

IMPLEMENTATION OF INTERNATIONAL DISCLOSURE STANDARDS

SAMUEL WOLFF*

1. INTRODUCTION

The International Organization of Securities Commissions ("IOSCO") is a voluntary association of securities commissions from around the world that was formed in 1974.¹ It has an international membership, with securities commissions and other organizations from many countries participating as members. IOSCO is not an organization of countries and was not formed on the basis of a treaty, unlike the European Union ("EU"), which is constituted upon the basis of the Treaty of Rome.² IOSCO has no law-making authority under international law and cannot bind its members. Still, it is probably the most important organization in the world currently working on securities regulation from a global perspective.³ As of May 2000, there were 165 members, although in some cases this includes more than one member for a country.

In September 1998, IOSCO adopted new disclosure standards entitled International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers ("IDSs" or "Disclo-

* Senior Counsel, Akin, Gump, Strauss, Hauer & Feld, L.L.P., Washington, D.C. This article is based on HAROLD S. BLOOMENTHAL & SAMUEL WOLFF, *SECURITIES AND FEDERAL CORPORATE LAW* § 1.10 (forthcoming 2001) (manuscript on file with authors). Copyright © West Group. All rights reserved by West Group. The author is grateful for research assistance provided by Fuad Bateh and Jessica Burdick. All foreign language materials cited herein have been verified by the author and not by the University of Pennsylvania Journal of International Economic Law.

¹ See HAROLD S. BLOOMENTHAL & SAMUEL WOLFF, *INTERNATIONAL CAPITAL MARKETS AND SECURITIES REGULATION* § 1.10[2][a] at 1-181 (2000).

² Treaty establishing the European Economic Community, March 25, 1957, 298 U.N.T.S. 11.

³ The EU has actually accomplished more in the area of securities regulation, but its work is being carried out solely from a regional perspective. Concerning securities law harmonization in the European Union, see Manning Gilbert Warren III, *Global Harmonization of Securities Laws: The Achievements of the European Communities*, 31 HARV. INT'L L.J. 185 (1990).

sure Standards").⁴ IOSCO's objective in promulgating these standards was to develop a generally accepted body of non-financial statement disclosure standards that could be used by foreign issuers in cross-border offerings and stock exchange listings.⁵ IOSCO recommended that its members take all necessary steps in their respective jurisdictions to accept a disclosure document containing the information specified in the Disclosure Standards.⁶ Although the Disclosure Standards by their terms apply to listings and public offerings of *equity* securities for cash, member countries are free to apply the Disclosure Standards more broadly. For example, the U.S. Securities and Exchange Commission ("SEC") adopted the IDs to make them generally applicable to all securities, including debt securities.⁷ The SEC applied the International Standards to annual reports as well as registration statements under the Securities Exchange Act of 1934⁸ that must be filed with the SEC in connection with listing and registration under the Securities Exchange Act of 1934.⁹ IOSCO approved the Disclosure Standards only in the context of cross-border offerings by foreign issuers. It did not develop the Disclosure Standards for the purpose of supplanting the disclosure regime applicable to domestic issuers. IOSCO did explain, however, that the Standards may provide a "point of reference" for jurisdictions considering changing their standards for

⁴ IOSCO, FINAL COMMUNIQUÉ OF THE 23RD ANNUAL CONFERENCE OF THE INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (Sept. 18, 1998) [hereinafter FINAL COMMUNIQUÉ], available at <http://www.iosco.org/press/presscom980918-eng.html>.

⁵ IOSCO, INTERNATIONAL DISCLOSURE STANDARDS FOR CROSS-BORDER OFFERINGS AND INITIAL LISTINGS BY FOREIGN ISSUERS [hereinafter INTERNATIONAL DISCLOSURE STANDARDS], available at http://www.iosco.org/docs-public/1998-intnl_disclosure_standards.html (last visited Feb. 14, 2001).

⁶ See FINAL COMMUNIQUÉ, *supra* note 4, at 4; IOSCO, A RESOLUTION OF THE PRESIDENT'S COMMITTEE ON IOSCO ENDORSEMENT OF DISCLOSURE STANDARDS TO FACILITATE CROSS-BORDER OFFERINGS AND LISTINGS BY MULTINATIONAL ISSUERS (Sept. 1998), available at <http://www.iosco.org/resolutions/resolutionsdocument18.html>.

⁷ International Disclosure Standards, Exchange Act Release No. 33-7637, 1999 WL 44076 (S.E.C.) at *9 (Feb. 2, 1999) [hereinafter Exchange Act Release No. 33-7637].

⁸ 15 U.S.C. § 78a-mm (1994).

