

SECURITY LAWS AND OTHER OBSTACLES TO
INTERNATIONAL COOPERATION

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MR. MUNDHEIM: Fortunately we have some regulators on the panel, and while they are not representing official positions of the regulatory bodies with which they are associated, I think it would be useful to get their reactions to the proposal which has just been made. I might start with Peter Lee. How do you react?

1. A BRITISH POINT OF VIEW

MR. LEE: Just to demonstrate the commonality that already exists, let me say at the outset, in good SEC tradition, that any views expressed are mine alone.

I believe that Harold Williams' and Lee Spencer's proposal for greater liaison and understanding between the regulatory authorities of the world is one that should be seriously considered. Harmonization is probably not an easy objective; however, we should become more aware of each other's problems so that even though we may have very different systems, we can avoid conflicts between our systems and also avoid malpractices falling between two regulatory stools. We can also help each other to discover relevant information and perhaps--although I think this is much more difficult--consider cooperation in the enforcement field.

A. Discovering Beneficial Owners

In my allotted span of seven hundred and fifty seconds, I want to discuss two topics from a U.K. perspective: first, a discovery problem and, second, the extraterritorial reach problem. In recent years there has developed a growing concern in various quarters in the U.K. about the difficulty of discovering the identity of the true or ultimate owner of shares in a U.K. company, particularly where the registered holder is a foreign entity. This concern, which has grown since the abolition of exchange control in Autumn 1979, is shared by regulatory authorities and public companies alike.

The problem exists within both our statutory and our self-regulatory systems. Pursuant to Section 27 of our 1976 Companies Act, any company listed on the Stock Exchange may require the registered holder of shares to disclose, if it lies within his knowledge, the name of the beneficial owner. Where the shares are held in the name of a company, an answer that the company holds the shares beneficially may be literally true and satisfies the statutory requirement; but the answer may be totally uninformative. What the company whose shares are so held requires to know is, who is the owner of the shares or, at least, who controls the intermediate company that is registered as the shareowner?

In the self-regulatory area, the Take-over Panel has a rule, Rule 34, which requires an offer to be made for the whole company if thirty percent of the voting rights are acquired by one person or a group of persons acting in concert. The Panel may have some difficulty in establishing the existence of such a holding if the shares are registered in the names of foreign companies. It may not be easy to discover the name of the ultimate owner, thus perhaps preventing all the necessary inquiries to establish whether or not there exists a group of people acting in concert holding thirty percent or more.

If the intermediate company in question is a U.K. company, it will probably be reasonably easy to discover the ultimate ownership of that company, assuming of course that the trail does not lead to a foreign company. But the chances of making any headway if it is a foreign intermediate company--whether of Panama, Hong Kong, Lichtenstein, or wherever--are about zero. I have no ready solution to this problem and would be glad of suggestions. I do not believe it can ever be fully conquered, whatever requirements all nations introduce; for, what can be done where the intermediate company has bearer shares or is controlled by a blind or discretionary trust?

Self-help by U.K. companies may be an answer. They might include in their articles of association express powers to disenfranchise from voting rights any shares held by intermediaries or others where the ultimate ownership was concealed. The Commission des Operations de Bourse requirement in takeovers that the identity of the ultimate purchaser be disclosed suggests other avenues; but I do not think that even the COB, for which I have great respect, would ever be told more than the name of the intermediate or shell company. The difficulties I have described are equally applicable to the investigation of insider dealing; but Marie-Claude Robert will describe the French experience in that field, which is similar to that of the United Kingdom. Of course, assuming that a wrong is discovered--and discovery is the point I have been trying to emphasize just now--assuming a wrong is discovered, a much larger and more difficult area is that of enforcing domestic requirements against a foreigner. But I am glad to say that in general the Panel has had no major difficulty in this field.

B. Extraterritorial Reach

My second and final topic concerns the impact that foreign requirements may have on the domestic transactions of another country. If a U.K. company bids in shares for a U.K. target company, that offer cannot be extended, as we heard from Lee Spencer earlier, to any U.S. shareholders in the target company unless the offeror's securities are registered with the SEC. It seems to me unfortunate that U.S. shareholders are prevented from receiving the same offer as, for example, U.K. shareholders in the same company, just because the offeror's securities are not registered in the U.S.

In trying to protect U.S. shareholders in this way, the SEC may end up depriving them of an offer. Is such protection really necessary? If a U.S. citizen holds securities in a foreign company, could he not be taken, should he not be taken, to accept that the requirements of that foreign jurisdiction are his sole protection? Certain SEC proposals of the 29th of November 1979 [1], went a lot further. One result of those proposals, if I understand them right,

would be that tender offers made for shares of foreign issuers outside the U.S. would violate U.S. law unless U.S. shareholders received the same offer after compliance with U.S. tender offer rules. Now, we have just seen that the same offer would not be permitted if it were a share offer and the offeror did not register its securities with the SEC. Hence, if an offeror were not prepared to break U.S. law--a reasonable stance to take--the proposed provision could have the effect of inhibiting, for example, one U.K. company from bidding for another U.K. company if the offeror were unable to make the same offer to the U.S. shareholders. This does seem to me an Alice-in-Wonderland result. I do believe that regulatory authorities should be hesitant--and when I use the word hesitant, I am being euphemistic--about implementing provisions that have an impact on transactions that have only a tenuous connection with that state.

The Take-over Panel would not attempt to regulate any tender offer made for, say, General Motors, even though General Motors has a listing on the London Stock Exchange and a number of U.K. shareholders. I believe the tail should not be allowed to wag the dog, on whichever side of the Atlantic the dog happens to be.

MR. MUNDHEIM: I take it, Peter, that you are saying that with respect to takeovers, the law of the target company ought to apply, in terms of defining the rules with which the offeror must comply?

MR. LEE: That is right, Bob. Obviously there are going to be gray areas where it is difficult to decide with which country certain targets are principally connected.

MR. MUNDHEIM: And you would look at the appropriate law as being not necessarily the law of incorporation, but the place where the principal office and the principal business is carried on?

MR. LEE: That is right. We would take the view that if it were a U.K. company, then U.K. provisions would apply. I believe we would also take the view that if it were registered elsewhere for purely tax reasons, perhaps, but its central office and its management were in the U.K., then I think we would feel it was a U.K. company.

MR. MUNDHEIM: Lee Spencer, if I heard the rumble in the audience correctly, I have the impression that Peter Lee's proposal is viewed as a very sensible one. Is it one that the Commission could accept?

MR. SPENCER: Something along those lines--I would hate to be either the tail or the dog. Choosing the side of the dog for a moment, let me say that perhaps our bark was worse than our bite will be. The proposal was quite broad and, without doubt, the Commission had left the comment period for rationalizing what is a difficult area. It appreciated the comment it received, and I think there is little, if any, chance that proposed Rule 14e-4 will be adopted in that form. Whether or not the particular modification that Peter Lee suggested would be the right modification is a matter of conjecture. An alternative would be to consider maintaining the status quo, which avoids the conflict but may not be perfect. This alternative would be to say that so long as an offer is not made to any U.S. shareholder, then our rules do not apply. That is the way it works

now. The result--which is not perfect--is that, again, U.S. shareholders are excluded from the offer. There are ways and means they can dispose of their shares, for example, abroad; but there are still transaction costs and accessibility questions.

Peter Lee said, in effect, that if you are a shareholder of a foreign corporation you should know that different rules of the game apply. There is a healthy argument to that effect. One difficulty I would point out is: where do you draw the line? For example, think of the buyers of foreign securities in a public offering. Could you not say that they know it is a foreign issuer; and therefore, all that prospectus disclosure presently required is not really warranted? The result would be that U.S. companies would be filing competitively sensitive information but their foreign competition would not. That may not be an entirely happy policy result. There is a substantial degree of merit in what Peter Lee said, but I am not sure that his solutions are exactly the right ones.

MR. MUNDHEIM: Perhaps Peter would argue that his theory for tender offers need not necessarily be applied to all transactions in a company's stock. Where there is an active trading market in a stock, the jurisdiction in which that market exists might appropriately set rules for required disclosure to maintain the integrity of that market. Similarly, where there is an effort to sell investors on buying a security, those investors can be protected by the jurisdiction in which they are located. But in a tender offer the investors in the target company know that they have their money in an enterprise which is protected only by U.K. law and not by the more stringent U.S. regulation.

The other point that Peter raised is relevant to insider trading. The COB has had some experience in trying to deal with insider trading which originated outside France. Claudie, I thought you might guide us through some of that experience.

2. A FRENCH POINT OF VIEW

MME ROBERT*: The internationalization of the market is an important fact in France: one hundred sixty-three foreign companies are listed on the French stock exchanges and twenty-six French companies are listed on a foreign stock exchange [2]. The value of foreign purchases of French shares was roughly \$1 billion in 1979, and French purchases of foreign shares amounted to \$3.2 billion [3]. This explains the interest of the French stock exchange authorities, the Commission des Operations de Bourse (COB) [4], in two main issues: (1) how to maintain adequate supervision of the market and control the solicitation of French investors, and (2) how to assure equal treatment of French shareholders as far as disclosure by foreign companies is concerned.

When the COB accepts the securities of a foreign company for listing on the stock exchange, it watches to see that French shareholders will be given the same rights and opportunities as the shareholders of the home country, and at the same time. Generally, the exercise of their rights by the shareholders depends on the thorough and rapid circulation of information.

*The views expressed in this article are the personal ones of the author.

The second issue is related to the effective supervision of the market and, more specifically, to the question of insider trading. The COB can generally detect insider trading by watching the market; but it cannot trace the name of the seller or of the buyer when an order has been given from a foreign country by a foreign bank. There are also difficulties arising from the dissemination of illegal offerings from foreign countries.

The solution to these two problems presupposes cooperation among the supervisory authorities of the different stock exchanges, and mutual confidence in their efficiency. This cooperation, however, meets with obstacles. Some of these are technical, and the experience of the COB shows they can be solved; but some of them are more political, and the solutions have to be found in international agreements and changes in national laws.

