[Northwestern Journal of International Law & Business](http://scholarlycommons.law.northwestern.edu/njilb)

Volume 17
Issue 1 *Winter*

Fall 1996

IOSCO: Its Mission and Achievement

A.A. Jr. Sommer

Recommended Citation

A.A. Jr. Sommer, IOSCO: Its Mission and Achievement, 17 Nw. J. Int'l L. & Bus. 15 (1996-1997)

ARTICLES

IOSCO: Its Mission and Achievement*

*A. A. Sommer, Jr.***

ORIGINS

The origins of the International Organization of Securities Commissions (IOSCO) lie in the Americas. In 1974, nations of the Western Hemisphere, largely under the leadership of the United States, organized the InterAmerican Association of Securities Commissions to provide a forum for consideration of securities regulation matters of common interest and to assist capital formation in the Western Hemisphere. Nine years later the organization transformed itself into a world-wide organization and was incorporated by an act of the Quebec Parliament as a non-profit corporation under Quebec law. A secretariat was established in Montreal, a recognition of the expanded scope of the organization. IOSCO perceives the transition from a

* This article is published unedited at the author's request and is solely the responsibility of the author. The *Journal* added citation to relevant authority, when available, and retains responsibility for citation form.

** Counsel, Morgan, Lewis & Bockius.

The author wishes to acknowledge the great assistance provided by former Securities and Exchange Commission (SEC) Chairman David A. Ruder, presently William W. Gurley Memorial Professor of Law at Northwestern University School of Law; Linda C. Quinn, formerly Director, SEC Division of Corporation Finance, presently partner, Shearman & Sterling, New York City; and Michael D. Mann, Director, and Paul A. Leder, Deputy Director, SEC Office of International Affairs. These persons were, during their time with the SEC, active participants in IOSCO activities and their insights stemming from that participation have been very helpful in preparing this article.

Western hemisphere endeavor to a world-wide one not as the succession of one organization by another, but rather as a continuum; for instance, it numbers its annual meetings from the inception of the InterAmerican Association; thus the first meeting of IOSCO in 1987 was called the Twelfth Annual Conference. The 1988 Annual Report was the first published, hence it is difficult to gain much insight into the 1974-1988 activity of the regulators.[1]

PURPOSES

The bylaws of the reconstituted IOSCO state the purposes of the organization and, while the emphases and priorities have changed, the formal statement of purpose has not. The members committed:

> •to cooperate together to ensure a better regulation of the markets, on domestic as well as on the international level, in order to maintain just and efficient markets;
>
> •to exchange information on their respective experiences in order to promote the development of domestic markets;
>
> •to unite their efforts to establish standards and an effective surveillance of international securities transactions; and
>
> •to provide mutual assistance to ensure the integrity of the markets by a rigorous application of the standards and by effective enforcement against offenses.[2]

The change of emphasis and priorities (or perhaps simply a particularization of the defined mission) were seen in the opening remarks of Jean Saint-Geours, chairman of the Comission des Operations de Bourse of France, at the Twentieth Annual Conference of IOSCO in 1987. He said:

> First public securities regulators should develop cooperation outside of their own field, in particular with banking regulators. Second, international accounting harmonization, which is crucial to compare the valua-

---

1 In 1992, perhaps because of the gap that developed between the SEC and the European members of IOSCO over such issues as capital adequacy (discussed below), the SEC organized the Council of Securities Regulators of the Americas (COSRA) of which the members are, for the most part, the countries which were members of the InterAmerican Association of Securities Commissions. While some of the work of COSRA parallels that being done by IOSCO, COSRA is principally involved in developing detailed standards to guide the development of securities law in the Americas in such areas as self-regulation, enforcement cooperation and market oversight, all to the same end as IOSCO - the facilitation of cross-border trading. *See Securities Regulators of Americas, Caribbean Create Corporate Council,* 24 SEC. REG. & L. REP. 837 (June 12, 1992); *New Securities Regulators Should Define Principles, Schapiro Says,* 25 SEC. REG. & L. REP. 822 (June 11, 1993).

