

PAPER PRESENTED

INTERNATIONALIZATION SPREADS TO SECURITIES REGULATORS

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1. INTRODUCTION

The internationalization of the securities markets is a present and rapidly evolving reality which has outstripped nationally delimited regulatory systems. Some important initial steps to develop the international aspect of securities regulation were taken, however, at the recent Eleventh Annual Conference of the International Organization of Securities Commissions (IOSCO) and similar organizations in Paris.¹ The Conference consisted of keynote speeches, papers by *rapporteurs* discussed in workshops, plenary sessions, the adoption of resolutions, and the creation of standing committees. There also were demonstrations of leading electronic securities trading systems. Taken as a whole, the Conference confirmed the growing importance of the internationalization of the securities markets and the ability of IOSCO to provide a framework for transnational cooperation among regulators. The specific initiatives taken by the Conference are discussed below.

2. ESTABLISHMENT OF REGULATORY COMMITTEES

The most important action at the Conference was the establishment of four IOSCO committees to accelerate:

- the automation of securities clearance and settlement systems among IOSCO members;
- the sharing of enforcement information among IOSCO members;
- the access of issuers, brokers, dealers and investors to each

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¹ The Conference met July 16-18, 1986. Yves Le Portz, President of the French Commissions des Opérations de Bourse (COB), served as President of the Conference.

- others' markets; and
 - the fostering of securities markets in developing countries.²

The committees³ were expected to function under the direction of Yves Le Portz who, as Vice Chairman of the Executive Committee, also was charged by IOSCO with encouraging member implementation of the resolutions adopted by the Conference and reporting on progress at the next IOSCO meeting in Brazil in September, 1987. Since the IOSCO Conference in Paris, in November, 1986, Monsieur Le Portz has proposed to the Executive Committee of IOSCO to establish a so-called Technical Committee on the regulation of securities markets. This Technical Committee would coordinate the working program of IOSCO on an ongoing basis. Although the position is not officially settled, it is likely that this Technical Committee, in effect, will be either an umbrella over the four committees or will supersede them. Thus, the Technical Committee, if established, would be a vehicle for the kind of international cooperation that is found among the world's banks in the Cooke Committee of the Bank for International Settlements (BIS).

3. THE WORKSHOPS: RECOMMENDATIONS AND RESOLUTIONS

Workshop I focused on internationalization of the securities markets, technological developments and the regulatory implications of both. Charles Cox, Commissioner of the Securities and Exchange Commission (SEC) and one of the *rapporteurs* of this Workshop, drew on the responses of the securities community⁴ to the two SEC concept releases in the international area.⁵ He offered a number of recommendations to governments and their securities regulatory authorities includ-

² See ELEVENTH CONFERENCE, INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (IOSCO), FINAL COMMUNIQUE (1986).

³ The four committees were proposed by John Shad, Chairman of the United States Securities and Exchange Commission (SEC), in an opening address. Before the implementation of his suggestion, there was a certain amount of behind-the-scenes negotiation as the European group of members and observers indicated some serious reservations about an enforcement committee inspired by the SEC. See *infra* text accompanying notes 4-6. Certainly, the SEC remains concerned with preventing the abuse of foreign bank secrecy laws and blocking statutes. See, e.g., *U.S. Stock Regulators Discover Pitfalls of Global Enforcement*, Int'l Herald Tribune, Aug. 21, 1986, at 9, col. 3. The Conference, however, in adopting Chairman Shad's recommendations, apparently perceived the SEC to be equally committed to the internationalization of the securities markets and intent on playing a leading role in that process.

⁴ See *SEC Staff Issues Summary of Comments on Stock Market Internationalization*, [Jan.-June] Sec. Reg. & L. Rep. (BNA) No. 18, at 187 (1986).

⁵ See Request for Comments on Issues Concerning Internationalization of the World Securities Markets, Exchange Act Release No. 34,21958, 17 CFR 230 (April 18, 1985); Facilitation of Multinational Securities Offerings, Securities Act Release No. 33,6568, 17 CFR 240 (Feb. 28, 1985).

ing: harmonizing disclosure standards while preserving national investor protections; enhancing international securities markets' efficiency while maintaining market integrity and investor protections; facilitating international market linkages; developing international cooperation in market surveillance; providing transnational access to regulatory investigative files; and entering into bilateral and multilateral agreements for assistance in securities matters. Most of Commissioner Cox's recommendations were endorsed by the Workshop, although the European members and observers objected to direct access by a foreign authority to their own investigative files. This objection was met by substituting the exchange of information for direct access to files.