I shall start with the greatest deterrent to effective supervision of the market: secrecy laws. Later I shall talk about other problems that are more technical, the solutions reached, and the directions followed by the COB in connection with international cooperation.

A. Secrecy Laws as an Obstacle to Effective Supervision

The secrecy problem has two aspects: the COB, watching the market, faces the barrier of secrecy laws in foreign countries, but it also faces the problem of French secrecy laws as an obstacle to international cooperation.

(i) COB experience with secrecy laws in foreign countries

In France, insider trading has been a criminal offense since December 23, 1970 [5]. During the past ten years, the COB has undertaken about 250 investigations in which major buyers have been identified [6]. In about forty of these investigations orders coming from a foreign country have been considered questionable. The country involved has mainly been Switzerland.

It is important to understand why it is essential for the COB to know the name of a seller or buyer before sending evidence to the Attorney General. The explanation lies in the phrase used to define the offense under the law. A person who has committed an offense is supposed to have received the unpublished, price-sensitive information through his "function or profession." The Commission has to demonstrate a connection between the person and the company whose securities are involved in the transaction. Even though foreign orders are not numerous, the Commission is concerned that if they should increase, they could interfere with the smooth functioning of the market.

The COB has been in touch with the Director General of the Banker's Association of Switzerland in Basle since 1972. He has been informed of all orders that could be considered insider transactions. Since 1975, the Commission has not only informed the Banker's Association of Switzerland of the relevant facts, but it has also directly notified the Swiss banks that are involved. Generally, if the identity of the customer is not revealed, the banks concerned make their own inquiry and give their opinion to the Commission. They are anxious to protect the reputation of their establishments and wish to avoid serving customers who violate French law. The development of an understanding between the Commission and banking organizations in Switzerland is considered a positive step.

With regard to stock market orders coming from other countries, the Commission has received active cooperation from the Take-over Panel in London and from the Belgian Banking Commission. In recent cases, the actions of these two organizations--as well as the actions of the banks that had transmitted the orders--were based on the recommendations of the European Community Commission of July 25, 1977 [7], which dealt with transactions in transferable securities. One of the main provisions stated that any person who, while pursuing his profession or carrying out his duties, comes into possession of information that is not public and that relates to a company, or to the market in its securities, or to any event that is of general interest to the market and is price-sensitive, should refrain from engaging in any transaction where such information is used and should refrain from giving this information to another person so that he may profit from it before it becomes public.

The actions of the Panel and the Belgian Commission, however, were limited to urgent requests to the organizations involved, but none of them would reveal the names of their customers. These experiences demonstrate that without conventions among the countries, efficient cooperation among supervisory authorities is very difficult to achieve.

The secrecy problem leads to the adoption of measures to prevent orders from coming from a foreign country when a buyer or seller declines in advance to reveal its identity. This solution has been adopted in the French regulation on takeover bids and exchange offers [8]. The rule requires disclosure of significant market transactions during the period of the takeover bid. Every day after the close of the Exchange, the companies involved in the bid, directors and shareholders who hold more than five percent of its stock, and all persons or companies acting in concert must inform the authorities of any purchase or sale of shares of the target company (and of the offeror, if it is an offer for exchange). These transactions are published in the Stock Exchange official bulletin. In 1978, the same obligation to disclose information was extended to any person who had directly acquired as little as 0.5 percent of the shares of the target company since the beginning of the takeover bid [9].

At the same time, rules were established to prevent buyers from maintaining anonymity by using a foreign agent [10]. The various agents who are involved in the transmission of a purchase order during the tender offer must agree to disclose to the Commission, if asked, the identity of the person they are acting for. If they are not acting for their own account, they must first advise the buyer that the transmission of a buying order creates a commitment to follow the established rules and, in consequence, the buyer's identity will be disclosed to the Commission, if requested. The application of these rules is considered satisfactory for the present time. During the period of the tender offer the Commission is able to identify rapidly the persons engaging in transactions, and only those prepared to be identified can trade.

The idea of extending this procedure to everyone on a permanent basis is most inviting. The regulations could be applied to all orders coming from a foreign country; but, of course, the measure is opposed by market intermediaries who execute orders for foreign investors. A procedure of this kind would probably be acceptable only if all the major stock exchanges and regulatory authorities were ready to act in concert.

(ii) *The new French secrecy provisions*

In spite of the desire of the COB to help foreign authorities and the belief that this help is part of the effective supervision of its own market, there have previously been two main obstacles to such help: French bank secrecy laws and the limited investigative powers of the Commission. Moreover, on July 11, 1980, a new law [11] was adopted by the French Parliament that is going to make cooperation even more difficult for the COB.

Banks assume they are bound by section 378 of the Criminal Code [12], which imposes penalties on any person who receives secret information by reason of his position or profession and transmits such information to others. There is no clear court decision on the matter, but some recent decisions seem to imply that section 378 could be applied to bankers. In addition, section 19 of the law of December 2, 1945 [13], states that any officer or employee of a national bank, or any person having to supervise a national or a private bank, is bound by professional secrecy; that is, bound by section 378.

In case of a violation of the secrecy law, a bank is civilly liable, and an employee is criminally and civilly liable. There are some exceptions to the secrecy requirement: a banker cannot refuse to give testimony in civil or criminal proceedings, and he cannot refuse to disclose information if asked by the banking commission [14] or the COB [15]. The power of the COB to require disclosure of professional secrets by bankers or brokers is limited, however, to situations involving registered companies.

Frequently, when a foreign organization has asked the Commission for assistance, it has not been able to oblige because the transactions were in non-public companies and, consequently, cooperation depended on the attitude of the bank involved. The COB received requests for aid several times from the SEC, and it was able to help in most of the cases, but not in all of them.

In cases involving manipulations on the Montreal Stock Exchange, the COB participated actively in the investigations by gathering evidence from French investors who had bought the Canadian shares. When the representatives of the Commission des Valeurs Mobilières du Québec went to Paris, they were given the opportunity of hearing the witnesses in the Canadian embassy in Paris. This could easily be done because the French investors were interested in the proceeding. Now, however--and, in my view, unfortunately--even the types of cooperation given to the SEC may no longer be possible because of the new law adopted in July 1980 [16].

The new law promulgated in July 1980 provides that

a) Without prejudice to international treaties or agreements, a natural person of French nationality or customarily residing on French territory, or director, representative, agent or official of an artificial person with headquarters or an establishment on French territory, shall not communicate in writing, orally, or in any other form, regardless of place, to the public authorities of another country documents or information of an economic, commercial, industrial, financial or technical nature where such communication is likely to threaten France's sovereignty, security or basic economic interests or the public order, as defined by the administering authority when necessary.

b) Without prejudice to international treaties and agreements or to current laws and regulations, a person shall not ask for, seek, or communicate in writing, orally, or in any other form, documents or information of an economic

commercial, industrial, financial or technical nature that may constitute proof with respect to legal or administrative proceedings in another country or in the framework of such proceedings. [17]

These provisions were adopted without consulting the Commission, and their primary aim was to protect the maritime trade. The particular event that gave rise to this law was the American Federal Trade Commission's investigation of several foreign companies, with resulting administrative sanctions. One French company was involved [18]. After a discussion in the Senate, the law was extended to cover all means of transport, and then, to all economic and financial matters. In the first drafts, only companies or private individuals, as distinguished from administrative agencies, were regulated; but then control was extended to all persons and agencies [19].

The members of Parliament did not consider the position of the COB, which has, following the example of the American agencies, investigative powers nearly as strong as the judicial authorities. Parliament just gave thought to the normal investigative powers of the judiciary, which can be exercised according to the convention of The Hague [20] or any bilateral agreement for judicial help [21]. Since the passage of this law, the Commission is completely paralyzed and cannot participate in an international investigation--even a European one under the Code of Conduct.

There are now two problems to be settled instead of one:

(1) the Commission would like to have a specific exemption from the law of July 1980, to permit an investigation for judicial or administrative proceedings in a foreign country; and (2) the Commission believes that it is necessary to have conventions such as the European Code of Conduct, but with stronger, binding authority that would allow for real cooperation in the supervision of the markets.

B. Future Directions in International Cooperation

There are two different kinds of international cooperation: one is formal and takes place through international agreements; the other is informal and can be either *ad hoc* or organized for an unlimited term.

(i) Formal cooperation

It is clear that in order to solve the problem of international cooperation in investigations--which is necessary for effective supervision of the market--the formal direction will have to be followed. An international agreement is necessary, but it has to be widely adopted or it will not be very useful. As long as insider trading is not an offense in Switzerland, for example, French insiders, using the channel of the Swiss banks, are going to be unidentified and unpunished.

Within the EEC, a draft directive on insider dealings is being prepared [22]. If it is adopted, the national laws of each member country will have to be altered to conform and make such dealings an offense. Then control authorities of the EEC countries will have a sound basis on which to proceed when investigations are necessary.

In the case of listing rules, two directives [23] have already established a contact committee for international cooperation. The committee will have as its function, "to facilitate the harmonized implementation of this Directive through regular consultations

on any practical problems arising from its application on which exchanges of views are deemed useful; to facilitate consultation between Member States on the supplements to and improvements of the listing particulars that the competent authorities are entitled to require or recommend at a national level" [24]. The competent authorities of the Member States are invited "to exchange information and use their best endeavors to achieve maximum coordination of their requirements concerning listing particulars, to avoid a multiplicity of formalities, and to agree to a single text requiring, at the most, translation where appropriate and supplements that may be necessary to meet the individual requirements of each Member State" [25].

The COB attended, as an observer, the recent Montreal Conference of the Inter-American Securities Regulators and Similar Agencies [26]. Previous meetings have been held in Caracas, Buenos Aires, Mexico, and Rio de Janeiro. One purpose of these conferences is to exchange experiences and discuss problems faced by the control authorities in each country. Even if there are few concrete results, the formal meetings encourage the formation of informal groups among the participants and facilitate contact when problems do arise.