2 INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (IOSCO), 1995 ANNUAL REPORT 28 (1996) [hereinafter 1995 REPORT].

tion of public companies between different markets. Last, the development of the cooperation in enforcement matters.[3]

Each of these priorities has its origin in the most compelling, difficult and sometimes disputatious problems IOSCO has confronted over the years: it has clashed with the Basle Committee on Banking Regulation and Supervisory Practices of the Bank for International Settlements (the Basle Committee); members have clashed among themselves, notably over capital adequacy for securities firms; and it has clashed with the International Accounting Standards Committee over the role of IOSCO in developing international accounting standards. In each instance, as the discussion below will indicate, IOSCO appears to be heading toward a happy solution.

MEMBERSHIP AND FINANCES

IOSCO has three classes of membership: regular, affiliate and associate.[4] Regular members are either governmental regulators of securities markets, or a self-regulatory agency, such as a stock exchange, when there is no government regulator.[5] Thus, for instance, the Bahrain Stock Exchange is a regular member since there is no governmental regulator of securities markets in Bahrain. Of course, in many instances such quasi-governmental entities are overseen with varying degrees of care by a governmental authority, such as a minister of finance. Associate members are associations of public regulatory bodies having jurisdiction in the subdivisions of a country when the national regulator is a member;[6] thus the North American Securities Administrators Association is a member. And finally, affiliate members are international organizations with a universal or a regional scope, whose mission includes the regulation or the development of capital markets, or any other organization recommended by the Executive Committee.[7] Exchanges in countries where there is a governmental regulatory authority and associations of dealers (e.g., the National Association of Securities Dealers)[8] are the principal entities

3 *See id.* at 4.

4 *Id.* at 31.

5 *See id.* at 41-45.

6 *See id.* at 46.

7 *See id.* at 46-48.

8 The roster of IOSCO reflects the membership of the organization before the recent reorganization that has resulted in three entities: NASDAQ Stock Market, Inc. which runs the NASDAQ market; NASD Regulation, Inc. which performs the regulatory functions formerly carried out by the National Association of Securities Dealers; and NASD, Inc. which is the parent of the other two entities and which is the statutory self-regulator and is the legal continuation of the National Association of Securities Dealers. *See NASDR Announces Reorganization, Multimil-*

in this category, though it includes such other entities as the Commission of European Communities.

The dues have suprisingly remained remarkably constant – and modest – since 1990: $5,000 per year for a member of any class.[9] In 1988 most of the developed nation members contributed at that rate even though the established level then was $3,000. These dues constituted about 83% of IOSCO's revenues in the year ended December 31, 1995, while net income from the annual conference in that year contributed about 8%.[10] Generally the net revenue from the annual conferences is split between IOSCO and the sponsoring organizations. Since 1989 (the first full year of operation as IOSCO) revenues have grown from $115,000 to $991,000 in 1995, and membership from 45 regular, 3 associate and 2 affiliate members, to 73 regular, 10 associate and 37 affiliate members in 1995.[11] Notable additions in 1995 were the China Securities Regulatory Commission and the Russian Federation Commission on Securities and the Capital Market.

Organization

IOSCO is governed by and its work done through a network of committees. The topmost body, the Presidents Committee, is made up of the presidents of all regular and associate members and meets once a year at the annual conference. This Committee approves all resolutions whereupon they become policies and pronouncements of IOSCO. Its also elects members of the Executive Committee.[12]

The principal governing body is the Executive Committee consisting of twelve representatives elected by the Presidents Committee, the chairs of the Emerging Markets and Technical Committees and a representative from each of the regional standing committees.[13] This committee meets throughout the year and appears to be primarily concerned with the governance and management of IOSCO rather than with the formulation of policy statements, although all Technical Committee statements and actions must be approved by it.

The committee which might be said to do the "grunt work" with respect to the most developed markets is the Technical Committee.

lion Dollar Budget Increase, 28 Sec. Reg. & L. Rep. 636 (May 17, 1996); *SEC Approves NASD Reorganization Rule Changes*, 28 Sec. Reg. & L. Rep. 786 (June 21, 1996). At the time of this writing, the relationship of each to IOSCO has not been determined.