The other *rapporteur* for this Workshop, Douglas Hawes, emphasized the need for the establishment of the types of regulatory committees that evolved at the Conference. He suggested that such committees set up a liaison with existing groups of securities regulators, such as the Contact Group of the European Economic Community (EEC). He also recommended, and the Conference adopted, a resolution encouraging governments to establish self-regulatory organizations "to regulate the activities of market professionals, both domestic and foreign, operating in their countries subject to the oversight of a control authority."⁶

Workshop II dealt with the integration of financial activities, the conflicts of interests related to such integration, and the problem of multiple regulatory authorities. The *rapporteurs*, Jeffrey Knight, Chief Executive of the London Stock Exchange and Paul Guy, Chairman of the Commission des Valeurs Mobilières du Québec, offered a series of resolutions based, in part, on the extensive study that had been made of the issues in connection with the Financial Services Bill of 1986 pending in the U.K. Parliament and the reform of the London market ("the Big Bang"⁷). They urged members to issue rules to prevent abuses resulting from conflicts of interest and especially to require disclosure to clients of such conflicts (for example, information about commissions or profits obtained by the brokerage firm from the transaction). They also recommended the adoption of fair dealing and "know your client" prin-

⁶ RESOLUTION OF WORKSHOP I OF THE ELEVENTH CONFERENCE, IOSCO, RECOMMENDATION 6 (1986).

⁷ The Big Bang, which occurred in October, 1986, eliminated such long-standing practices as fixed commissions and the strict demarcation between jobbers and brokers. In addition, banks, insurance companies, and foreign firms will be able to participate more fully in the London market. It is expected that the number of market makers will double. See *London Market Makers and Alpha Stocks Listed by SE*, Fin. Times, July 18, 1986, at 6, col. 1.

principles, special protections for clients with whom financial intermediaries have a fiduciary relationship, and some mechanism for ensuring that external checks are imposed to prevent abuse.⁸

Workshop III was concerned with privatization, a subject which had wide interest for representatives of both well-developed and less well-developed countries. Lord Rockley, the Managing Director of Kleinwort Benson Limited, a London merchant bank, was the *rapporteur*. He presented a paper which outlined the U.K. experience and attempted to draw some conclusions.⁹ The only resolution recommended by this Workshop was to make certain that privatization, if made through market channels, follow a procedure that is transparent and complies with normal market practices.

Workshop IV focused on the current factors in the development of capital markets. David Gill, Director of the International Finance Corporation, an affiliate of the World Bank, served as *rapporteur*. The aim of this Workshop was to promote the development of capital markets by making national savings more effective through long-term investment in the stock market. The most interesting resolutions to emerge from this Workshop suggested that governments should enhance

⁸ See RESOLUTION OF THE ELEVENTH CONFERENCE, IOSCO, RECOMMENDATION 3 (1986) (The resolution recommended that "members should ascertain what steps can be taken to enhance the efficiency of international trading markets while providing for market integrity and investor protection").

⁹ Paper presented by Lord Rockley, WORKSHOP III OF THE ELEVENTH CONFERENCE, IOSCO (1986). Lord Rockley made the following points:

- A. In order to prepare a government-owned enterprise for privatization, it is often necessary to carry out a major restructuring of its financial profile and its commercial relationships, and to establish some regulatory control in cases where the enterprise enjoys monopolistic power.
- B. Public sales of state enterprises tend to be of disproportionate size in their indigenous markets and international interest is likely to be required to ensure success.
- C. Differing disclosure requirements in different jurisdictions raise problems, but, accounting issues aside, the burden can be met by additional work.
- D. More difficult problems are raised by the different marketing practices in different jurisdictions (e.g., road show publicity in Japan can only take place prior to a registration statement being filed, while in the U.S., no such publicity is allowed in the pre-filing period).
- E. Encouraging individual investors to buy has been easier than persuading them to hold (e.g., on the sale of British Aerospace, 130,000 investors bought but only about 40,000 shareholders kept their shares).
- F. Pricing of such offerings is a matter of wide debate but in the last analysis, there is no difference between a privatization sale and any other: the objective is a fair price to the vendor and investor, and an initial market premium is normal and healthy.
- G. A key factor in the ultimate success of a privatization program is the political will of a government to maintain an environment in which an enterprise can generate profit and future growth.