(ii) Informal cooperation

Two types of informal cooperation have been employed so far. The first type is used to solve in a short period of time a specific technical problem such as the exercise of shareholders' rights with respect to a new issue or a takeover bid. The other type involves organizing periodic meetings of representatives of the control authorities to examine their common problems.

The general rule is that a listed company issuing new shares must publish a prospectus with an endorsement by the COB before the shares may be disseminated [27]. As there is not much time to check the prospectus, the COB is satisfied with the same prospectus that was distributed in the company's home country, or a translation of it. Often, there are telephone contacts with the Banking Commission in Belgium and with the London Stock Exchange.

When Amax, a U.S. company listed in Paris, proposed a reinvestment-of-dividends plan to its shareholders, the prospectus that was sent to French shareholders was the SEC prospectus, with the addition of a French language comment on its main technical features and tax rules for French investors. In appropriate circumstances, the French Commission relies on supervision by the foreign control authorities.

In one example of a takeover situation, the COB had to intervene when a Canadian company made a tender offer to the stockholders of *Crédit Foncier Franco-Canadien* (CFFC). CFFC is also a Canadian company, and its shares are traded on the Montreal and Paris Exchanges. As soon as the Canadian company's plan to make an offer became known, the COB received an inquiry asking whether the French regulations applied in these circumstances, and to what extent the COB viewed this matter as within its purview. This transaction presented a special case, for the principal market for CFFC shares is in Paris and more than two-thirds of these shares were held by French residents. The most important shareholder was the group of the *Compagnie Financière de Paris et des Pays-Bas*, which held twenty-one percent of CFFC capital.

Because the tender offer target was a Canadian company, it was subject to the laws of that country. Moreover, the matter was initially presented to the Montreal Exchange authorities. Thus, it was the Canadian regulations with respect to tender offers that should have applied [28]. At the same time, the French Exchange authorities were responsible for the sound functioning of the French market and for the accuracy of information given about the securities. They could not decline to take an interest in the manner in which the tender offer would be made. The COB had to decide whether or not to permit the tender offer.

In addition to communications between the COB and the banks and lawyers representing the companies affected by the offer, the COB was constantly in contact with the Stock Exchange Commission in Quebec, in order to keep the latter informed, as much as possible, of the information needed by the French public. In this instance, it was possible for the COB to permit French shareholders to delay their response to the offer. This was quite indispensable, since offers made in Canada are permitted to have a shorter duration than offers made in France. Specifically, the date of the offer's expiration was initially set for the 19th of January 1979, but it was extended to the 19th of February 1979, so the offer was outstanding for almost nine weeks.

Inside the EEC informal cooperation takes place, at the present time, through periodic meetings of the representatives of the control authorities. Three groups can be mentioned: one is in charge of the mutual funds question; one supervises disclosures by listed companies; and one implements the directive of the European Code of Conduct relating to transactions in transferable securities.

It is interesting to note part of the explanatory memorandum of the Code:

The lack of full information on the securities themselves and ignorance or misunderstanding of the rules governing the various markets have certainly helped to confine the investments of the great majority of savers to the markets of the countries in which they live or to a few well-known major international securities.

A reduction in these disparities would therefore tend to encourage the interpenetration of the member countries' markets, particularly if this were accompanied by the improvement of safeguards available to savers. [29]

For implementation of the Code, the Commission recommends that the member states

appoint one or more representatives from these associations or authorities who shall be responsible for informing the Commission each year--beginning one year after the transmission of this recommendation--of any measures adopted to implement it, of the experience in applying them, of any difficulties encountered, and of any suggestions for additions or amendments to the European Code of Conduct. [30]

A meeting has been organized each year. In 1980 the group examined changes that had occurred in the securities laws of each member state and methods for implementing the Code [31]. A meeting will be held before the end of 1981 to examine the problems raised by the implementation of the Code, mainly those occurring between a member state and a foreign country.

Informal cooperation among supervisory authorities has taken place for some time and will no doubt continue to be an effective, if limited, regulatory tool. Significant progress in dealing with the international aspects of the securities markets probably requires something more, however. For EEC member countries, such cooperation is being formalized through a series of directives that embody both substantive rules of general applicability and the mechanism for cooperation among the supervisory authorities [32].

There would seem to be three possible methods for extending this kind of cooperation beyond the EEC: (1) formal bilateral or multilateral treaties; (2) informal cooperation through a regularly meeting committee, such as the Cooke Committee in the banking area; and (3) cooperation directed toward the establishment of international standards, which any supervisory authority or exchange could adopt and from which certain privileges would automatically follow. An example of such standards is, perhaps, an agreement not to accept trades from countries that refuse to reveal information regarding beneficial owners.

My own view is that formal treaties take too long and are too difficult of amendment to be useful in the rapidly changing area of securities regulation. The time seems quite ripe, however, for initiatives in the other two areas mentioned; and the COB would be quite interested in following those paths.

3. A SWISS POINT OF VIEW

MR. MUNDHEIM: Thank you, Claudie. One of the points you have made, and it is a common point in talking about enforcement problems, is that all of our problems would be a lot easier if the trading activity had not originated in Switzerland. Alain, we must put the question to you directly. Is the Swiss secrecy law really an insurmountable obstacle to effective regulation in an international world? A one word answer, yes or no, will do.

MR. HIRSCH: . . . it should be!?

A. Harmonization in the Securities Field

First of all, I would very much like to support Peter Lee when he said that he fully agreed with the proposal of Harold Williams and Lee Spencer to have an informal international committee for cooperation on securities questions--a committee similar to the one for banks that we discussed before. Not only is it sensible, but I do not see why it could not be done. Certainly, the first task would be to assure a mutual exchange of information and mutual understanding, just as this conference seeks to do and does. This would be highly useful, as it proved to be in the banking system. A part of the problem is that the relevant authorities are not always very easy to identify. This may be one difference between developing effective cooperation in the banking field and in the securities field.

Another important difference is that in the banking world the main goals of the regulators are broadly similar in all western countries, while in the securities field this may not be the case. For instance, the significance of disclosure is greater in countries like the U.S. where securities are so much more aggressively marketed

than in many European countries. To give a good example, some securities have been sold in a more aggressive way in Europe--the mutual funds. Immediately regulations were enacted in European countries like Switzerland and Germany, which previously had no regulation of the securities business. As soon as the mutual funds started pushing their sales, regulation came.

It seems to me that harmonizing securities regulations in the U.S. and Europe probably would not make sense, because a lowering of the standard in the U.S. would possibly cause damage--that is for you to say--and probably a great increase in the amount of disclosure required in Europe would just be over-regulation.

Moreover, the importance of privacy in economic life may be appreciated very differently in the two places. Yesterday in a workshop I heard somebody saying, an American I believe, "If a person does not want to disclose exactly what he owns and what shares he has, it can only be for bad reasons--tax evasion, exchange control, and so on--and that should not be allowed." Somebody else, also an American, said, "Well, it may be for very good reasons: for instance, fear of government changes, fear of political measures against him, and perhaps the general feeling that privacy should be respected as much as possible even in financial and economic matters, because they cannot be completely separated from other personal matters."

In light of these big differences, I think the difficulties of harmonization are great; but they are not impossible to overcome, if the parties are ready to try to understand each other's point of view. The U.S. surely realizes that if it regulates its market for foreigners in exactly the way it regulates for Americans, it will result in isolation of the American market. The foreign issuer always asks, "How far will the American regulators go with possible exceptions for foreigners?"

I would like to deal with this problem for a minute, not so much with respect to the issuers and continuing information about securities, but rather with regard to market regulations. A major problem is: Who is the beneficial owner of the shares of stock? Of bonds? If the aim is to have an answer to these questions in each and every case, for acquisitions small and large, there will be resistance to supplying the information. Foreign institutions will never be willing to answer these questions, especially for normal transactions in day-to-day business. The questions can be asked only for exceptional, unusual transactions; and I assume that normally only these unusual transactions lead to significant market manipulation.

Of course, what I call an unusual transaction could be more precisely defined. It is not necessarily my view that a uniform global amount should be defined. For instance, if an American citizen has no account in a Swiss bank at all, is not known, and comes to open an account for, let us say, a hundred thousand dollars (which is not a large account) for the sole purpose of buying one single American security, this could very well be considered an exceptional investment.

The first condition for international cooperation should be to limit its scope to certain types of unusual transactions. The second condition should be--and we have also discussed this before--the agreement by American regulators to be content, at least to a

reasonable extent, with verification done by independent external auditors in the country concerned. This leaves open the question of what happens if something improper has really been done. Should the foreign bank--for example, the Swiss bank--at the end of the day give the name of the client to the U.S. authorities, or is it always protected by Swiss banking secrecy? There is no very easy answer to this, but I would suggest that at least in some cases, total refuge is not afforded by the secrecy rules governing Swiss banks.

B. The Swiss Banking Agreement

Swiss bank secrecy has its limits. The limits were not widely known until a few years ago, although they have always existed. They were not known because the Swiss banks had been clever enough to make everybody believe that Swiss bank secrecy had no limits, but that was not true. As long as only the clients believed this, it was entirely advantageous; but then some regulators also began to think that no limits existed. Then Switzerland concluded that it should indicate the limits. This was done, for instance, in 1977 with the signing of the Swiss Banking Agreement [33] which I would now like to discuss briefly. This could be a good beginning of an answer to the question Bob put to me earlier.

This agreement is a private agreement, governed by private law, implemented by private arbitration, with very high fines. I will not discuss the specifics of the agreement today. I will tell you that a report has just been issued, and will soon be published in Switzerland, about all the cases decided under this agreement. The implementation by the Swiss National Bank has been very tough.

Coming back to the legal point, however, it is a curious private agreement with a definitely public aim and implementation mainly by the Swiss National Bank. So it is really something between a private agreement and a public regulation. Amusingly enough, it probably is more efficient than any law would be, because the legislature would not dare to establish the high financial liabilities that were provided in this agreement and that have been imposed.

The text of the agreement itself is brief. It has been signed by all the Swiss banks with no exceptions. The text of the agreement is followed by commentaries. These commentaries are much more than mere commentaries. They are remarks expressing a unified and harmonious interpretation of the agreement, accepted by the Swiss Banking Association and the Swiss National Bank. So, the commentaries are like a part of the agreement itself.