⁹ 15 U.S.C. § 77a-ccc (1994). However, some of the new disclosure items only apply to registration statements under the Securities Act. Exchange Act Release No. 33-7637, *supra* note 7, at *10.

domestic issuers.¹⁰ For the most part, the Disclosure Standards govern non-financial disclosure; in particular, they do not determine which body of accounting or auditing principles may be used in preparation of the financial statements.¹¹

Two and one-half years after IOSCO promulgated the International Disclosure Standards, it is an appropriate time to review the status of implementation by at least a sample of member organizations. Why is IOSCO's IDS initiative important? Basically, the goal is a simple one: to allow an issuer to prepare one disclosure document that it can use for listings or capital-raising transactions wherever it chooses. Internationally acceptable disclosure standards would facilitate use of a so-called "international passport" for securities offerings and listings. True, convergence in disclosure standards has to some extent already occurred through market forces.¹² The international regulatory community could simply wait for the market forces of convergence to continue, but why not take a more proactive approach to facilitate internationally acceptable standards? Of course, lack of internationally acceptable accounting standards around the world pose a more intractable problem for the development of a common prospectus for securities offerings.¹³ A common prospectus simply will not be possible until there is agreement on internationally acceptable accounting standards. Also, even with internationally acceptable express standards, some national tailoring will still be required due to administrative interpretations that will be taken by local regulators and possibly differing concepts of materiality.¹⁴ Still, express disclosure regulations are a place to start. It is important for the international regulatory community to continue to push forward toward harmonized or mutually acceptable express non-financial disclosure requirements since this is an essential component of

¹⁰ FINAL COMMUNIQUÉ, *supra* note 4, at 5.

¹¹ The Disclosure Standards do specify which financial statements must be included in the disclosure document, the periods to be covered, the age of the financial statements, and certain other financial information. INTERNATIONAL DISCLOSURE STANDARDS, *supra* note 5, at 20-23.

¹² Linda Quinn, International Regulation of Cross-Border Offerings and Listings of Securities – A Window of Opportunity, Speech to the XXIVth IOSCO Annual Conference (May 27, 1999).

¹³ See 3 HAROLD S. BLOOMENTHAL & SAMUEL WOLFF, SECURITIES AND FEDERAL CORPORATE LAW § 27:49 (2d. ed. 2000).

¹⁴ See Sara Hanks, *International Deals*, NAT'L L.J., May 1, 2000, at B6.

what ultimately may become a common prospectus for cross-border securities offerings and listings. As the SEC stated, the ability to prepare one core disclosure document "should reduce the cost of capital raising for issuers and allow them to make decisions about where to raise capital or list their securities with less concern about the costs and burdens of complying with multiple regulatory systems."¹⁵

This Article assesses the implementation of IOSCO IDSs by a sample, albeit not a scientifically drawn one, of twenty IOSCO member organizations. The Technical Committee of IOSCO published a Report on International Disclosure Standards in May 2000 ("May 2000 Report").¹⁶ The May 2000 Report only addressed organizations that were members of the Technical Committee of IOSCO. No doubt, sooner or later, possibly at the next annual meeting in the summer of 2001, IOSCO will release a further report on implementation. In the meantime, this Article attempts, unofficially of course, to update and expand upon the May 2000 Report by the Technical Committee.

At the outset, it is necessary to explain briefly why this Article gives such prominent attention to stock exchange listing provisions. In the United States, disclosure requirements generally are found in the rules of the SEC: for the most part, in Regulation S-K¹⁷ for domestic issuers and Form 20-F¹⁸ for foreign issuers. In a number of other countries around the world, it is also the case that disclosure standards are set forth by the government in rules of the securities commission. But in many jurisdictions, disclosure standards are set and enforced by the stock exchanges. In these countries, the public offering process is closely intertwined with the process of listing on the stock exchange.¹⁹ The company prepares so-called "listing particulars," which are frequently reviewed by the stock exchange. Ultimately, the listing particulars also serve as

¹⁵ Exchange Act Release No. 33-7637, *supra* note 7, at *6.

¹⁶ See TECHNICAL COMMITTEE OF IOSCO, REPORT ON IMPLEMENTATION OF INTERNATIONAL DISCLOSURE STANDARDS (May 2000), available at http://www.iosco.org/iosco.html/docs-public-2000/2000-internal_disclosure.htm.

¹⁷ 17 C.F.R. § 229.10 (2000).

¹⁸ Form 20-F, 5 Fed. Sec. L. Rep. (CCH) ¶ 29,701 (1993).