the status of securities commissions in order to improve the prospects for securities market growth; that fiscal disincentives for market growth be eliminated; that securities commissions work for the adoption of internationally accepted uniform accounting practices and disclosure standards; and that securities commissions support the development of independent rating agencies.¹⁰

4. DEMONSTRATIONS OF ELECTRONIC SECURITIES TRADING SYSTEMS

The Conference provided the first opportunity for the evaluation of the four leading electronic information and transaction processing systems in a head-to-head competition. Representatives of the CATS system of the Toronto Stock Exchange (TSE),¹¹ the NASDAQ system of the National Association of Securities Dealers (NASD),¹² the SEAQ system of the LSE,¹³ and the Instinet/Reuters system,¹⁴ were able to

¹⁰ See WORKSHOP IV OF THE ELEVENTH CONFERENCE, IOSCO, DRAFT RESOLUTIONS (1986).

¹¹ CATS is presently in use for just over 20% of the volume of the TSE. This system provides upstairs (i.e., office, not trading floor) automatic electronic trading with multiple market makers. A unique feature is that dealers can see the complete book of orders at different market levels (as with the New York Stock Exchange specialists' book, which is not available to others). Stocks traded in CATS are not traded on the floor and vice versa. The adoption of the CATS system in Paris (on a pilot basis) led to the use of a continuous market system for five stocks versus the present auction market (where the price is generally fixed only once or, at most, a few times during the day). Today there are 36 stocks so traded.

¹² NASDAQ has 125,000 terminals, over 4,000 issues and about 500 market makers. In the basic system, bid and asked prices of multiple market makers are displayed electronically and trades are made by telephone. In addition to the basic system, NASDAQ has developed SOES (Small Order Execution System) through which dealers electronically and automatically trade orders of up to 1,000 shares. SOES accounts for about two to three million of the average of 120 million shares traded by NASDAQ daily. Since April 22, 1986, NASDAQ has been linked with the LSE; several hundred key stocks in each market are displayed in the other's system. A key aspect of the linkage is that the LSE has, since the Big Bang, enjoyed electronically assisted, multiple market upstairs trading for all stocks.

NASD announced on July 15, 1986 that the Association of International Bond Dealers (AIBD) intends to computerize the Eurobond market and is studying with NASD the use of its system as well as a formal linkup.

¹³ SEAQ very much resembles NASDAQ, even to the extent that a small order execution system will be added in the near future.

¹⁴ See *Reuters and SE to Pool Systems*, Fin. Times, Feb. 13, 1986, at 38, col. 1. While similar in many ways to the other three, Instinet/Reuters presents the most unusual mix in terms of its fit in the market. Reuters presently has 15,000 terminals around the world providing basic securities information, both prices and news; an additional 49,000 terminals provide currency and commodities trading and news. Reuters has acquired the right to market the Instinet system throughout the world outside of North America. In the U.S., Instinet has 450 subscribers including brokers, institutions and stock exchange specialists. Instinet allows trading execution through the computer; all of its trades are reported through NASDAQ. Instinet members must have a Na-

demonstrate their equipment to those in attendance, as well as to observe their competitors' offerings, during simultaneous exhibitions in one location. During this time, it became clear that a multi-layered competition exists: exchange floor versus upstairs dealing; exchange organized versus over-the-counter trading; electronically assisted telephone versus automatic execution; and exchange (or self-regulatory organization) sponsored versus private for-profit systems. This competition appears likely to contribute to the internationalization of the securities markets. Regulatory authorities, however, must ensure that fair and open markets exist for present and future competitors in the field of electronic information and transaction processing systems.