The agreement was primarily intended not to introduce new rules, but to confirm traditional good-banking practices. In some fields it definitely went beyond that. The aim of it, I want to insist, is to ensure that banks do not make improper use of Swiss banking secrecy. Especially, they may not accept funds that derive from criminal offenses and may not aid and abet capital flight, tax evasion, or the like. I do not elaborate on that, because it is outside our present subject of regulating the capital markets.

This could, however, be part of a discussion on the development of a movement toward cooperation. There is a possibility of amending and supplementing the banking agreement, so that it could also be applied to precisely defined infringements of recognized securities rules.

My interest today focuses on articles 3, 4, 5, 6 and 7, which describe how a Swiss bank is now obliged to ascertain the real owner of an account. In this regard, the Swiss banks, I think, are under the strictest standards of the whole world. Certainly Swiss rules are stricter than those of any European and, probably, any American bank. Banks are to ascertain, with due care, not only the exact identity of the physical person or the corporate entity that opens an account, but also whether this legal or personal entity is acting for its own account or as trustee for somebody else [34]. If so, the bank has to know the name of the beneficial owners. More than that, the bank must determine whether the owner of the account is a corporate entity that has no real economic activity--that is, a so-called shell company. Whether a Swiss or a foreign shell company, technically it acts for its own account; but, of course, in practice it acts for its sole or majority shareholder. The bank has the duty of knowing the identity of the shareholders and of refusing to open the account if it does not. There is a great exception, an important exception, if the members of the board of directors of such a company are acting in a professional capacity, as defined by the agreement. In this case, they need only assure the bank that they know the real owners and will be responsible for seeing that the agreement is not violated by these persons.

I do not pretend that such an agreement is--as Peter Lee said some time ago--a full, complete, and final answer to the question of who is the owner and how he should be regulated. It is less than that, but it is a reasonable way of arriving at a solution to the problem. It is a reasonable approach which could perhaps be adopted by an international cooperative committee. Let us see whether other countries would adopt it.

MR. MUNDHEIM: I just want to be clear about one thing, Alain. Assume a Swiss bank knows or discovers that a client is engaging or has engaged in insider trading in American stocks. Would there be a bar on either that Swiss bank or the Banking Commission or the Swiss National Bank, if they were aware of that information, from giving it to Lee Spencer in aid of an SEC inquiry?

MR. HIRSCH: Today the answer is, in principle, yes. There would be a bar to telling the name of the client, except in very unusual cases where banking secrecy had been abused in a highly improper manner. But one may find some adequate means to insure that, at least in a good number of cases, either the names could be given or--much more important--that in receiving the orders of the clients, the bank would make certain that it was not giving orders for an insider. In practice, that is usually the case--and today, more and more so--because the Swiss banks have no interest whatsoever in having troubles and questions from the SEC. This could for instance be more formally regulated by an amendment to the Banking Agreement of 1977.

4. AN AMERICAN POINT OF VIEW

MR. MUNDHEIM: Today when we talk about SEC enforcement, everybody thinks about Stanley Sporkin. But Irv Pollack taught Stanley Sporkin everything he knows. That is fairly useful because Irv will talk about how, as a practical enforcement matter, the SEC has been able in certain cases to weave its way among sovereign sensitivities,

and to be able to deal effectively with enforcement problems.

MR. POLLACK: First, perhaps to illustrate how difficult it is to determine who the beneficial owners are, I am reminded of a story they tell about the St. Louis Zoo where they had an old lion who slept all day. This disturbed all of the people who came to the zoo with their children. They complained to the zoo director who finally brought in another young lion, and that young lion was just terrific. It did acrobatics all day and kids were just enthralled with what they were seeing and the parents were delighted. But when the first night came, the young lion got an apple, some peanuts, and a banana; and the old lion got fifty pounds of steak and fifty pounds of ground beef. Well, this, as you can expect, disturbed the young lion a little bit, but he decided he had not performed as well as expected. So the next day he performed even better, and everybody was really excited that day, and he got great applause from the audience. But that evening the same thing happened. He got the banana, the peanuts, and the apple; and the old lion got all the meat.

So he sidled up to the old lion and he said, "Hey, you have been around here a long time. How come you sleep all day and they give you all that good food, and I work my tail off and all I get is the apple, banana, and peanuts?"

He said, "That is very simple. On the records they have you as a monkey. . . . because they are only budgeted for one lion."

That illustrates the difficulty. You can be a dreamer and you can worry about all of the formal international agreements that you could make if you had complete harmony, without all the differences that exist in the world, and if you had all the time that it takes to negotiate formal agreements. I think, as Alain Hirsch has so well pointed out, you do not have the homogeneity in the securities field that you have in the banking field. Now, what happens when you are confronted with a real problem? He mentioned the reaction of the European countries when IOS went through the country with a saw and started to take away some of the timbers that were there in the financial community.

A. The IOS Problem

The SEC was confronted with that situation twice. Once in 1967 when IOS was under the control of a gentleman named Mr. Cornfeld. We had very few American investors here, but our overall appraisal was that IOS was engaging in improper conduct in the U.S. through its activities here and through its sales techniques around the world. In short, after violations of U.S. securities laws were established in an SEC administrative proceeding, IOS agreed in a settlement that it would not sell any of its securities in the U.S., in any of its territories, or indeed, to a U.S. citizen anywhere in the world [35]. Shortly thereafter IOS floated a fifty million dollar issue in Europe which was dissipated in a few months. This set the stage for the next IOS escapade.

As you know, IOS was taken over by a man named Robert Vesco who promised to rescue it from its financial difficulties. Initially Mr. Vesco said that he did not control Mr. Cornfeld's shares, which purportedly had been sold to a series of foreign corporations.

Secrecy laws around the world made it a bit difficult for the SEC to show who really had the beneficial interest in this block of shares. How do you determine that? By meticulously following the paper record, intensively questioning the available participants, carefully inquiring into the creation of the corporate entities, and non-acceptance of spurious secrecy claims, you can frequently be successful in overcoming attempts to conceal the true ownership. Sometimes you may have to exert a little bit of leverage on people and say, "Well, if Mr. Vesco does not own them maybe you own them; and if you do not disclose who you were acting for, we will have to assume you were acting for yourself." In the absence of full disclosure and an adequate explanation, the SEC may have to act against a party who appears on the record as the owner of particular blocks of shares.

Frequently you will get a degree of cooperation. It may take some time. But intensive and persistent inquiry pays off. In any event, the SEC, despite secrecy and other obstacles, not only in Switzerland but elsewhere as well, was able to develop the necessary evidence for a court action. Secrecy laws exist all around the world and in varying degrees. Switzerland happens to be the place that is frequently used because of the stability of the country, the stability of its financial system, and the reputation of its people. But people also tend to move for tax reasons or otherwise into other countries. SEC investigators were confronted, for example, with the bank secrecy law in the Bahamas, where a substantial portion of the IOS monies had gone. Despite such obstacles, the SEC inquiry was able to put together sufficient information to establish initially that over two hundred million dollars had been siphoned out of the IOS mutual funds that had been sold throughout the world, but principally on the European continent. I believe, for example, two-thirds of the investors in one fund were from Germany, and investors from many other countries supplied the rest of the money.

Toward the end of 1972, the SEC determined it had enough evidence to move into court against IOS, Vesco, and a number of other people who were associated either as individuals or as entities in that promotion. The result was an injunctive action against that group for fraud and other violations of the U.S. securities laws; and what was more important, there was an ancillary request for a receiver [36]. Initially, the court declined to issue a temporary restraining order prohibiting any further transfer of funds. The court indicated a need to examine the voluminous documents filed with the complaint. The defense also argued that nothing improper had occurred; that all the money would eventually be brought into court and be put on the table for the court to see; that the action was a vendetta on the part of the SEC or the U.S. government because the IOS funds were taken out of a U.S. bank and put into foreign bank entities. However, the filing of the action led to an opening up of the whole operation insofar as other countries were involved. For example, a bank in Luxembourg had acted as an IOS fund depository but unfortunately had been induced to sub-deposit over a hundred and fifty million dollars in a Bahamian bank and could not get these funds back.

In any event, on the basis of further hearings and proof, a receiver was appointed by the court and an order was issued giving him jurisdictional control over all of the IOS assets wherever they might be located. The court also issued a variety of orders that were needed to protect against further depredation of the IOS funds.

After the suit had been filed, Mr. Sporkin and I travelled through the European continent, explaining to our European counterparts what had occurred and reporting all of the information that we had. We also visited some of the banks that we knew had funds of the IOS complex in their depository or on their books. We alerted them that the movement of those funds without proper court protection might expose the banks to later litigation, which--I might tell you as an aside--proved true.

Part of the SEC's program was to alert cooperative countries around the world to what we saw as a very massive and complicated fraud that had been going on at least for a couple of years. After the appointment of the receiver, we were faced with the type of problem that has been discussed here. How do you liquidate this enterprise that had companies and investments throughout the world?

B. International Cooperation in the IOS Case

In a meeting held in Luxembourg in June 1973, an intergovernmental committee was formed and it was agreed that the IOS funds (one of which had been set up in the Netherlands Antilles, another in Luxembourg, and two others in Canada) would be liquidated under the various statutory provisions available in the respective countries in which they had been organized. It was left to the cooperating government authority as to how it would facilitate the initiation of a specific liquidation. The arrangement worked exceptionally well. Appropriate consent orders were worked out and entered in the U.S. action between the SEC, the U.S. receiver, and the fund liquidators appointed in the other countries. This permitted a coordinated effort. It also helped to avoid jurisdictional and secrecy questions. Through the concentrated efforts of the fund liquidators and other liquidators, subsequently appointed as additional entities were placed in liquidation, hundreds of millions of dollars of IOS assets ultimately were recovered.