¹⁹ See, e.g., Simon Gleeson & Harold S. Bloomenthal, *The Public Offer of Securities in the United Kingdom*, 27 DENV. J. INT'L L. & POL'Y 368 (1999) (discussing the public offering process in the United Kingdom).

a prospectus for the offering. Under this framework, the governmental securities commission is somewhat removed from this process. Full disclosure typically is made at the time of a public offering when securities are listed for the first time in the country. Traditionally, regulation of public offerings of unlisted securities in these countries was less extensive than regulation of public offerings made in tandem with a listing,²⁰ and might simply involve a filing with the registrar of companies (like the Secretary of State in a state of the United States).²¹ The European Union, however, adopted the Prospectus Directive requiring EU member countries to impose minimum disclosure requirements in the case of public offerings of unlisted securities.²² Even so, this disclosure is less extensive than in the case of a listing. Contrast this practice with that of the United States, where the most extensive regulation comes in the context of public offerings: the SEC is heavily involved, and stock exchange listing is usually not a major issue as long as the company meets the listing criteria and does not have any unusual transactions or material past violations by itself or management.

2. RESPONSE OF OTHER JURISDICTIONS AND ORGANIZATIONS

As indicated above, IOSCO did not develop the Standards for the purpose of supplanting the disclosure regime applicable to domestic issuers.²³ Several jurisdictions, however, have gone beyond what IOSCO recommended and applied IDs to both foreign and domestic issuers. The Stock Exchange of Singapore, for example, amended its listing rules in March of 2000 to adopt IOSCO Disclosure Standards for both foreign *and* domestic issuers.²⁴

²⁰ For example, in Singapore, prospectus content requirements in the case of unlisted securities are governed by Section 45 of the Companies Act and the Fifth Schedule to the Companies Act, *reprinted in* FOREIGN TAX LAW, COMMERCIAL LAWS OF THE WORLD (1999).

²¹ This is still the case in the United Kingdom, for example, in the case of public offers of unlisted securities governed by the Public Offers of Securities ("POS") Regulations 1995. *See* POS Regulations, § 4(2) (1995) (U.K.).

²² *See* Council Directive No. 89/298/EEC, 1989 O.J. (L 124) 8.

²³ *See* FINAL COMMUNIQUÉ, *supra* note 4.

²⁴ *See* Stock Exchange of Singapore Limited, Listing Manual, amendments to Listing Manual (Mar. 3, 2000) [hereinafter Singapore Listing Rules]; *see also* Lee Han Shih, *SGX Revamps Listing Rules to Attract More IPOs*, BUS. TIMES (Sing.) (Mar. 4, 2000). A listing application must include a draft prospectus containing the in-

However, the Singapore Exchange modified the IOSCO Standards in several respects. For example, where the IOSCO requirements provide that five years of information should be furnished,²⁵ the issuer making an offering in Singapore may provide the required information covering only the three most recent financial years.²⁶ Singapore also added a rider specifically permitted by the IOSCO Standards²⁷ requiring disclosure of the "financial prospects" of the issuer.²⁸ Although Singapore is discussed here as an example of a jurisdiction that has implemented IDSs, its adoption of a modifier requiring issuer projections illustrates the potential for inconsistency even among jurisdictions that have adopted the IOSCO Standards.

Mexico also requires use of IDSs by both foreign and domestic companies. This position was effected by recent changes to rules of the National Banking and Securities Commission.²⁹ Argentina has adopted IDSs for foreign issuers and will extend the IOSCO Standards to Argentine issuers in about a year.³⁰ The changes were brought about by amendments to rules of the National Securities

formation required in Appendix 3(a) of the Singapore Listing Rules. See Singapore Listing Rules, *supra*, Rule 713 (3)(b). Appendix 3(a) requires the prospectus to provide the information set out in the IOSCO IDSs, which are attached as an annex to the Singapore Listing Rules. See *id.*

²⁵ See, e.g., INTERNATIONAL DISCLOSURE STANDARDS, *supra* note 5, Standard III.A, at 10-11.

²⁶ See Singapore Listing Rules, *supra* note 24, app. 3 (a)(1)(2).

²⁷ See INTERNATIONAL DISCLOSURE STANDARDS, *supra* note 5, Standard V, Introduction, at 14 ("Some countries may require a forecast or statement of the company's prospects for the current year and/or other future periods.").