5. CONCLUSION

The need for an activist and truly representative organization capable of promoting cooperation among the world's securities regulatory agencies has been appreciated for some time.¹⁵ It was, however, uncertain that IOSCO would be either serious enough or international enough to do the job. In the course of the Conference, it became apparent that IOSCO is coming of age, and that it is now an appropriate body.¹⁶ What was until 1983 an organization limited to North and South America regulators has become a truly international organization, with 26 members¹⁷ and 23 observer countries or organizations,¹⁸ a

tional Clearing Corporation agent which in turn vets the Instinet subscriber like any other client. About 86% of Instinet's trades go through an exchange or market maker while 14% represent trading by principals. The total volume of trades executed through Instinet in 1985 was 750 million shares.

Entry of Instinet in Europe through Reuters has been neither quick nor easy. Reuters has had some disagreements with the LSE about mixing quotes of non-LSE members with LSE quotes, *On Screen Financial Pact*, Fin. Times, Feb. 13, 1986, at 30, col. 1, and at present is only receiving SEAQ level 1 information (i.e., no inside market). Reuters has applied for LSE membership, and is hopeful of being accepted as it has been on the U.S. regional exchanges (though not on the NYSE). For Europe and elsewhere, Reuters expects that by making association with a clearing member, a prerequisite to use of the system for execution, the financial integrity of subscribers will be assured. As to surveillance, Reuters claims to do some monitoring of trades although it seems clear that such monitoring does not begin to rival that of the NYSE or NASD.

¹⁵ Address by D. Hawes, ABA Conference, Washington, D.C. (July 7, 1985) (paper presented: *Internationalization of the Capital Markets: Economic Changes and Legal Implications*); *How to Vet Global Share Markets*, Fin. Times, Jan. 20, 1986, at 12, col. 1 (editorial). While the Cooke Committee of the BIS served as an admirable model, neither the SEC nor Peter Cooke were keen on using the BIS as its home.

¹⁶ There is another informal group of securities regulators from eight countries (Australia, Canada, France, Hong Kong, Netherlands, South Africa, U.K. and U.S.) which has been meeting annually since 1982. Until IOSCO demonstrates that it can do the job, including attracting representation from key countries like Germany, Switzerland and Japan, this informal committee probably continues to serve a useful purpose.

¹⁷ Six nations (Italy, New Zealand, Norway, Portugal, Spain and Taiwan) were

number of which are considering membership. Other evidence of IOSCO's newfound seriousness includes the establishment of a permanent secretariat located at the Quebec Securities Commission and the creation of an eight member Executive Committee¹⁹ to further the work of IOSCO, especially between annual conferences. It is reasonable to believe that the "fundamental reform of the organization's structure"²⁰ has turned IOSCO "from an American talk shop into an embryonic global securities operation."²¹ It has been observed, however, that "the combination of securitization and internationalization of capital markets suggests that the securities watchdogs should now be addressing the systemic problem."²²

That IOSCO is already beginning to address "the systemic problem" may be seen from the resolutions hammered out by the various workshops and plenary sessions and adopted by the President's Committee, and especially from the proposed establishment of the Technical Committee. Moreover, the Executive Committee, at its November 1986 meeting, adopted a resolution calling on all members of IOSCO to provide mutual assistance in securities matters. To date, the following members have agreed to be bound by such a resolution: France, Hong Kong, Ontario, Quebec, and the U.K. The next year will provide an opportunity to see whether the urgency evidenced in Paris will yield continuing initiatives and to see whether it will be perpetuated when the Conference returns to South America in September, 1987.

admitted at the Conference.

¹⁸ Observer organizations include the Organization for Economic Cooperation and Development (OECD), the Commission of the European Communities, the Council of Europe, the International Finance Corporation of the World Bank, and the International Federation of Stock Exchanges.

¹⁹ Australia, Brazil, France, Hong Kong, Italy, Peru, U.K. and U.S., plus the President of the Permanent American Regional Committee and the General Secretary of IOSCO *ex officio*.

²⁰ *Planned Reforms Sharpen IOSCO Regulatory Teeth*, Fin. Times, July 17, 1986, at 36, col. 6.

²¹ *Watchdogs to Bark in Tune*, Fin. Times, July 21, 1986, at page 16, col. 1.

²² *Id.*