Let me go back and mention a number of other steps that were taken after the SEC suit was filed that helped to prevent the illicit transfer of IOS funds and assets. Despite the pendency of the action, the transfer of IOS monies and properties was continuing as part of an ongoing and continuing fraud. Consequently, admonitions were given to those associated with the case that this was so and that action could be taken against anyone whose assistance resulted in further looting of the IOS funds. As a result, we were alerted to various attempts by defendants to transfer or obtain control over IOS assets. For example, we received information that certain of the defendants were about to move forty million dollars out of an account belonging to IOS in a London bank. Now, how do you stop forty million dollars from being moved when you just have hours to take action?

You pick up the phone and call the London bank and tell them you understand that they have a forty million dollar deposit in a specified account, which is a part of the IOS funds, and that it would be unwise and poor business practice on their part to move these funds without being sure that they are receiving proper authorization to do so. Banks that respected that kind of advice found in the end that it was to their benefit, for they had the funds on hand when later demands were made upon them by liquidators.

The other thing we were able to do vividly illustrates the

effectiveness of cooperation between regulatory authorities that the speakers here have been talking about. Because of our close relationship with the Quebec Securities Commission we were able to obtain control over more than a hundred million dollars. We received information that IOS monies deposited in a Bahamas bank had been placed in an account in a Montreal bank. We telephone this information to the Quebec Securities Commission Chairman. He promptly issued a freeze order against this account, as well as three other discovered accounts. Upon the Bahamas bank's representation that one of the accounts was a transit account required for their daily business, and after consulting with us, the Chairman agreed to reimpose the next day, upon discovery that the Bahamas bank had moved out almost half of the four million dollars in the account.

Similar protective actions were taken by the Ontario Securities Commission over assets located in that province, and the Luxembourg Banking Commissioner also immediately took action to preserve the remaining IOS assets still within his jurisdiction.

I previously mentioned the intergovernment committee that was established in Luxembourg in June of 1973. This *ad hoc* group, now consisting of representatives from the U.S. SEC, the Ontario and Quebec Securities Commissions, the Dominion of Canada, and the Luxembourg Banking Commission, has continued up to the present time to oversee the activities of the IOS liquidators. It has been formally recognized by courts involved in IOS liquidations. It has been successful in resolving disputes among the liquidators and, in general, in expediting what is perhaps one of the most difficult and complicated international liquidations [37].

Now, what does all of this demonstrate? It demonstrates that if you are going to meet these international problems that arise from time to time, you can talk about formal arrangements, you can talk about bilateral arrangements (and they have been used by the U.S. Department of Justice to make information developed by the SEC in its investigations of questionable corporate payments available to other countries), but you still must have a cooperative spirit among the various countries of the world. When they recognize that they have mutual problems, such as an insider trading case or a manipulation, they will devise among themselves a practical method to meet their present needs. That, I have found, is the most productive approach, while you try to work on formal agreements that will take care of common problems. The basic fact is that you need cooperation based on an ability to relate to the other countries. You need to establish trust and confidence among regulators, so that a government regulator in Canada, on the basis of a telephone call from his counterpart in the U.S., would feel comfortable using his own regulatory authority to cooperate in a worldwide endeavor to protect investors.

MR. MUNDHEIM: Thank you, Irv. You have elaborated an important argument for the adoption of Lee and Harold's proposal. Formalization regularizes contacts so that people can respond quickly to create the flexible *ad hoc* arrangements for special situations which you described as being essential.

Over a year ago in Geneva, the International Faculty for Capital Markets and Corporate Law organized its first public conference. That conference included a substantial session on the regulation of multinational banking institutions. The conference focused on the need for bank supervisors to take a multinational view if they were

to discharge their responsibility in overseeing a business which was becoming increasingly international.

This year's conference has carried forward that theme and has noted its application to the securities business. Here too, internationalization is becoming more prevalent. Regulatory mechanisms must grow in a way which recognizes this development. The Williams-Spencer proposal to securities regulators that they adopt the Cooke Committee precedent as a helpful model is highly significant. Some formalization of links among regulators should not only enhance the effectiveness of the informal techniques of cooperation, but should also insure the regular exchange of information and ideas.

The International Faculty hopes that this conference will hasten the forging of the formal and informal links which help create a regulatory environment that facilitates multinational activity, but guards against the potential abuse which occurs where regulation fails because it does not travel well beyond national boundaries.

NOTES

- [1] Securities Exchange Act Release No. 16385, 44 Fed. Reg. 70,349 (1979).
- [2] There are a total of seventy-eight listings in foreign countries, mainly in Europe.
- [3] Bank of France statistics.
- [4] In France the stock exchange is supervised by the Commission des Operations de Bourse, called the Commission or COB.
- [5] Law of December 23, 1970, which modifies the ordinance 67-833 of September 28, 1967
- [6] See the annual reports of the COB, 1970 to 1980, under paragraph "Investigations."
- [7] Principle No. 9 of the European Code of Conduct relating to transactions in transferable securities:
Any person who comes into possession of information, in exercising his profession or carrying out his duties, which is not public and which relates to a company or to the market in its securities or to any event of general interest to the market, which is price-sensitive, should refrain from carrying out, directly or indirectly, any transaction in which such information is used, and should refrain from giving the information to another person so that he may profit from it before the information becomes public.
- [8] COB General Regulations on Take-over Bids.
- [9] COB General Regulations on Take-over Bids, D.2; July 25, 1978.
- [10] Stockbrokers company's regulation - article 199; COB General Regulations on Take-over Bids, D.5.

- [11] Law No. 80-538, July 16, 1980 concerning the communication of documents or information of an economic, commercial, industrial, financial or technical nature to aliens whether natural or artificial persons.
- [12] Section 378 of the Criminal Code:
 Les médecins, chirurgiens et autres officiers de santé, ainsi que les pharmaciens, les sages-femmes et toutes autres personnes dépositaires, par état ou profession ou par fonctions temporaires ou permanentes, des secrets qu'on leur confie, qui, hors le cas où la loi les oblige ou les autorise à se porter dénonciateurs, auront révélé ces secrets, seront punis d'un emprisonnement d'un mois à six mois et d'une amende (L. 29 déc. 1956, art. 7; L. n° 77-1468 du 30 déc. 1977, art. 16) de 500 F à 8,000 F.
- [13] Section 19 of the law of December 2, 1945: "tous ceux qui, à un titre quelconque, participent soit à la direction, à l'administration ou au contrôle des banques nationalisées, soit au contrôle des banques non nationalisées, sont tenus au secret professionnel".
- [14] Article 17, law of June 13, 1941.
- [15] Article 5, Ordinance of September 28, 1967.
- [16] *Supra* note 11.
- [17] *Id.*
- [18] The Compagnie Générale Maritime had to pay \$200,000 pursuant to a consent decree.
- [19] National Assembly--June 24, 1980; Senate--June 30, 1980.
- [20] The Hague Convention of March 18, 1970, concerning the transmission of evidence on civil and commercial matters in a foreign proceeding.
- [21] An example of such agreements is the treaty between the U.S.A. and the Swiss Confederation on mutual assistance in criminal matters, May 25, 1973.
- [22] Draft directive prepared by the Financial Division of the Commission.
- [23] Council Directive of March 5, 1979 coordinating the conditions for the admission of securities to official stock exchange listing, 22 O.J. Eur. Comm. (No. L 66) 21 (1979). Council Directive of March 17, 1980 coordinating the requirements for the drawing up, scrutiny, and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing, 23 O.J. Eur. Comm. (No. L 100) 1 (1980).
- [24] Council Directive of March 17, 1980, section V, article 26.
- [25] Council Directive of March 17, 1980, section IV, article 24.
- [26] Inter-American Conference of Securities Commissions and Similar Agencies held in September 8-12, 1980.
- [27] Ordinance of September 28, 1967, article 6.
- [82]

- [28] With respect to the problem of the application of tender offer rules to foreign issuers, the COB, for its part, taking into account international law and French regulations, is of the view that the governing regulations should be those of the state in which the target company is domiciled.
- [29] Commission Recommendation of July 25, 1977 concerning a European Code of Conduct relating to transactions on transferable securities-- Explanatory memorandum 2, 20 O.J. Eur. Comm. (No. L 212) 37 (1977).
- [30] Commission Recommendation of July 25, 1977: IV Implementation of the European Code of Conduct article 15-3.
- [31] The meetings are held in Brussels generally in November.
- [32] See note 23 *supra*.
- [33] See Appendices XVIII-A and B *infra* at 308 and 312.
- [34] See article 4, *infra* at 314.
- [35] For a complete description of the settlement, see *In re IOS, Ltd. (S.A.) d/b/a Investors Overseas Services*, SEC Release 8083 (May 23, 1967).
- [36] For additional details concerning IOS and the work of the IOS intergovernment committee, see Loomis and Grant, *The U.S. Securities and Exchange Commission, Financial Institutions Outside the U.S. and Extraterritorial Application of the U.S. Securities Laws*, 1 J. Comp. Corp. L. & Sec. Reg. 3, 19 (1978). See also pages 8 to 10 for a discussion of other litigation arising out of the IOS case and pages 20 and 21 for another example of international cooperation in an SEC injunction action.
- [37] See *SEC v. Robert L. Vesco et al.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCR) ¶93,671 (S.D.N.Y. Nov. 27, 1972).

APPENDIX XVIII-A

AGREEMENT ON THE OBSERVANCE OF CARE IN ACCEPTING FUNDS
AND ON THE PRACTISING OF BANKING SECRECY

AGREEMENT

between

the banks domiciled in Switzerland and the Swiss Bankers' Association on the one
hand and

the Swiss National Bank, on the other hand

on the observance of care in accepting funds and on the practising of banking
secrecy.

