69) See discussion of IOSCO MOU Principles above in the section on information sharing.
- (70) G7 Finance Ministers' Working Group on Financial Crime (1999) *Ten Key Principles for the Improvement of International Co-Operation Regarding Financial Crimes and Regulatory Abuse*, May.
- (71) IBCs are the primary corporate form employed in OFCs by non-residents. They are limited liability corporate vehicles that may be used to own and operate businesses, issue shares or bonds, or raise capital in other ways. In many OFCs, the costs of setting up IBCs are minimal, and IBCs are generally exempt from all local taxes on profits, capital gains, and other income. Historically, requirements for setting up and maintaining IBCs has provided a great degree of anonymity, thus making it difficult for authorities to obtain information about their beneficial ownership and control. See Financial Stability Forum, *Report of the Working Group on Offshore Centres*, 5th April, 2000, at Box 3, p. 11, available online at <http://www.fsforum.org/Reports/RepOFC.html>.
- (72) The US delegation to the FATF is represented by the Departments of Justice, State and Treasury, and assisted by financial regulators and law enforcement authorities.
- (73) Financial Action Task Force on Money Laundering, *Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures*, 22nd June, 2000, available online at http://www1.oecd.org/fatf/pdf/NCCT2000_en.pdf.
- (74) See eg Financial Action Task Force on Money Laundering, *Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures*, 22nd June, 2001, available online at http://www1.oecd.org/fatf/pdf/NCCT2001_en.pdf.
- (75) Corporate vehicles include shell corporations, international business corporations (IBCs) and offshore trusts.
- (76) Organization for Economic Cooperation and Development, Directorate for Financial, Fiscal & Enterprise Affairs, Steering Group on Corporate Governance, *Report on the Misuse of Corporate Vehicles for Illicit Purposes*, DAF/FE/CA/CG(2001)2/REV2, 9th May, 2001, available at <http://www.oecd.org/daf/corporate-affairs/governance/company-law/corporate-vehicles-en.pdf>.
- (77) Jersey, amendments to the Financial Services (Jersey) Law 1998, effective date 1st March, 2002.
- (78) Turks & Caicos Islands, Overseas Regulatory Authority (Assistance) Ordinance (2001), s. 3.
- (79) Bermuda, Monetary Authority Amendment Act 2001, ss 30A to 30D of Principal Act.
- (80) Mexico, Securities Market Law, Fiduciary Law, April 2001.
- (81) Virgin Islands, Financial Services (International Co-Operation) Act, 2000, effective 1st February, 2001.
- (82) Cayman Islands, Monetary Authority Law, revised amendments by law, June 2000 and December 2000, s. 42.
- (83) Singapore, Securities Industry Act (Cap. 289) (2000), Part VIII.
- (84) For a discussion of the IMF's work regarding assessments of OFCs' implementation of standards, see the International Monetary Fund, Monetary and Exchange Affairs Department, *Offshore Financial Centers (OFCs): Note for the IMF Executive Board*, 29th June, 2001, available online at <http://www.imf.org/external/np/mae/oshore/2001/eng/062901.htm>.
- (85) *SEC v Stephen Hourmouzis and Wayne Loughnan*, Civ. No. 00–n-905 (D. Colo. May 2000).
- (86) *Ibid.*
- (87) *Ibid.* See SEC litigation release at <http://www.sec.gov/litigation/litreleases/lr16705.htm>.
- (88) For a description of the Australian action, see ASIC media and information releases 2001/01/166 and 01/170, available online

