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# Regulation of Securities Markets

## Some Recent Trends and Their Implications for Emerging Markets

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The trend toward the liberalization of financial markets is part of a general recognition that free markets normally work better than government controls. Regulatory systems should be developed in light of the market failures that make them necessary and should provide the least possible opportunity for rent extraction by any single interest group.

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In recent years there has been a trend toward liberalizing financial markets in developed and emerging securities markets. In the United States, the Securities Act Amendments of 1975 emphasized competition in the provision of financial services by deregulating commission rates on stock transactions and by fostering the development of a national market system in securities. London's so-called "big bang" series of major reforms in 1986 deregulated commission rates, put a new trading system on the stock exchange, and allowed foreign financial service firms to participate more in the U.K.'s domestic securities market. Changes in the U.K. were far-reaching in a short period, so Chuppe and Atkin could examine their effects on the market — particularly on competition. They found that the big bang made London more competitive as a global financial center.

After examining trends in U.S., U.K., Japanese, Korean, and several emerging markets, Chuppe and Atkin conclude that securities markets can facilitate the efficient allocation of an economy's resources and can foster competition in the financial sector by providing an alternative to government-directed funding or a supplement to private funding through the banking systems. For securities markets to allocate resources to their most productive uses, they conclude, regulation should be confined to that needed to correct the market failures that arise in unregulated markets. This has several important implications:

- It is more desirable to allow the market to set prices than to have direct government intervention in the pricing and selection of issues. But market-based prices depend on investors having access to reliable financial information, which means standardized accounting rules and clear disclosure requirements must be in place as a market moves from government

control to market-based pricing. Market trading systems must be supervised to prevent market manipulations and insider trading based on privileged information. Governments are better employed educating investors about the risks and rewards of owning marketable securities than in trying to determine the prices of those securities.

- Restrictions on entry into the financial services sector are appropriate to the extent that they are concerned with capital adequacy and measurable competence — the goal being to correct possible market failures.

- Restricting foreign ownership of shares is not justified by economic theories of regulation. Markets can develop more easily if foreign institutions are allowed to invest at the same time that domestic institutions are encouraged to develop. The Korean market has developed despite an interventionist regime in charge of stock market development, but there is no evidence that entry barriers faced by new providers of financial services have done more than increase the profits of existing providers.

- Developing countries eager for their developing markets to be a link to the world capital market cannot afford to ignore the trend toward an international harmonizing of regulatory structures. There has been a tendency in recent years to strengthen government oversight of markets, with an appropriate delegation of regulatory responsibility to stock exchanges or other self-regulating organizations.

- In countries moving from centrally planned to market economies, the basic building blocks for a securities markets must be established, along with appropriate regulatory safeguards. Private property rights must be defined, adequate accounting systems established, and specialized institutions developed to act as broker, dealer, and investment banker.

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## Regulation of Securities Markets:

### Some Recent Trends and their Implications for Emerging Markets

Recent rapid changes in the world economy, particularly the transformation of command economies into free market economies in many places around the world, can be expected to lead to an increase in the number of newly created securities markets throughout the 1990s. This follows a decade of unprecedented change in the world's securities markets. The 1980s witnessed a rapid expansion in the securities markets of both developed and developing countries, cross-border investment flows increased sharply, and there was quite widespread regulatory reform or liberalization. Reflecting these trends, cross-border securities transactions (gross purchases and sales) between the U.S., the world's largest securities market, and other countries increased from \$251.2 billion to \$5.5 trillion over this period. The twin trends of liberalization and globalization, of course, affected not only securities markets but the global financial markets as a whole. Generally speaking, regulatory regimes became more open and competitive as more liberal regulatory policies tended to replace government controls or private cartel arrangements.

In the 1990s, we expect that increased attention will be given to newly established and emerging securities markets<sup>1/</sup> as a result of the historic movement toward free market economies in central Europe and the Soviet Union and the need for more efficient capital markets to support the expanding role of the private sector in many developing countries around the world. Given the importance of the regulatory environment to capital market development, this

paper focuses on the regulatory issues. It examines the interplay between regulation and market efficiency and reviews recent developments in regulation, paying particular attention to the experience in the Korean market in the 1980s.