The signatory banks and the Swiss Bankers' Association
in their endeavour to maintain Switzerland's good
reputation as a financial centre and to combat
criminalism,
with intent to confirm, to lay down in a binding way and to
define the established rules of good conduct in bank management,
conclude with the Swiss National Bank the following agreement:

I. Object

Article 1

The object of the agreement is

- to insure that the identity of the bank clients is reliably ascertained
- to prevent that by the improper use of the banking secrecy acts are made possible or facilitated that are considered to be improper within the meaning of this agreement

II. Improper Acts

Article 2

Considered to be improper within the meaning of this agreement are:

- a) the opening and keeping of accounts and deposits of securities without ascertaining the identity of the owner (Art. 3 to 7),
- b) the acceptance of funds acquired, recognizable to the bank, by acts that, according to Swiss law, are punishable or call for extradition (Art. 4 and 5),
- c) aiding and abetting capital flight, tax evasion and so forth (Art. 8 and 9).

III. Observance of Care in
Respect of the Acceptance of Funds

Article 3

I. *Ascertaining the identity of the person entitled.*

The banks undertake not to open bank accounts and securities deposits, not to effect fiduciary investments and not to provide safe-deposit facilities unless they have ascertained with such care as, according to circumstances, can reasonably be expected who the beneficial owner of the funds to be credited or to be invested or who the renter of the safe deposit box is.

Article 4

2. *Ascertainment of the origin of the funds*

The banks undertake not to transact any business if it is known to them or if it should be known to them in exercising reasonable care that the funds are entrusted to them for purposes that are considered to be improper within the meaning of this agreement.

Article 5

3. *Professional Secrets*

1. If the client acts via a person that is to observe professional secrecy by law, or via a trustee, the bank is to ask of that intermediary a written statement to the effect that the owner is known to him and that no improper transactions within the meaning of this agreement are involved.

2. A written statement can be dispensed with if, based on all circumstances, on hitherto existing business relations, on the known care exercised by the holder of professional secrecy, etc., the bank may assume that these preconditions are fulfilled.

3. No written statement is required in respect of accounts and securities deposits of domestic and foreign banks.

Article 6

4. *Procedure*

a) in general

1. In case of doubt, the banks require of the customer who wishes to open an account or a securities deposit a written statement as to whether he acts for own account or for account of a third party, in which latter case he is requested to state for whose account.

2. The banks use a standard form which constitutes an integral part of this agreement.

Article 7

b) in respect of domicile-establishing companies

1. Of domestic and foreign companies registered merely to establish legal domicile are to be claimed

(a) an extract from Trade Register or a certificate of equal value,

(b) the written statement by the competent organs certifying the control situation,

(c) the same data on the controlling individuals as if these persons actually acted as customers.

To be regarded as domicile-establishing companies within the meaning of this agreement are all companies, institutions, foundations, trust enterprises, etc. that do not run in Switzerland any trading or manufacturing firms or any other business operated according to commercial principles.

2. In cases where the group membership of a domicile-establishing company or the control situation and the identity of the controlling individuals are known to the bank, it may do without the data stipulated under lit. (b) and (c).

IV. Aiding and Abetting Capital Flight, Tax Evasion and so forth

Article 8

1. Capital Flight

The banks undertake not to aid and abet in any active way capital transfers from countries having introduced legislation to restrict the investment of funds abroad, such as, for instance, by receiving in an organized way clients abroad, outside their own bank premises, to accept funds; by commissioning agents abroad with a view to organizing capital flight; by promising commission payments to capital-flight agents and to people mediating flight capital.

Article 9

2. Tax evasion and so forth

The banks do not support attempts at deception made by their clients vis-à-vis authorities at home and abroad, in particular vis-à-vis tax authorities, neither by incomplete nor by other misleading attestations.

V. Numbered Accounts and Numbered Deposits

Article 10

The prescriptions of the present agreement apply without restriction to accounts and securities deposits designated by numbers only or by passwords.

VI. Screening of Existing Accounts

Article 11

In respect of existing customers holding accounts and/or security deposits in excess of 1 million francs, the requirements stipulated in Art. 6 and 7 are to be fulfilled within the period of one year as from the date on which this agreement is put into force.

VII. Dissolution of relations

Article 12

The banks undertake to break off relations with customers if, in the course of business, suspicion should arise to the effect that the information obtained on the beneficial owner is not correct or that the customer performs acts through the bank which, within the meaning of this agreement, are improper (Art. 2, par.b).

VIII. Control

Article 13

1. By their signature to this agreement, the banks commission and authorize the auditing agency imposed on them by banking legislation to control by means of random tests the observance of this agreement on the occasion of their ordinary bank examination and to report to the Arbitration Committee set up under Art. 14, as well as to the Federal Banking Commission, any offences or any founded suspicion as to possible offences.

2. The Swiss National Bank will make known to the authorized auditing agencies the text of this agreement as well as the list of signatories and thus their mandate.

IX. Sanctions

Article 14

1. For the ascertainment and punishment of offences against this agreement, an Arbitration Committee incorporated in Zurich is set up, comprising two representatives each of the Swiss National Bank and the Swiss Bankers' Association and which is presided over by a Federal Judge designated unanimously by these representatives. The Secretariat of the Arbitration Committee will be maintained at the Swiss National Bank.
2. The Arbitration Committee may impose on the bank convicted of an offence against the agreement a conventional fine of up to 10 million francs; in assessing the conventional fine, due regard is to be paid to the seriousness of the breach of contract, the degree of the bank's fault and its financial situation. The Arbitration Committee allocates the conventional fine to charitable institutions.
3. The Arbitration Committee arranges the procedure; Art. 36 to 65 of the Federal Law of December 4, 1947 on the Federal Rules of Civil Procedure and Art. 22 to 26 of the Federal Law of December 16, 1943 on the Organization of the Federal Judicial Practice apply *mutatis mutandis*.
4. The members of the Arbitration Committee are to observe strict secrecy as to the facts come to their knowledge in the course of the proceedings (Art. 47 of the Banking Law).
5. The Arbitration Committee informs the Federal Banking Commission of its decisions for them to examine the question whether the persons entrusted with the administration and management of the bank involved still give "warranty for an irreproachable conduct of business" within the meaning of Art. 3 par. 2 lit.c of the Banking Law.

X. Coming into Force

Article 15

1. This agreement enters into force on July 1, 1977 and is valid for a fixed period of five years.
2. Subsequently, and unless it is not terminated by the Swiss Bankers' Association or by the Swiss National Bank at three months' notice, it is looked upon as being automatically renewed for further periods of one year each.
3. Each signatory bank is entitled, subject to three months' notice, to denounce the agreement as per the end of the contract year, for the first time as per June 30, 1982.
4. The signatory banks authorize the board of directors of the Swiss Bankers' Association, in cooperation with the Swiss National Bank, to make further definitions or any modifications to the agreement that may prove necessary on the strength of the experience gained.

APPENDIX XVIII-B

COMMENTARIES ON THE SWISS BANKING AGREEMENT

PREAMBLE

The signatory banks and the Swiss Bankers' Association

- *in their endeavour to maintain Switzerland's good reputation as a financial centre and to combat economic criminalism,*
- *with intent to confirm, to lay down in a binding way and to define the established rules of good conduct in bank management, conclude with the Swiss National Bank the following Agreement:*

PRELIMINARY REMARKS:

1. The Agreement covers all the signatory banks' offices domiciled in Switzerland, but not their foreign branches, representatives and subsidiaries (but see point 15 under Art. 3).

2. The Agreement does not alter the banks' obligation to observe banking secrecy. It cannot, nor is it intended to

- incorporate foreign fiscal, economic or currency regulations into Swiss law or declare them to be applicable to the Swiss banks (unless this is already the case under existing international treaties and Swiss law);
- affect current legal practice in the field of private international law.

Swiss legislation and legal practice and the treaties Switzerland has concluded with other countries continue to represent the legal norms for banks in Switzerland.

OBJECT

Article 1 - The object of the Agreement is

- *to insure that the identity of the bank clients is reliably ascertained,*
- *to prevent that by the improper use of the banking secrecy acts are made possible or facilitated that are considered to be improper within the meaning of this Agreement.*

3. The Agreement is aimed at insuring that the identity of each bank customer is carefully established and thus enabling the authorities to make effective use of the duty under federal or cantonal regulations to give evidence or disclose information.

4. The Agreement lays down in binding form established rules of good conduct in bank management; normal banking transactions are not to be impeded by the Agreement.

IMPROPER ACTS

Article 2 - Considered to be improper within the meaning of this Agreement are:

- a) the opening and keeping of accounts and deposits of securities without ascertaining the identity of the owner (Art. 3 to 7),
- b) the acceptance of funds acquired, recognizable to the bank, by acts that, according to Swiss law, are punishable or call for extradition (Art. 4 and 5),
- c) aiding and abetting capital flight, tax evasion and so forth (Art. 8 and 9).

5. "Improper" is equated with breach of contract. Engaging in an improper act represents contravention of the Agreement and is subject to the sanctions dealt with in Art. 14.

6. The list of acts which are regarded as improper within the meaning of the subsequent articles is exhaustive. The only applicable definitions of what are considered to be improper acts are those to be found in the articles of the Agreement referred to in parenthesis in sub-sections a-c. Art. 2 cannot be interpreted in isolation.

OBSERVANCE OF CARE IN RESPECT OF
THE ACCEPTANCE OF FUNDS

Article 3 - Ascertaining the identity of the person entitled.

The banks undertake not to open bank accounts and securities, not to effect fiduciary investments and not to provide safe-deposit facilities unless they have ascertained with such care as, according to circumstances, can reasonably be expected, who the beneficial owner of the funds to be credited or to be invested or who the renter of the safe deposit box is.

I. SCOPE

7. The obligation to check the identity applies to all accounts, bank books and securities deposits - except as indicated otherwise under point 20 - whether carried under the name of the bank customer or designated by number.

8. Savings books, made out to the bearer, too, may not be issued without an identity check. Unless the book is placed in its safe-custody, however, the bank is not in a position and hence not obliged to trace the book's subsequent ownership or to know the holder at any given time.

9. Except for ascertaining the origin of funds as treated in Art. 4 (see points 30-32), there is no obligation to check identity with regard to transactions over the counter (changing money, purchase and sale of precious metals, cash subscription to bank bonds and debentures, cashing of cheques, etc.).

II. EXTENT OF IDENTITY CHECK

10. When a safe is being leased, only the identity of the lessee has to be established. The procedure should follow points 12-20.