9 1995 Report, *supra* note 2, at 32.

10 *Id.* at 35.

11 *Id.* at 41-48.

12 *Id.* at 28.

13 *See id.* at 49.

The Technical Committee tackles the problems confronting developed markets.[14] It is made up of the representatives of sixteen securities agencies that regulate the larger and more developed markets in the world.[15] Basically the Technical Committee is self-constituting, in the sense that the Committee determines the countries which will be members of it; similarly it determines its procedures and agenda.

The Technical Committee does its work through five Working Groups.[16] Each of these is responsible for reviewing major regulatory issues related to international securities regulation in a defined area and for making recommendations to the Technical Committee,[17] which in turn recommends them to the Presidents Committee and Executive Committee for approval and promulgation. The defined areas for which the Working Groups are responsible are: multinational disclosure and accounting, regulation of secondary markets, regulation of market intermediaries, enforcement and the exchange of information and investment management.[18]

The Technical Committee was significantly strengthened in 1990 as the result of a Strategic Assessment developed by SEC Chairman Richard Breeden and the staff of the SEC.[19] On the first review of it prior to the 1990 meeting in Santiago, Chile, there was considerable controversy over parts of it, but these were resolved at the annual conference (what happened behind closed doors isn't publicly known since all committee meetings of IOSCO are closed). Breeden, who was serving as chairman of the Executive Committee, was elected to a two year term as chairman of the Technical Committee.

For the first time the Technical Committee had a chairman and a focused plan of work. The reorganization, among other things, called for fuller staffing of projects by members, limiting the number of members (in January 1990 forty-two individuals representing seven-

---

14 *Id.* at 11.

15 *See id.* at 50. Notably, the most recent addition to the Technical Committee has been Mexico.

16 The advent of working groups, which have been extremely important in pressing forward the work of IOSCO, followed the speech of then SEC Chairman John S. R. Shad suggesting their organization at the 1986 annual meeting of IOSCO in Paris. Letter from David S. Ruder, former SEC Chairman, presently William W. Gurley Memorial Professor of Law at Northwestern University School of Law, to A.A. Sommer, Jr., former SEC Commissioner, presently Counsel, Morgan, Lewis & Bockius (Sept. 4, 1996).

17 1995 Report, *supra* note 2, at 11.

18 *Id.* at 13-20.

19 Richard Breeden and the SEC, Strategic Assessment of the IOSCO Technical Committee (Fall 1990) (private, unpublished document on file with IOSCO and the SEC).

teen members attended the Technical Committee meeting) and more meetings.[20]

The Emerging Markets Committee (formerly the Development Committee) is concerned with the problems of emerging markets.[21] IOSCO describes its mission in this manner:

> The Emerging Markets Committee endeavors to promote the developing and improvement of efficiency of emerging securities markets by establishing principles and minimum standards, preparing training programs for the personnel of members and facilitating exchange of information and transfer of technology and expertise.[22]

In 1995, training was provided to the staffs of six emerging nations and some emerging nations were training the staffs of other emerging nations.[23]

The Emerging Markets Committee performs a role with respect to emerging markets that parallels the role the Technical Committee has in relation to developed markets, and as such is an important part of the work of IOSCO. Like the Technical Committee, it does its work through working groups assigned to areas paralleling those established by the Technical Committee. The defined areas for which the Emerging Markets Committee Working Groups are responsible include: disclosure and accounting, regulation of secondary markets, regulation of intermediaries, enforcement and the exchange of information and investment management.[24]

This Committee has chalked up significant achievements. Perhaps the most notable has been the development of a "blueprint" setting forth, in the words of the 1993 IOSCO Annual Report, "all the relevant issues to be dealt with when designing an adequate clearing and settlement system that meets the G-30 standards as well as alternative solutions. . . ."[25] This has led to an initiative in the Caribbean region to assess the problems associated with implementing the blueprint.