²⁸ See Singapore Listing Rules, *supra* note 24, app. 3(a), ¶ 1(3)(a). Compare to the implementation of IDSs in the United States, where forward-looking information is not required. See *id.*, Form 20-F, Item 5, Instruction 3 to Item 5. The United States does require disclosure of presently known data that will have an impact on future operating results. *Id.*

²⁹ Letter from Director General de Supervisión de Mercados, Comisión Nacional Bancaria y de Valores, to Samuel Wolff (Jan. 9, 2000) (on file with author). On September 15, 2000, "the CNBV issued Rule 11-32 describing the disclosure requirements for listing of foreign companies, including a prospectus, and periodic disclosure requirements, including an annual report." *Id.* These disclosure requirements are reportedly prepared in accordance with IOSCO's Standards. *Id.* Rules 11-29 and 11-33 require domestic companies to prepare prospectuses and annual reports in accordance with IOSCO Standards. *Id.*

³⁰ E-mail from National Securities Commission of Argentina, to Samuel Wolff (Jan. 15, 2001) (on file with author).

Commission.³¹ The IOSCO Standards are mandatory for foreign issuers and are expected to be mandatory for Argentine issuers next year.³² In 1999, Italy also generally amended the rules of its securities commission, *Consob*, to conform to IDS requirements for both foreign and domestic companies.³³

The United States took a different approach to implementation of the IOSCO Standards.³⁴ The SEC adopted IDSs into U.S. law and made them applicable only to foreign issuers. Also, in the United States, IDSs are optional for foreign issuers; they may choose to follow the U.S. disclosure standards applicable to U.S. issuers although there is little reason for them to do that. Switzerland is following the approach recommended by IOSCO and adopted by the United States, namely accepting IDSs for foreign issuers, but not applying IDSs to domestic Swiss companies. The changes will be effected through amendments to the listing rules of the Swiss Exchange, expected to be effective sometime in 2001.³⁵ The French *Commission des Opérations de Bourse* ("COB") is in the process of implementing international disclosure standards by administrative revisions. On January 4, 2000, the Board of COB Commissioners ("College") favorably considered a proposal to include IDSs in a COB Guidance (Instruction).³⁶ The proposal is being published for industry comment, and it is expected that the proposal will be adopted in 2001.³⁷ Presumably, the COB Guidance (Instruction) that will implement the IDSs will be a modifica-

³¹ Modificación del Capítulo VII de las Normas (N.T. 1997) Prospecto, Resolución General No. 350/2000, Boletín Oficial No. 29392 (May 5, 2000).

³² It is anticipated that the IOSCO Standards, as applied to domestic issuers in Argentina will contain a modification relating to consolidation of financial statements. E-mail from National Securities Commission of Argentina, to Samuel Wolff (Jan. 16, 2001) (on file with author).

³³ Giuseppe Scassellati-Sforzolini & Pietro Fioruzzi, *Italy: The New Regulation on Investment Solicitation*, INT'L FIN. L. REV. 35 (Supp. Apr. 1998).

³⁴ See generally BLOOMENTHAL & WOLFF, INTERNATIONAL CAPITAL MARKETS AND SECURITIES REGULATION, *supra* note 1, §§ 5.05[1] & [2].

³⁵ Letter from SWX Swiss Exchange, to Samuel Wolff (Nov. 29, 2000) (on file with author). The listing rules of the Swiss Exchange may be found at http://www.swx.com/admission/oz_reglement_e.pdf. See also BLOOMENTHAL & WOLFF, INTERNATIONAL CAPITAL MARKETS AND SECURITIES REGULATION, *supra* note 1, at App. SW 1-1.

³⁶ E-mail from International Relations Division, COB, to Samuel Wolff (Jan. 24, 2001) (on file with author).

³⁷ *Id.*

tion to COB Regulation 98-01, which sets forth disclosure standards for a listing.³⁸ The May 2000 IOSCO Report states that the Spanish rule effected changes which permit optional use of IDS by foreign issuers.³⁹

The United Kingdom has taken a slightly different approach. The U.K.'s approach to implementation was taken by the U.K. Listing Authority, which is a Division of the Financial Services Authority ("FSA"). The FSA was appointed as the "competent authority" in the United Kingdom (and for purposes of EU law) to decide on the admission of securities to the Official List that would become effective May 1, 2000.⁴⁰ The FSA is a governmental agency