11. At the opening of an account or securities deposit the identity of both the contracting party (client) and the beneficial owner [wirtschaftlich Berechtigter] must be established in accordance with the following guidelines.

III. IDENTIFICATION OF CONTRACTING PARTY

A. Individuals

a) Domiciled in Switzerland

12. At a meeting with the customer in person, the bank checks the contracting party's identity by means of an official document (passport, identity card, driver's licence, etc.); individuals domiciled in Switzerland who are already known to the bank personally do not have to produce any document.

13. If the customer relationship is initiated through correspondence, the bank checks the identity of a contracting party domiciled in Switzerland by confirming the address indicated via postal delivery or some other equally valid method.

b) Not domiciled in Switzerland

14. At a meeting with the customer in person, the bank identifies a contracting party without permanent domicile or domiciled abroad by checking an official identity document. Identity can also be established by virtue of a written recommendation from a foreign branch or representative of the bank itself, from a foreign correspondent bank, or from one of the bank's clients who is known personally to be trustworthy.

15. A signatory bank can accept the recommendation of one of its foreign branches, subsidiaries or representatives, provided it has requested the offices involved to check the identity of persons they recommend as in the light of the Agreement.

16. If the customer relationship is initiated through correspondence, the bank has to request that the signature of the contracting party abroad be authenticated by the appropriate consulate, a correspondent bank, or a customer whom the bank knows personally to be trustworthy. The address indicated should be confirmed via postal delivery or some other equally valid method.

B. Legal entities and companies

a) Registered in Switzerland

17. The bank is to establish whether the organization concerned appears in the "Schweizerisches Handelsamtsblatt / Feuille officielle suisse du commerce" or the "Schweizerisches Rationenebuch / Annuaire suisse du Registre du commerce"; otherwise identity is to be established by means of an extract from the "commercial register" [Handelsregister / Registre du commerce].

18. The identity of an organization not entered in the commercial register (associations, foundations) is to be checked by confirming the address indicated by means of postal delivery or another equally valid method.

b) Registered abroad

19. In the case the identity check has to take place by means of an extract from the "commercial register" or another, equally valid document (for instance, certificate of incorporation).

C. Exceptions

20. The identity of a contracting party domiciled or registered in Switzerland does not have to be checked when the customer wants to open

- (a) a salary account,
- (b) a savings book or account, a deposit book or account, an investment book or account, designated by name and with an initial sum of less than Sfr. 100,000.
- (c) a current account, time deposit or similar account to meet professional or business needs, or
- (d) an account for the paying in of share capital maintained at a cantonal depository for payment of shares when a company is being founded or increasing its capital.

IV. ASCERTAINING THE IDENTITY OF THE PERSON ENTITLED
[wirtschaftlich Berechtigter]

21. The beneficial owner [wirtschaftlich Berechtigter] of the assets should be identified at the time an account or securities deposit is opened.

22. All reasonable care which can be expected under the circumstances must be exercised in identifying the beneficial owner [wirtschaftlich Berechtigter]. The bank may assume that the contracting party and the beneficial owner [wirtschaftlich Berechtigter] are identical. This can no longer be assumed, however, if anything unusual is observed (see points 25 and 42-46).

A. Individuals

23. If the contracting party declares that he is acting for a third party, the bank has to obtain the third party's full name, address and country of domicile.

B. Legal entities and companies

24. If the contracting party is representing a legal entity or a company, the bank has to file its exact name and the precise address of its registered office.

V. CASES OF DOUBT

25. Whenever there are any doubts the procedure of Art. 6 should be applied, particularly when details of the identity supplied appear doubtful or there are indications that the contracting party may not be identical with the beneficial owner [wirtschaftlich Berechtigter] (see points 42-46).

26. Special provisions apply to professional secrets and to domicile-establishing companies [Sitzgesellschaften] (Art. 5 and 7, points 34-41 and 47-53).

VI. CONTROLS

27. The bank has to ensure that its in-house auditors and its auditors [bankengesetzliche Revisionsstelle] can verify that the identification procedures have been carried out.

28. An appropriate record should be kept of the full name, address and country of domicile of the contracting party, as well as the means used to establish this party's identity. Any documents furnished in connection with legal entities should be preserved.

29. The indication specified in points 23 and 24 on the identity of the beneficial owner [wirtschaftlich Berechtigter] must be accessible.

Article 4 - Ascertaining of the origin of the fund

The banks undertake not to transact any business if it is known to them or if it should be known to them in exercising reasonable care that the funds are entrusted to them for purposes that are considered to be improper within the meaning of this agreement.

30. The bank here commits itself not to conduct any business with money it knows or ought to know, in light of concrete evidence, to have been acquired in activities which would be punishable or subject to extradition under Swiss law (see Art. 2 b).

31. This provision is not limited to the opening of an account or securities deposit, but extends to all bank business. It also applies to cash transactions over counter (see point 9 on Art. 3).

32. If the bank has concrete indications of criminal acts committed by people with whom it maintains business relationships or who would like to enter into such relationships, the business relationships concerned are to be cancelled (see points 66-68 on Art. 12).

Article 5 - Professional secrets

1. If the client acts via a person that is to observe professional secrecy by law, or via a trustee, the bank is to ask of that intermediary a written statement to the effect that the owner is known to him and that no improper transactions within the meaning of this Agreement are involved.

2. A written statement can be dispensed with if, based on all circumstances, on hitherto existing business relations, on the known care exercised by the holder of professional secrecy, etc., the bank may assume that these preconditions are fulfilled.

3. No written statement is required in respect of accounts and securities deposits of domestic and foreign banks.

I. PRIVILEGED PROFESSIONS

33. Lawyers and notaries in Switzerland are bound by professional secrecy which is protected by law.

34. An equivalent position is held by professional trustees and asset managers.

35. When such parties are domiciled or have their registered office in Switzerland, they can establish their quality as professional trustees or asset managers by virtue (for example) of membership in one of the associations affiliated with the "Schweizerischen Treuhand- und Revisionskammer" or possession of a cantonal licence to practice or a federal diploma (such as that of dipl. Bücherexperte).

36. Non-residents bound by professional secrecy and non-resident professional trustees, who are not already known to the bank in that capacity, can establish it by--among other things--presenting an authenticated licence to practice in the country concerned or being confirmed by the foreign branch or representative of the Swiss bank involved or by a foreign correspondent bank.

II. SIGNING THE WRITTEN STATEMENT

37. When the party bound by professional secrecy is a legal entity or a company, the written statement must bear the corporate signature.

38. The written statement can be dispensed with as an exception when the party bound by professional secrecy or the trustee is known to the bank as careful and trustworthy from previous business relations, by an excellent professional reputation, or through some other means.

39. If a person bound by professional secrecy is representing a company or legal entity in which he is acting as a director or member of the management, the written statement must always be provided on the standard form referred to in Art. 6, par. 2.

III. EXCEPTIONS FOR BANKS

40. No written statement has to be provided for accounts and securities deposits belonging to banks. Companies subject to the Federal Law of Bank and Savings Banks qualify as domestic banks. Companies registered abroad are considered to be banks if they qualify as such under the law of their country of domicile.

IV. ASCERTAINING IDENTITY

41. The identity of persons who present themselves as bound by professional secrecy should be established in accordance with points 12-20; points 27 and 28 also apply here accordingly.

Article 6 - PROCEDURE

a) in general

1) *In case of doubt, the banks require of the customer who wishes to open an account or a securities deposit a written statement as to whether he acts for own account or for account of a third party, in which latter case he is requested to state for whose account.*

2) *The banks use a standard form which constitutes an integral part of this agreement.*

42. If there is any doubt that the contracting party is acting for his own account, the "Declaration on Opening an Account or a Deposit of Securities or on Renting a Safe-Deposit Box" form should be submitted to him for signature.

43. As a rule, doubts arise as to the identity of the beneficial owner [wirtschaftlich Berechtigter] in one of the following cases:

a) An application for opening an account or a securities deposit is made by a person domiciled in Switzerland. At the same time, a power of attorney is issued to a person who clearly cannot stand in a sufficiently close relationship to the account-holder (for instance, a person living abroad), or other unusual aspects are observed.

b) The application to open an account or securities deposit is made by a person domiciled in Switzerland whose financial situation is known to the bank. The assets presented or indicated, however, do not conform to the known financial circumstances.

c) The application to open an account or securities deposit is made by a person domiciled abroad, who has been introduced to the bank (see points 14 and 15). At the same time, a power of attorney is issued to a person who clearly does not stand in a sufficiently close relationship to the account holder.

d) The application to open an account or securities deposit is made by a person domiciled abroad, who has been introduced to the bank (see points 14 and 15) and whose financial situation is known to the bank. The assets presented or indicated, however, do not conform to the known financial circumstances.

e) The application to open an account or securities deposit is made by a person domiciled abroad, who has not been introduced to the bank. The initial meeting with the customer concerning the opening of the account or deposit gives rise to unusual observations.

f) The account or securities deposit is applied for in correspondence by a person domiciled abroad, who supplies an authenticated signature (see point 16) but is not known personally to the bank and wants to make a deposit of more than Sfr. 100,000.

44. If serious doubts remain as to the correctness of the customer's written declaration which cannot be removed through further clarifications, the bank declines to open the account or securities deposit (see point 68 on Art. 12).

45. The standard form to be used under Art. 6 par. 2 can be ordered from the Swiss Bankers' Association in Basle in German, French, Italian, and English.

46. The banks are free to produce their own forms to fit their particular needs. These forms must include the full text of the standard form, and the portions referring to the significance of banking secrecy, the banks' duty to disclose information, and the establishment of accounts and securities under numbers or passwords, may not be printed in smaller or fainter type than used for the rest of the text.

Article 7 - b) In respect of domicile-establishing companies

1) Of domestic and foreign companies registered merely to establish legal domicile are to be claimed

a) an extract from the Trade Register* or a certificate of equal value,

*commercial register; see point 17 [Handelsregister / Registre du commerce]

- b) the written statement by the competent organs certifying the control situation,
- c) the same data on the controlling individuals as if these persons actually acted as customers.