There are now four Regional Committees which meet to discuss problems in their geographical areas. These are the Africa-Middle

---

20 *Id.*

21 1995 REPORT, *supra* note 2, at 21.

22 *Id.* at 30.

23 *Id.* at 3; The U.S. Securities and Exchange Commission has for several years run a three week training program for regulators from emerging markets. At the last one there were more than one hundred attendees from over seventy countries.

24 1995 REPORT, *supra* note 2, at 21-26.

25 Clearing and Settlement in Emerging Markets – A Blueprint: Report of the Emerging Markets Committee of IOSCO (Oct. 1992) (unpublished document on file with IOSCO); <http://www.IOSCO.org/>.

East Regional Committee, the Asia-Pacific Regional Committee, the European Regional Committee and the InterAmerican Regional Committee.[26] The geographic areas least represented in IOSCO are Africa, the Middle East and former parts of the Soviet Union (other than Russia).

Finally, there is a Consultative Committee constituted of affiliate members which is intended to provide a channel for these members to express their thoughts concerning matters under consideration by IOSCO.[27] Since the reports of this committee do not appear to be published, it is difficult to judge its effectiveness, but there have been some episodic conversations which suggest it has been low. Some evidence of a sense that the Consultative Committee has not had the role it should have may be seen in the report of the Technical Committee in the 1995 Annual Report which says:

> During the year, the Technical Committee Working Groups made a deliberate effort to increase the involvement of the Consultative Committee in their activities. . . . The cooperative relationship between the Technical Committee and the Consultative Committee is evolving in a positive direction.[28]

Under the Technical Committee chairmanship of Jean Saint-Geours, the Consultative Committee began to have greater opportunities for input to the Technical Committee and the expectation and hope is that it will increasingly become a more important presence in the work of IOSCO. Clearly it has the potential of contributing unique insights to the work of the organization.

ANNUAL CONFERENCE

IOSCO holds an annual conference which consists of closed meetings of its committees and public meetings at which papers are delivered on a variety of subjects.[29] The papers and reports presented at the meetings are available through the IOSCO office in Montreal.[30] The meeting is generally managed by the regulator-member in the host country, including the selection of the topics for the public meetings and the speakers. Usually large numbers of persons in the securities industry, lawyers and others interested in international financial

26 1995 REPORT, *supra* note 2, at 28 .
27 *Id.* at 30.
28 *Id.* at 20.
29 *Id.* at 31.
30 The documents made public during the annual conference can be obtained from the General Secretariat and are listed on the IOSCO Internet Home page: <http://www.IOSCO.org/>. 1995 REPORT, *supra* note 2, at 5, 31-32.

matters attend as "observers."[31] While observers may not attend the organization's committee meetings, they can and do attend open meetings and participate in the social program.

The papers at the workshops or meetings generally reflect the topics then commanding the attention of the international financial world. Those at the Twentieth Annual Conference in 1995 dealt with regulators and the media, emerging markets, objective evaluation of companies, the impact of institutional management on company resources and corporate governance, globalization of risks - cooperation between banking and market regulators, the creation of new technologies and the evolution of markets, international cooperation – the exchange of information between regulators and its development and the establishment of regional financial areas and perspectives on regulatory harmonization.[32] The variety and currency of the topics is noteworthy; they touch all the "hot buttons."

Achievements and Controversies

Through the years IOSCO has issued innumerable reports and studies, and its members have spent uncountable man-years in meetings and preparing papers; their burden has been heavy since IOSCO has, as a matter of policy, maintained a small secretariat. It has unquestionably become a steadily bigger player in the development of international financial markets, achieving an importance equal to that of the Basle Committee and International Association of Insurance Supervisors, which plays an IOSCO-like role with respect to the insurance industry.[33] During its relatively brief life, international trading has expanded enormously, new financial instruments and markets have been born and flourished, new systemic threats have emerged and a number of catastrophes have afflicted the financial world.[34] It is impossible to delineate all the actions IOSCO has taken to confront the world's financial problems, but some might be noted, particularly those which have embroiled it in controversy.