³⁸ Reglement COB N 98-01, available at Soficom, <http://www.soficom.fr> (last visited Feb. 14, 2001). The Regulation was published in the Journal Officiel de la République Française on March 2, 2000. See *France: New Regulations on Public Offerings, Disclosure Requirements Issued by COB*, WORLD SEC. L. REP. 8 (2000). Regulation 98-01 covers all the regulated markets except the *Nouveau Marche*, which is covered by Regulation 95-01. *Id.* The *Service des Relations Publiques* of the COB indicates that Regulation 98-01 has not been translated into English. This was confirmed by Société Financière de Communication ("Soficom"), a commercial purveyor of French legal materials. See Soficom, at <http://www.soficom.fr/> (last visited Feb. 14, 2001). Perhaps as a matter of national pride, France seems to have translated fewer of its securities regulations than the other leading financial centers. One of the innovations of COB Regulation 98-01 was that it allowed foreign issuers to prepare a prospectus in English, if accompanied by a French summary. *France: New Regulations on Public Offerings, Disclosure Requirements Issued by COB, supra*. On December 20, 2000, France's highest administrative court, *Le Conseil d'Etat*, invalidated this provision. *French Court Overturns COB Rules, Holds Prospectuses Must Be in French*, SEC. REG. & L. REP. (BNA) 90 (Jan. 22, 2001). The *Conseil d'Etat* determined that "'a prospectus presenting a public offer or a financial product in a market covered by the French language should be written in French.'" *Id.*

³⁹ See TECHNICAL COMMITTEE OF IOSCO, *supra* note 16. Rules of the Comisión Nacional del Mercado de Valores may be found in Spanish at <http://www.cnmv.es>.

⁴⁰ The appointment was made under the Official Listing of Securities (Change of Competent Authority) Regulations 2000. See Official Listing of Securities (Change in Competent Authority) Regulations, (2000) SI 2000/968 (U.K.). The FSA retained this responsibility under the recently enacted Financial Services and Markets Act 2000. See Financial Services and Markets Act, 2000, c. 8 (U.K.). Under the Financial Services and Markets Act 2000, the FSA also authorizes and regulates banks, brokers, fund managers, derivatives traders, insurance companies and others, making it perhaps the most powerful financial markets regulator in the world. See *id.*

The FSA serves as the "competent authority" for purposes of the EU prospectus and listing directives. See, e.g., Council Directive 79/279/EEC, Coordinating the Conditions for the Admission of Securities to Official Stock Exchange Listing, § II, art. 9, 1979 O.J. (L 66) 21; Council Directive 80/390/EEC, Coordinat-

in the United Kingdom, the successor to the Securities and Investments Board.⁴¹ In any event, the FSA amended its listing rules to *exempt* foreign issuers complying with the IOSCO Standards from *certain* disclosure provisions of the FSA rules.⁴² However, a company complying with IDSs would nonetheless still be required to furnish listing particulars prepared in accordance with the remaining provisions of the FSA's Listing Rules. There are areas of overlap between the U.K. Listing Rules and the IOSCO Standards, but there are also differences. For example, under the IDSs, the company must disclose persons who beneficially own 5% or more of the company's voting shares.⁴³ However, the U.K. sets this threshold at 3% where the issuer has this information.⁴⁴

In the case of a company making a public offering in the U.K. *not* in tandem with a listing, disclosure is not governed by the FSA listing rules, but by a separate regulation issued by HM Treasury, the Public Offers of Securities Regulations ("POS Regulations").⁴⁵ Prior to adoption of the POS Regulations, public offers of securities that were not to be listed were governed by the prospectus provi-

ing the Requirements for the Drawing Up, Scrutiny and Distribution of the Listing Particulars to be Published for the Admission of Securities to Official Stock Exchange Listing, § I, art. 6, 1980 O.J. (L 100) 1. Note that there is a proposal in the EU for the combination of all of the various listing directives into one master directive. See Proposal for a Directive of the European Parliament and of the Council on the Admission of Securities to Official Stock Exchange Listing and on Information to be Published on Those Securities, COM(00)126 final, available at http://europa.eu.int/eurlex/en/com/dat/2000/en_500PCØ126.html (last visited Feb. 14, 2001).

⁴¹ Historically, disclosure standards in the United Kingdom were primarily set and enforced by the London Stock Exchange. See Official Listing of Securities (Change of Competent Authority) Regulations, (1991) SI 1991/2000. As indicated, this function was transferred to the FSA.

⁴² FSA, LISTING RULES, App. 1 to Ch. 5, ¶ 12 [hereinafter FSA, LISTING RULES]. "Where listing particulars have been prepared in connection with an issue of equity securities to IOSCO International Disclosure Standards, the information required by the following paragraphs of Chapter 6 may be omitted: 6.B.1, 6.B.3, 6.B.23, 6.B.25, 6.B.21, 6.E.14, 6.F.10 and 6.F.11." *Id.*

⁴³ INTERNATIONAL DISCLOSURE STANDARDS, *supra* note 5, § VIII.A.

⁴⁴ FSA, LISTING RULES, *supra* note 42, Rule 6.C.16.