To be regarded as domicile-establishing companies within the meaning of this Agreement are all companies, institutions, foundations, trust enterprises, etc. that do not run in Switzerland any trading or manufacturing firms or any other business operated according to commercial principles.

2) In cases where the group membership of a domicile-establishing company or the control situation and the identity of the controlling individuals are known to the bank, it may do without the data stipulated under lit. b) and c).

I. DEFINITION

47. Regardless of a company's objective, activity, and registered office (domiciled in Switzerland or abroad), it qualifies as a domicile-establishing company [Sitzgesellschaft] if

- a) it does not maintain its own business premises domiciled with an attorney's office, a trust company, a bank, etc. or
- b) it does not employ its own staff working exclusively on its behalf, or the people it does employ are solely engaged in administrative tasks (keeping the books, handling correspondence under instructions from the persons or companies controlling the domicile-establishing company [Sitzgesellschaft]).

48. Swiss companies with their own operations, in which the board of directors and the management are identical (such as in a one-man company) do not count as domicile-establishing companies [Sitzgesellschaft].

II. CONTROL

49. A company is controlled by those people or groups of people who have a direct or indirect share in the company with more than half the authorized capital or votes, or who recognizably exercise a dominant influence on the company in some other way.

50. When a company is itself controlled by another legal entity, the bank has to ascertain the identity of the individual(s)* ultimately in control. This entails having the contracting party complete the "Declaration on Opening an Account or a Deposit" form. Point 44 is applicable here.

51. The form does not have to be used when the bank already knows the group membership [corporate affiliation] of the domicile-establishing company [Sitzgesellschaft] or its control situation (including the identity of the persons ultimately in control).

52. Art. 5 par. 1 (points 33-41) applies to persons bound by professional secrecy and trustees who are officers or directors of domicile-establishing companies [Sitzgesellschaft]. The written statement is to be requested in every case.

*"Natural persons" on the "Declaration" form.

III. ASCERTAINING THE IDENTITY

53. The identity of the individuals controlling a domicile-establishing company is to be ascertained and recorded as stipulated in point 23.

AIDING AND ABETTING CAPITAL FLIGHT,
TAX EVASION AND SO FORTH*Article 8 - Capital flight*

The banks undertake not to aid and abet in any active way capital transfers from countries having introduced legislation to restrict the investment of funds abroad, such as, for instance by receiving in an organized way clients abroad, outside their own bank premises, to accept funds; by commissioning agents abroad with a view to organizing capital flight; by promising commission payments to capital-flight agents and to people mediating flight capital.

54. "Capital flight" is defined here as unauthorized capital transfer in the form of foreign exchange, securities or bank notes from a country prohibiting or restricting such transfers of capital abroad by its residents.

55. The bank is forbidden to render active assistance in the flight of capital such as

- a) by the organized reception of customers abroad outside the bank premises for purposes of accepting funds (visits abroad to look after customer relations, however are permissible so long as the bank's official neither accept funds whose transfers prohibited nor gives advice on illegal capital transfers);
- b) by commissioning agents to organize capital flight;
- c) by promising commissions or other compensation to those who assist or arrange capital flight;
- d) by pointing out contact people who organize or assist capital flight.

56. For the rest, assets of clients domiciled abroad can continue to be accepted in Switzerland, providing the provision concerning funds acquired by criminal acts are observed (see points 30-32 on Art. 4).

Article 9 - Tax evasion and so forth

The banks do not support attempts at deception made by their clients vis-à-vis authorities at home and abroad in particular vis-à-vis tax authorities, neither by incomplete nor by other misleading attentions.

57. The bank is forbidden to give incomplete or otherwise misleading attestations to the customer himself or, at the customer's wish, to domestic or foreign authorities.

The term "authorities at home and abroad" is intended in particular to mean tax authorities, customs authorities and currency and bank authorities.

58. The prohibition extends particularly to special attestations which are drawn up on behalf of authorities at the client's request.

The bank is not allowed to make misleading or deceptive alterations on the forms it routinely provides, such as account and deposit statements, credit and debit advices, or settlement notes for foreign exchange, coupon and stock market transactions.

59. Attestations are incomplete when for the purpose of deceiving authorities relevant facts are suppressed, for instance when the bank--at its customer's request--omits certain items from a special declaration or an account or deposit statement.

Account and deposit statements do not have to mention, however, that the same client maintains other accounts or securities deposits.

60. Attestations are misleading when facts are presented untruly with the intention of deceiving the authorities, such as

- a) by the inclusion of false dates or sums, fictitious rate or the indication of false beneficiaries or debtors;
- b) by the attestation of fictitious claims or liabilities (regardless of whether the attestation corresponds to the books of the bank or not).

NUMBERED ACCOUNTS AND NUMBERED DEPOSITS

Article 10 - The prescriptions of the present Agreement apply without restriction to accounts and securities deposits designated by numbers only or by passwords.

61. Statements relating to the totality of business relations with a customer should also cover the accounts and securities deposits carried under numbers or passwords.

SCREENING OF EXISTING ACCOUNTS

Article 11 - In respect of existing customers holding accounts and/or security deposits in excess of 1 million francs, the requirements stipulated in Art. 6 and 7 are to be fulfilled within the period of one year as from the date on which this Agreement is put into force.

62. The screening of the existing accounts and deposits can also proceed on the basis of the situation as of 31.12.1976 or 31.12.1977.

63. The review is required when the sum of a customer's accounts taken together or the total amount represented by the securities deposits comes to more than 1 million Swiss francs.

64. The relevant amount can be computed separately for each branch or office of the bank.

65. The screening of existing accounts or securities deposits is to be completed by 30th June 1978. Applications for extensions by way of exception should be filed before this period expires with the Secretariat of the Arbitration Committee (point 70).

DISSOLUTION OF RELATIONS

Article 12 - The banks undertake to break off relations with customers if, in the course of business, suspicion should arise to the effect that the information obtained on the beneficial owner is not correct or that the customer performs acts through the bank which, within the meaning of this Agreement, are improper (Art. 2, par. 6).

66. Existing relations are to be broken off as quickly as possible without representing a breach of contract with the customer,

- a) when the bank has concrete indications that the customer is using it to conduct business based on activities punishable or subject to extradition under Swiss law,
- b) when the bank ascertains that the customer knowingly provided it false information on the beneficial owner [wirtschaftlich Berechtigter] upon opening the account or securities deposit (subsequent failure to report changes in beneficial ownership [wirtschaftlich Berechtigter] does not count as knowingly providing false information).

67. If the bank is not in a position to contact the customer because of correspondence instructions and a case arises according to point 66 b) above, the bank can wait until the customer's next visit or the next delivery of correspondence before breaking off relations.

68. The agreement does not create an obligation to notify prosecuting authorities. But should the bank ascertain that an attempt is being made to misuse its services for the sake of illicit manoeuvres, it is to consider further steps in order to prevent punishable acts (for instance, alerting the Swiss investigative authorities).

CONTROL

Article 13 - 1) By their signature to this Agreement, the banks commission and authorize the auditing agency imposed on them by banking legislation to control by means of random tests the observance of this Agreement on the occasion of their ordinary bank examination and to report to the Arbitration Committee set up under Art. 14, as well as to the Federal Banking Commission, any offences or any founded suspicion as to possible offences.

2) The Swiss National Bank will make known to the authorized auditing agencies the text of this Agreement as well as the list of signatories and thus their mandate.

SANCTIONS

Article 14 - 1) For the ascertainment and punishment of offences against this Agreement, an Arbitration Committee incorporated in Zurich is set up, comprising two representatives each of the Swiss National Bank and the Swiss Bankers' Association and which is presided over by a Federal Judge designated unanimously by these representatives. The Secretariat of the Arbitration Committee will be maintained at the Swiss National Bank.

2) The Arbitration Committee may impose on the bank convicted an offence against the Agreement a conventional fine of up to 10 million francs; in assessing the conventional fine, due regard is to be paid to the seriousness of the breach of contract, the degree of the bank's fault and its financial situation. The Arbitration Committee allocates the conventional fine to charitable institutions.

3) The Arbitration Committee arranges the procedure; Art. 36 to 65 of the Federal Law of December 4, 1947 on the Federal Rules of Civil Procedure and Art. 22 to 26 of the Federal Law of December 16, 1943 on the Organization of the Federal Judicial Practice apply *mutatis mutandis*.

4) The members of the Arbitration Committee are to observe strict secrecy as to the facts come to their knowledge in the course of the proceedings (Art. 47 of the Banking Law).

5) The Arbitration Committee informs the Federal Banking Commission of its decisions for them to examine the question whether the persons entrusted with the administration and management of the bank involved still give "warranty for an irreproachable conduct of business" within the meaning of Art. 3 par. 2 lit. c of the Banking Law.

69. The Arbitration Committee is to acquaint the banks periodically with the current tenor of its rulings, taking care that banking and business secrets are respected.

70. The address of the Secretariat of the Arbitration Commission:

c/o Swiss National Bank
Department I, Legal Section
8002 Zurich

COMING INTO FORCE

Article 15 - 1) This Agreement enters into force on July 1, 1977 and is valid for a fixed period of five years.

2) Subsequently, and unless it is not [sic] terminated by the Swiss Bankers' Association or by the Swiss National Bank at three months' notice, it is looked upon as being automatically renewed for further periods of one year each.

3) Each signatory bank is entitled, subject to three months' notice, to denounce the Agreement as per the end of the contract year, for the first time as per June 30, 1982.

4) The signatory banks authorize the board of directors of the Swiss Bankers' Association, in cooperation with the Swiss National Bank, to make further definitions or any modifications of the Agreement that may prove necessary on the strength of the experience gained.

71. The authority set out in Art. 15 par. 4 above does not empower the Swiss Bankers' Association to alter the substance of the Agreement to the disadvantage of the signatory banks.

72. No authentic interpretation is to be given neither by Swiss Bankers' Association nor the Swiss National Bank. They are jointly competent for interpretation.