- at <http://www.asic.gov.au>; SEC litigation release at <http://www.sec.gov/litigation/litreleases/lr16535.htm>.
- (89) *In the Matter of Oeschle International Advisors*, Administrative Proceeding File No. 3-10554, 10th August, 2001, available online at <http://www.sec.gov/litigation/admin/ia-1966.htm>; *In the Matter of ABN AMRO Inc.*, Administrative Proceeding File No. 3-10552, 10th August, 2001, available online at <http://www.sec.gov/litigation/admin/34-44677.htm>; *In the Matter of Angela Iannone*, Administrative Proceeding File No. 3-10553, 10th August, 2001, available online at <http://www.sec.gov/litigation/admin/34-44678.htm>; and *In the Matter of Andrew S. Parlin*, Administrative Proceeding File No. 3-10555, 10th August, 2001, available online at <http://www.sec.gov/litigation/admin/34-44679.htm>.
- (90) The UK Securities and Futures Authority (SFA) announced disciplinary proceedings against Hugh Rance and Bradley Bilgore, employees of Morgan Stanley & Co. International Ltd, on 30th April, 2001 for events arising out of this matter. SFA press release available online at http://www.fsa.gov.uk/sfa/press_releases/2001/sfa3-2001.htm. The London Stock Exchange also imposed fines against Morgan Stanley and ABN Amro in response to this matter. See eg *Financial Times*, 'Fines for Share "Misconduct": ABN Amro and Morgan Stanley Securities Arms Censured After London Stock Exchange Inquiry', 1st April, 1999. Other foreign investigations are ongoing.
- (91) *SEC v Stephen C. Sayre, et al.*, Civ. Action No. CV-00-03800 MMM (Ex)(CD Cal. 21st April, 2000), litigation release available online at <http://www.sec.gov/litigation/litreleases/lr16525.htm>.
- (92) See cases discussed online at the SEC's press release, <http://www.sec.gov/news/headlines/fortyfourdefendants.htm>.
- (93) *Joint and Cross-Border Investigations and Related Proceedings*, Non-Public Report of IOSCO Standing Committee 4 on Enforcement and the Exchange of Information, June 2001.
- (94) See discussion above in the IOSCO part of the information-sharing section.
- (95) Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, see ref. 66 above.
- (96) For a discussion of securing of assets abroad, see 'The Establishment of International Mechanisms for Enforcing Provisional Orders and Final Judgments Arising From Securities Law Violations', ref. 12 above.
- (97) Some of the groundwork has already been laid. Two projects undertaken by international groups discuss enforcement of judgment issues. In 1996, IOSCO studied the provisions available on a cross-border basis to protect defrauded investors' interests and assets. *Compilation of Answers to Questionnaire on 'Provisions available on a cross-border basis to protect defrauded investors' interests and assets'* (January 1996). In addition, recently a group was formed to propose a Hague Convention on Jurisdiction and Recognition and Enforcement of Judgments, which attempts to deal with enforcement of judgments issues on a more comprehensive basis. The group held its first full diplomatic session in June 2001 in the Hague (Hague Convention on Jurisdiction and Recognition and Enforcement of Judgments).

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APPENDIX

Index of SEC Formal Information Sharing Arrangements

<i>Jurisdiction</i>	<i>Date of Agreement</i>
Argentina	9th December, 1991
Australia	20th October, 1993
Belgium	30th January, 2001
Brazil	1st July, 1988
Canada	7th January, 1988
Chile	3rd June, 1993
China	28th April, 1994
Costa Rica	10th October, 1991
Egypt	11th February, 1996
European Community	23rd September, 1991
France	14th December, 1989
Germany	22nd November, 1993
	24th March, 1994
	20th December, 1995
	17th October, 1997
Hong Kong	5th October, 1995
Hungary	22nd June, 1990
India	6th March, 1998
Indonesia	24th March, 1992
IADB/UNECLAC	26th September, 1991
Israel	13th February, 1996
Italy	5th & 7th May, 1993
Japan	23rd May, 1986
	17th May, 2002
Jersey	30th May, 2002
Mexico	18th October, 1990
Netherlands	11th December, 1989
	1st July, 1992
Norway	24th September, 1991
Portugal	10th October, 1997
Russia	5th & 6th December, 1995
Singapore	16th May, 2000
South Africa	2nd March, 1995
Spain	8th July, 1992
Sweden	25th September, 1991
Switzerland	31st August, 1982
	10th November, 1987
	3rd November, 1993
United Kingdom	23rd September, 1986
	25th September, 1991
	1st May, 1995
	27th October, 1997