---

31 *Id.* at 4.

32 *Id.* at 5.

33 The importance of IOSCO's role in the development of international financial markets today is evidenced by the attention world regulators give to IOSCO's position on issues. *See, e.g., Financial Conglomerates Face Tighter EC Regulatory Oversight*, EuroWatch, May 29, 1992, at vol. 4, no. 5 (stating that "the heightened level of interest shown by international groups of regulators, such as the Basle Committee on Banking Supervision and the International Organization of Securities Commissions, seems likely to affect the choices the [European Community] makes in addressing the supervision of conglomerates").

34 1995 Report, *supra* note 2, at 2.

A notable early achievement was the study of international equity offers and the publication of *International Equity Offers*.[35] Recognizing that IOSCO has no power to impose any prescriptions, the study made six recommendations. These recommendations looked to the development of a single disclosure format which could be used in offerings in several countries, the development of an annual report format which would lend itself to satisfying disclosure requirements for offerings, developing means of coordination among regulators to expedite offerings and listings, seeking closer alignment of practices (such as stabilization) in primary markets, the codification of principles to limit the extra-territorial application of domestic provisions governing offerings and the development of greater standardization with respect to restrictions on resale of non-publicly sold securities.[36] All of these recommendations, of course, had the single goal of facilitating cross-border access to capital by issuers.

The final recommendation was that each jurisdiction represented on the Technical Committee report annually on the changes it had made that could affect multinational offerings.[37] These annual reports contain much information about the progress that is being made to facilitate multinational offerings and reflect progress in facilitating such offerings.

Perhaps the most significant impediment to multinational offerings is in accounting practices. After a scuffle in 1994, the waters are now calm and significant progress in removing this barrier may be on the horizon.

From its earliest days, IOSCO has been a supporter of the International Accounting Standards Committee (IASC).[38] At the 1988 annual meeting, the Presidents Committee urged the IASC and the

---

35 International Equity Offers: Report of the Technical Committee of IOSCO (Sept. 1989) (unpublished document on file with IOSCO); <http://www.IOSCO.org/>.

36 *Id.*

37 *Id.*

38 The IASC was organized in 1973 by the accounting professions of nine developed countries for the purpose of developing accounting standards which would, it was hoped, become accepted throughout the world. *See The Standard Setters: As the Influence of the International Accounting Standards Committee Grows, Christopher Nobes Explains How it Works*, FIN. TIMES, Oct. 10, 1996, at 12. Steady progress has been made in reaching the goal: IASC standards have been increasingly accepted in many developed countries, and most nations with developing market economies look to them as the primary authority in developing their own standards. Worldwide Financial Dictionary, RR NEWSWIRE, June 18, 1986, available in LEXIS, News Library, ARCNWS file. For an example of a developed country using IASC Standards, *see* Allister Wilson, *International Accounting: Fifteen-part Harmony*, The Banker, Sept. 1995, at *3, available in LEXIS, News Library, CURNWS file. As of January 1996, the membership of the IASC consisted of 116 accounting bodies in 86 countries. *See Accountancy: Turning the Multinationals*

International Auditing Practices Committee to get on with their work looking toward internationally acceptable accounting principles and auditing standards.[39] That theme continues through subsequent reports until 1994 when there emerged publicly a rift between IOSCO and IASC that had undoubtedly been smoldering in the privacy of committee and other meetings.

IOSCO had indicated that while it supported the work of the IASC, it had identified a set of "core" principles and would withhold action on individual standards until all of the core principles were promulgated.[40] A working party of the Technical Committee has considered, commented up and generally found to be satisfactory, but not formally approved, some fourteen principles proposed by the IASC.