⁴⁵ The Public Offers of Securities Regulations (1995) SI 1995/1537. See BLOOMENTHAL & WOLFF, INTERNATIONAL CAPITAL MARKETS AND SECURITIES REGULATION, *supra* note 1, § 6.05; Gleeson & Bloomenthal, *supra* note 19. It is possible that the POS Regulations will be amended as the Financial Services and Markets Act, passed by Parliament on June 12, 2000, is brought into force, but as of January 2001, the POS Regulations remain in effect.

sions of the Companies Act.⁴⁶ The POS Regulations were designed to implement the Prospectus Directive of the EU⁴⁷ which establishes minimum standards for prospectuses to be used in public offerings of securities that will not be listed on an exchange.⁴⁸ Although there may be some overlap between the disclosure regime of the POS Regulations and IDSs, a prospectus subject to the requirements of the POS Regulations is required to comply with the disclosure standards set out therein and does not receive any special treatment if it also complies with IDSs.⁴⁹ While it is likely that a prospectus prepared in accordance with IDSs would for the most part satisfy the disclosure requirements of the POS Regulations, from the standpoint of international regulatory harmony, it would be preferable if the POS Regulations were amended to implement the IOSCO Standards for foreign issuers. Since the POS Regulations were not promulgated by an IOSCO member, however, but rather by HM Treasury, it is unlikely that they will be changed in this regard, at least in the foreseeable future. Even if the POS Regulations are amended to refer to the IOSCO Standards, it is unlikely they would incorporate IDS to any greater extent than do the listing rules of the FSA.⁵⁰

Another category of jurisdictions includes IOSCO members that have not specifically amended their rules in response to the IOSCO initiative, but who have taken the position that a disclosure document complying with IDSs would generally comply with national laws or rules due to substantial equivalence between IDSs and the local disclosure regime.⁵¹ Germany, for example, has not amended its disclosure provisions to reference IDSs.⁵² However,

⁴⁶ Gleeson & Bloomenthal, *supra* note 19, § 6.03[1]. Schedule 3 to the Companies Act was repealed concurrently with adoption of the POS Regulations. The Public Offers of Securities Regulations (1995) SI 1995/1537, pt. IV, § 21.

⁴⁷ Gleeson & Bloomenthal, *supra* note 19, § 6.05.

⁴⁸ BLOOMENTHAL & WOLFF, *supra* note 1, § 9A.02[2]. The disclosures indirectly required by the Prospectus Directive in the case of public offerings not in tandem with a listing are not sufficient to entitle the issuer to the mutual recognition provisions of the EU.

⁴⁹ Letter from Head of Policy & Compliance, U.K. Listing Authority, to Samuel Wolff (Dec. 7, 2000) (on file with author).

⁵⁰ See FSA, LISTING RULES, *supra* note 42.

⁵¹ See TECHNICAL COMMITTEE OF IOSCO, *supra* note 16.

⁵² See Letter from Head of the Division for Int'l Affairs, Bundesaufsichtsamt Für Den Wertpapierhandel ("BAWe"), to Samuel Wolff (Nov. 30, 2000) (on file

Germany's Federal Securities Trading Supervisory Authority ("BAWe") has informally stated that since German disclosure requirements do not exceed the requirements set forth by IDs, a prospectus complying with IDs generally should suffice as a listing document in Germany.⁵³

In Luxembourg, neither the Surveillance Commission of the Financial Sector nor the Luxembourg Stock Exchange has implemented IDs, though the Surveillance Commission indicates that it may permit the use of IDs on a discretionary basis.⁵⁴ Japan also will accept disclosure documents prepared in accordance with IDs pursuant to its discretionary authority,⁵⁵ due to the substantial equivalence between IDs and Japanese requirements.⁵⁶ However, the prospectus must be translated into Japanese and also must conform to the proper Japanese form. The Financial Services Agency in Japan has not promulgated any rules specifically adopting the IDs for foreign or domestic issuers.⁵⁷

In Australia, prospectus disclosure is governed primarily by the Corporations Law.⁵⁸ Neither the Australian Securities and Investment Commission nor the Australian Stock Exchange has pub-

with author); E-mail from Division of Int'l Affairs, BAWe, to Samuel Wolff (Dec. 5, 2000) (on file with author) [hereinafter E-mail from Division of Int'l Affairs].

⁵³ See E-mail from Division of Int'l Affairs, *supra* note 52.

⁵⁴ See Letter from Commission de Surveillance du Secteur Financier, to Samuel Wolff (Jan. 10, 2001) (on file with author). The listing rules of the Luxembourg Stock Exchange may be found at <http://www.bourse.lu/english/services/textes/index.html>. Information in French concerning the Surveillance Commission can be found at <http://www.cssf.lu/fr/index.html>.