In a strongly worded address to the 1994 IOSCO meeting, Eiichi Shiratori, then chairman of the IASC, took strong issue with these and other positions of IOSCO. He reproached IOSCO for demanding a process different from that which most of the members followed in their own countries:

> In other words, IOSCO expects IASC to have dealt with issues that have not been, and perhaps cannot be, resolved by national standard setting bodies. So, for example, IOSCO expects IASC to have completed an International Accounting Standard on Financial Instruments before it will endorse the use of International Accounting Standards - but the SEC (an IOSCO member)[41] continues to endorse FASB pronouncements even though the FASB is a long way from completing its Financial Instruments project.
>
> IOSCO's approach also raises one other question. Should IOSCO endorse the process of setting International Accounting Standards in the same way that IOSCO members endorse the process of setting national standards? Or should IOSCO review, in detail, each International Accounting Standard? IOSCO is following the second approach, something which most of its members do not do in their own jurisdictions.[42]

Nine months later, largely through the leadership of the SEC, the breach was healed and in July, 1995, at the IOSCO annual meeting in Paris, IOSCO and IASC proudly published a communiqué that they

Inside Out: Paul Pactor on the International Accounting Standards Committee's Efforts to Require Better Information about 'Segments' in Companies, FIN. TIMES, May 30, 1996, at 28.

39 IOSCO, 1988 ANNUAL REPORT 8 (1989).

40 *See* IOSCO, 1994 ANNUAL REPORT 5 (1995) [hereinafter 1994 REPORT].

41 Shiratori apparently suspected the SEC was behind the IOSCO intransigence which he perceived.

42 Eiichi Shiratori, Efficiency in Multinational Securities Offerings: How to Promote International Harmonization of Accounting Standards (Oct. 1994) (unpublished speech on file with IOSCO); <http://www.IOSCO.org/>.

had reached agreement[43] that by 1999[44] the IASC would develop a comprehensive set of core principles which would allow the IOSCO Technical Committee to endorse them for cross-border capital raising and listing purposes in all global markets.[45] Since the United States has always been seen as a principal, if not *the* principal, obstacle to the acceptance of financial statements for filing in the United States not prepared in accordance with U.S. standards or reconciled to them, the public acknowledgment by SEC officials that they were supportive of the agreement lent it considerable additional importance.[46]

The agreement, of course, adopts the IOSCO position on postponing approvals of standards until the core standards as a body are finished, but by adopting a deadline for completion of work on them, it increases considerably the likelihood that an accommodation between IOSCO and the IASC will be accomplished on the short, rather than the long, term.

Lest it be thought that the 1995 concordat was the first hint of sunlight, it should be noted that previously IOSCO had approved International Accounting Standard No. 7 with respect to the reporting of cash flows and a number of jurisdictions, including notably the United States, accepted filings using this standard.

With regard to auditing standards, there was a breakdown of discussions between IOSCO and the International Auditing Practices Committee (IAPC) looking toward IOSCO approved auditing standards. This stemmed largely from the belief held by IOSCO that the IAPC, in codifying principles which had been approved by IOSCO, changed them in an unacceptable manner. However, discussions have resumed and reportedly progress is being made.

Another notable battle concerned standards for capital adequacy for securities firms. This time the struggle was not with an external foe, but was rather intramural and basically pitted the SEC under Chairman Richard Breeden against other members of IOSCO, principally the European ones. The controversy also involved the Basle

---

43 1995 REPORT, *supra* note 2, at 13.

44 This target has since been expedited to March, 1998.

45 1995 REPORT, *supra* note 2, at 13.

46 In April, 1996, the SEC published a release applauding the IASC for accelerating the date for completion of the core standards. It cautioned, however, that those principles would be acceptable to the SEC only if they constituted a comprehensive, generally accepted basis of accounting, were of high quality that would result in compatibility and transparency, provided for full disclosure, and were rigorously interpreted and applied. *See* Steve Burkholder, *FASB Advisory Council Gives Support to Derivatives Accounting Proposal*, 28 SEC. REG. & L. REP. 537 (Apr. 19, 1996).

Committee which was seeking to develop capital standards for both banks and securities firms.[47]

The heart of the intramural IOSCO quarrel was simply how the "haircut" should be applied to the equity securities in a security firm's portfolio for purposes of calculating its net capital.[48] The European regulators and their allies pushed for a so-called "building block" approach which would charge against the equity portfolio 8% across the board, and then would charge another 4% to 8% depending on the specific risk, which would depend on the diversification of the portfolio and the extent to which it contained liquid and marketable stocks.[49] Breeden thought this approach, if adopted in the United States (which of course it would not have to be even if IOSCO approved it), would result in a significant weakening of protection against insolvency of securities firms.[50] The situation was further aggravated when Sir Leon Brittan, vice-chairman of the Commission of the European Communities, the principal speaker at the main banquet of the conference in London in 1992, spoke out vigorously against the Breeden position.[51]

While this controversy continues unresolved, its importance has been eclipsed by the considerable progress which IOSCO has made in reaching agreements with the Basle Committee on other issues, including disclosures for supervisory purposes concerning derivatives, public disclosure of trading activities of banks and securities firms and developing value-at-risk models for regulatory purposes,[52] although with respect to the last as proposed by the Basle Committee, IOSCO has expressed some reservations[53] which appear likely to be resolved.

The importance of heightened international cooperation among regulators was highlighted in the final communiqué of the heads of

---

47 1995 REPORT, *supra* note 2, at 16.

48 Tracy Corrigan & Robert Peston, *IOSCO Setback Over Common Capital Requirements – IOSCO Conference*, 1 FIN. TIMES, Oct. 27, 1992, at 33.

49 There have been various articulations of the building block method; this is a simplified version of it.

50 Robert Peston & Tracy Corrigan, *Hopes Dwindle for New Agreement on Capital Requirements – IOSCO Conference*, 1 FIN. TIMES, Oct. 28, 1992, at 30. The determination of the appropriate haircut SEC rules is difficult; in general, a 15%-30% haircut on liquid equity positions is the benchmark, with a number of variations of that depending on the circumstances.

51 Robert Peston & Tracy Corrigan, *Sir Leon Brittan Joins Row Over Capital Standards – IOSCO Conference*, 1 FIN. TIMES, Oct. 29, 1992, at 28; *See also* Tracy Corrigan, *SEC and Regulators Deadlocked Over Capital Requirements*, 1 FIN. TIMES, Oct. 30, 1992, at 31.

52 1995 REPORT, *supra* note 2, at 15-16.

53 *Id.* at 16.

state of the G-7 nations at the conclusion of their meeting in Halifax, Nova Scotia, in June, 1995:

> The growth of financial markets, the development of new instruments, and a desire for diversification of investment have spurred global integration of national markets and increased liquidity. These developments have led to a more efficient allocation of capital and thus greater growth of economic activity. At the same time, with today's highly integrated financial markets, there is a greater potential for the rapid transmission of financial disturbances. Closer international cooperation in the regulation and supervision of financial institutions and markets is essential to the continued safeguarding of the financial system and to prevent erosion of necessary prudential standards.[54]

In response to this communiqué, in May, 1996, IOSCO and the Basle Committee released a joint statement identifying the major principles which should guide their approach to the supervision of internationally active financial institutions.[55] These principles include greater access to information possessed by regulators, better communications among them and the strengthening of cooperative arrangements to enhance the ability of each regulatory authority to supervise firms operating from its jurisdiction that are engaged in significant cross-border trading activities.[56]

To hasten the process of international cooperation, especially in enforcement matters, in 1994, IOSCO, describing some jurisdictions as "under-regulated and uncooperative," adopted resolutions recommitting members to adherence to the cooperation commitments entailed in membership and called upon each of them to do a written self-evaluation assessing the member's ability to provide mutual assistance and cooperation to foreign securities and futures regulators.[57] The resolution also provided that new members would have to similarly commit themselves and confirm that they would be able and willing to adhere to the principles and provide self-evaluation.[58] The

---

54 See *Communiqué from the G-7 Halifax Summit,* released June 16, 1995, DAILY EXEC. REP. (BNA) ¶22.

55 Response of the Basle Committee on Banking Supervision and of the International Organization of Securities Commissions to the Request of the G-7 Heads of Government at the June 1995 Halifax Summit (May 1996) (unpublished manuscript on file with IOSCO); <http://www.IOSCO.org/>.