⁵⁵ See TECHNICAL COMMITTEE OF IOSCO, *supra* note 16.

⁵⁶ For listing requirements in Japan, see BLOOMENTAL & WOLFF, INTERNATIONAL CAPITAL MARKETS AND SECURITIES REGULATION, *supra* note 1, JA 3-1, 4-1 (2000).

⁵⁷ The Financial Services Agency is a regulatory body that was created in Japan in 2000 through the merger of the Financial Supervisory Agency and the Financial Planning Bureau of the Ministry of Finance. See *New Regulator Established to Oversee Financial Services*, WORLD SEC. L. REP. 3 (July 2000).

⁵⁸ The Australian Securities and Investments Commission ("ASIC") interprets and enforces the Corporations Law. In order to list securities on the Australian Stock Exchange ("ASX"), a prospectus must be filed with ASIC and the Exchange. If the ASX agrees, the issuer may file an information memorandum instead of a prospectus. See ASX Listing Rules, 11.1, Condition 3, available at <http://www.asx.com.au/listingrules/chapters/ch01.shtm> (last modified Aug. 7, 2000); see also ASC Policy Statement 72, *Foreign Securities Prospectus Relief*, <http://www.cpd.com.au/asic/ps> (updated Aug. 4, 1997).

lished any documents suggesting that they have adopted IDSs. Nonetheless, Australia apparently informed IOSCO that it would permit foreign issuers to use IDSs when offering securities and listing in Australia.⁵⁹ In Hong Kong, disclosure requirements for foreign issuers accessing the market are governed by the Companies Ordinance⁶⁰ and the Listing Rules of the Stock Exchange of Hong Kong.⁶¹ Although the Listing Rules do contain special provisions applicable to foreign issuers and provide for the omission of information in certain cases,⁶² neither such rules nor the Third Schedule to the Companies Ordinance contain any reference to the IOSCO Standards. Yet, Hong Kong apparently informed IOSCO that it would permit foreign issuers to use IDSs through its discretionary authority.⁶³

The May 2000 IOSCO Report states that Belgium and the Netherlands would permit, either through discretionary authority or other means, foreign issuers to use IDSs. Subsequent to the May 2000 Report, the Brussels Exchanges, the Amsterdam Exchanges, and the Paris Bourse merged to form a combined exchange, Euronext.⁶⁴ The combined exchange has three financial centers and, at

⁵⁹ See Report on Implementation of International Disclosure Standards, *supra* note 16.

⁶⁰ See HONG KONG, D.R.C., COMPANIES ORDINANCE, ch. 32, sched. 3, available at <http://www.justice.gov.hk/blis.nsf/> (last visited June 30, 1999).

⁶¹ See Growth Enterprise Market ("GEM") Listing Rules, http://www.hkgem.com/listingrules/e_default.htm (updated Sept. 2000). For further information concerning listing on the Main Board of the Hong Kong Stock Exchange, see Exchange Listings and Listed Companies at <http://www.hkex.com.hk/list-edco/listing/listing.htm> (last visited Feb. 14, 2001). For a comparison of listing requirements of the Main Board and the GEM in Hong Kong, see *Comparison of the Salient Features of the Listing Rules of the GEM and the Main Board*, at http://www.hkgem.com/listingrules/features/e_main.htm (last visited Feb. 14, 2001).

⁶² See Exchange Listings and Listed Companies, *supra* note 61, § 19.09

⁶³ See TECHNICAL COMMITTEE OF IOSCO, *supra* note 16.

⁶⁴ See *Euronext Comprehensive Paper*, available at http://www.euronext.com/en/euronextinfo/publications/comprehensive_paper (last visited Feb. 14, 2001). Euronext is incorporated in the Netherlands. In the merger, each of the three participating exchanges contributed all of its assets, with the result that the Paris Bourse represents two-thirds of Euronext's market capitalization. The clearing of transactions will take place under French jurisdiction. Euronext is a single integrated trading platform for all listed securities that can be accessed through each financial center in Amsterdam, Brussels, or Paris. Ultimately, "[t]his means that brokers who have been granted membership of one Euronext entry points will have access to all products traded on the market." *Id.* Despite the three financial

present, the listing process is handled separately through the three financial centers based upon their separate standards.⁶⁵ Ultimately, the listing criteria for entry into the market through the three gateways will be harmonized.⁶⁶ Hopefully, when Euronext publishes new listing rules for the combined exchange, expected in April or May 2001, it will adopt the IOSCO Standards for foreign issuers. In the meantime, Euronext Amsterdam NV (formerly the Amsterdam Stock Exchange) recently promulgated amendments to its listing rules.⁶⁷ The new rules only represent rules of Euronext Amsterdam that had been in progress, and do not represent new listing rules of the combined exchange, which will be published later. The new rules do not appear to reference the IOSCO standards and the extent to which Euronext Amsterdam took the IOSCO Standards into account in formulating its rules is unclear.