56 *Id.* at 6.

57 1994 REPORT, *supra* note 40, at 4, 8; Resolution on Commitment to Basic IOSCO Principles of High Regulatory Standards and Mutual Cooperation and Assistance (Oct. 1994) (private, unpublished document on file with IOSCO).

58 *Id.*

resolutions further provided that the self-evaluations had to be filed with the General Secretariat and would be available to members.[59]

One of the principal objectives of IOSCO has been to stimulate "memoranda of understanding" (MOU) among national regulators committing the parties, to the extent permitted by law, to cooperate in enforcing their respective securities laws.[60] In 1988 only a handful of such memoranda existed. In 1991 the Technical Committee adopted ten principles to serve as a blueprint for the negotiation and implementation of MOUs.[61] This initiative has unquestionably facilitated the development of the more than 200 MOUs that have now been signed, to some twenty-five of which the United States is a party.[62]

Conclusion

Unquestionably, IOSCO has grown stronger and more influential and has proven its value, relevance and even indispensability. It has achieved a status with respect to securities regulation comparable to that enjoyed by the Basle Committee on Banking Regulation and Supervisory Practices with respect to banking regulation. Its maturing was hastened by Richard Breeden's reorganization of the Technical Committee in 1991 and the leadership he provided to that Committee; the Committee has continued to be the heart of IOSCO's activities. This renewed vigor was evident in the 1991 Annual Report: it reflected a new vigor, a new resolution; it bespoke an organization confident of its footing and its mission.[63] It is poised for even more growth in stature and effectiveness.

In this time of lightning swift developments in international capital markets, it is essential that there be a meeting place for securities regulators to pool their power, their intellectual resources, their ex-

59 *Id.*

60 1995 Report, *supra* note 2, at 3.

61 Principles for Memoranda of Understanding: Report of the Technical Committee of IOSCO (Sept. 1991) (unpublished document on file with IOSCO); <http://www.IOSCO.org/>.

62 1995 Report, *supra* note 2, at 3; The important role of IOSCO as a mechanism for cooperative international securities regulation was significantly strengthened at the 1988 annual meeting in Melbourne when then SEC Chairman David D. Ruder delivered an SEC Policy Statement on Regulation of International Securities Markets which had the unanimous approval of the Commission. This document set forth the elements necessary to achieve an effective regulatory structure for an international securities market system, which would include efficient market structures and practices, sound disclosure systems and fair and honest markets. This document appears to have been influential in the development by IOSCO of its priorities and projects. Policy Statement on the Regulation of the International Securities Markets, Securities Act Release No. 6807, 53 Fed. Reg. 46,963 (Nov. 21, 1988).

63 IOSCO, 1991 Annual Report (1992).

periences and their information to cope with proliferating problems. The abilities of the members will, in the years to come, be taxed to their fullest in assuring the efficiency and honesty of markets that change daily. But the organization has built a foundation upon which to build the responses needed to the mounting challenges.

At the 1994 annual meeting in Tokyo, Messr. Jean Saint-Geours, then chairman of the Technical Committee and President of the Comission des Operations de Bourse in Paris, fittingly characterized IOSCO:

> Our organization is some kind of laboratory, a crucible where tomorrow's markets are planned. In the last ten years, since IOSCO opened itself up to the whole world, a genuine community of market regulators has concretized. Mutual understanding has noticeably progressed in such a multilateral framework. This mutual understanding is the common soil from which tomorrow's technical solutions will sprout. Our recommendations, even though they do not belong to the classical legal order, are nevertheless of an obvious normative scope. My experience as a regulator taught me that hindrances to international cooperation seldom are of a technical nature; they have more to do with cultural differences, in the wider meaning of the term. Thus, any improvement in mutual understanding among regulators contributes to the lifting of technical obstacle [sic].[64]

---

64 Jean Saint-Geours, Opening Speech (Oct. 1994) (unpublished document on file with IOSCO); <http://www.IOSCO.org/>.