The Johannesburg Stock Exchange amended its listing rules effective October 2000 and the rules, quoting from the Preface, "have been aligned with international best practice."⁶⁸ It is not clear whether this reference is to IOSCO Standards. The new rules are only partially consistent with the IOSCO rules. They do not mention the IOSCO rules, but do give the Listing Committee authority to permit the omission of certain information by foreign issuers.⁶⁹

The Israel Securities Authority has not implemented the IOSCO Standards.⁷⁰ In addition, neither the Ontario Securities Commission nor the Toronto Stock Exchange implemented IDSs. Inbound offerings and listings by foreign issuers are currently not permitted

centers, there is a single membership, a single rulebook, and a single clearing system for the resulting exchange. Each exchange retains separate primary listing services and separate national licenses, although ultimately, listing conditions and requirements will be harmonized. The merger occurred in September 2000. *Id.*

⁶⁵ *See id.*

⁶⁶ *Id.*

⁶⁷ For a general discussion of the prospectus content requirements, see Euronext Announcement 2000, 167, para. 3, at <http://www.aex.nl/scripts/nieuws/nwsbericht.asp?taal=en&nieuwstype=5&artnr=53263> (last visited Feb. 14, 2001).

⁶⁸ Listing Rules of the Johannesburg Stock Exchange, available at <http://www.jse.co.za> (last visited Feb. 14, 2001).

⁶⁹ Listing Rule of the Johannesburg Stock Exchange, ¶ 18.12, available at <http://www.jse.co.za>.

⁷⁰ Letter from Attorney, Israel Securities Authority, to Samuel Wolff (Dec. 20, 2000) (on file with author).

in India, and "[t]herefore the question of IDSs does not arise."⁷¹ Nonetheless, India would accept IDSs to the extent they are "in consonance with the prevailing provisions of applicable Indian Laws, regulations/rules, guidelines."⁷² Similarly, the Securities and Futures Commission in Taiwan has not yet adopted the IOSCO Standards into Taiwanese law for foreign issuers or otherwise.

3. CONCLUSION

A review of the actions taken or not taken by even a small subset of the IOSCO membership allows us to make several observations. The United States clearly took the lead in its early, unequivocal and forceful adoption of the IOSCO Standards for foreign issuers.⁷³ A few other jurisdictions took similar action, including Singapore, Italy, Mexico, and Argentina. These four jurisdictions actually went beyond the IOSCO recommendations and adopted IDSs, with some modifications, into the national framework for *domestic* issuers. Although several other IOSCO members have changed their rules to adopt the IOSCO Standards for foreign issuers, most IOSCO members surveyed as described herein have not implemented the IOSCO Standards by rule amendment. There may be increasing convergence among national disclosure standards, but there is not a trend toward clear, formal and speedy adoption of the IOSCO Standards.

While a number of jurisdictions reported to IOSCO that they would accept IDS through their discretionary authority, there is often no clear evidence in their listing or disclosure rules that they have formalized their positions. Indeed, market participants would not even know of such positions if they were not familiar with the somewhat obscure May 2000 Report. Thus, the record so far, two and one-half years after promulgation of the IOSCO Standards, is mixed at best. It is true that many of the listing and prospectus disclosure rules around the world are similar. But they are by no means identical, as they are usually worded very differently; they cover subjects in somewhat different ways, and sometimes for

⁷¹ Letter from Division Chief, Primary Market Department, Securities and Exchange Board of India, to Samuel Wolff (Jan. 18, 2001) (on file with author).

⁷² *Id.*

⁷³ See BLOOMENTHAL & WOLFF, *supra* note 13, § 27:183.1.

different time periods. There is also the issue of private civil liability, if a securities offering is made on the basis of disclosure documents that do not comply with local disclosure requirements. While some progress has been made toward the implementation of International Disclosure Standards, the move toward implementation has probably been slower than IOSCO contemplated. There is still a hodge-podge of prospectus and listing rules which foreign issuers have to sort through as before on a country-by-country basis to determine applicable disclosure standards. More often than not there is no reference at all to the IOSCO Standards. The international regulatory community should move more quickly, directly, and clearly to adopt the IOSCO Standards for cross-border offerings and listings by foreign issuers. Even though an "international passport" to world capital markets cannot be realized until the problem of international accounting standards has been resolved, acceptance of IOSCO's non-financial standards will bring us one step closer to the ultimate objective.

* * * * *