1. Economic Considerations

Economic theory suggests that regulation is only necessary and desirable in cases where independent actors in free economic exchange produce socially undesirable outcomes. These cases of market failure arise when there are externalities, that is, costs and benefits that do not appear in the calculus of the individual agents. This argument for regulation is well established; the most frequently used example is pollution, but there are important externalities in many areas of an economy. In the case of financial markets, what are the market failures that provide a justification for regulation within economic theory?

Broadly speaking, there are at least two reasons why unrestricted exchanges between buyers and sellers of financial instruments do not produce efficient outcomes. The first is informational asymmetries, and the second is the risk of financial system collapse. Let us examine each of these.

Informational asymmetries abound in financial markets. The managers of a firm know more about that firm's market prospects and investment opportunities than do outsiders. Financial market professionals often have access to

information that is not widely available. In an unregulated market, therefore, the possibility exists that unsuspecting investors will be harmed by those with access to information not available to the public at large. This matters for the economy because a lack of public confidence in securities markets would cause the supply of funds to the markets to dry up, thus depriving the economy of the benefits of a functioning market.

These informational asymmetries are the basic justification for a large number of regulations. Disclosure requirements for public companies, for example, ensure that financial information is available to investors in a way that facilitates inter-company comparisons. It is extremely important to note, however, that disclosure is only effective if there are good accounting standards in place, standards that allow investors to assess the financial health of enterprises. Restrictions on who is licensed to serve as a broker, dealer, or investment banker provide a measure of quality control. Finally, maintaining the confidence of the public requires credible contract enforcement, and a pricing system that is transparent and seen to be fair by the investing public. All these areas require appropriate regulation. (Whether this is best provided by the government or by the stock exchanges themselves in the form of accepted and enforced "rules of the game" is, of course, a separate issue, which will be taken up below.)

The second important market failure is that arising from the risk of financial system collapse. Because financial markets lie at the heart of the economy, the economy could be severely damaged by the widespread failure of

intermediaries to meet the obligations to customers or other market professionals (for example, loss of confidence due to fears about the solvency of financial firms). Because securities markets are closely intertwined with the rest of the financial system, the economy needs to be protected from the possible spillover effects of unusual developments in the securities markets. This type of market failure is responsible for a range of regulations, particularly those governing capital adequacy (and thus the ability of securities market firms to withstand bad debts of insolvent customers or adverse market developments) and the safekeeping of customers' funds and securities.

The economic case for regulation, however, is by no means the end of the story. Regulatory regimes are often more complex than would be prescribed by economic theory. In a seminal article on regulation, Stigler (1971) argued that there is a market for regulation, with the amount of regulation determined by the bidding power of the different groups involved. Those with the greatest bidding power end up with the right to tax the wealth of the other participants. Although there have been a number of modifications to Stigler's original propositions, which are well summarized in Peltzman (1989), his key insight into the interplay between market failures, rent extraction, and political influences remains at the core of the analysis of regulation. In developing countries, this non-economic dimension to regulation is often more explicit, for one good reason. Whereas in developed countries, stock exchanges began as private responses to economic needs, in developing countries they have more often been established by governments with fixed goals in mind. Hence governments have a closer, more direct stake in ensuring the success of the market.

This explicitly political dimension gives rise to so-called merit regulation; that is, the involvement of the regulatory authorities in assessing outcomes rather than procedures. Of course, this kind of activity is not confined to the developing countries alone. The Japanese securities market, for example, has been noted for the degree of control exercised by the authorities. The most prevalent form of merit regulation is government involvement in determining which issuers have access to the market, sometimes even setting the prices of new issues; this practice is particularly common in emerging markets.

There is, of course, a linkage between institutional arrangements and regulation [OECD (1987) and (1988)]. The kind of regulation that is appropriate depends both on micro-level issues such as aspects of market organization and on the broader issues, such as the types of institutions providing capital market services (i.e., universal banks, or specialized securities intermediaries) and the role of sophisticated institutional investors in the marketplace. (Institutional investors can be presumed to require less protection than ordinary members of the investing public.)

There are, broadly speaking, two main approaches to regulation. On the one hand, regulation of markets may be imposed by government authorities, backed by law. These authorities may be a securities commission, a government ministry, or central bank. In some markets, this may take the form of direct government controls or management of the markets. On the other hand, there is self-regulation by the markets themselves, typically via the securities exchange with the government's role confined to oversight. In fact, these two approaches



tend to be complementary, with many day-to-day activities regulated by the markets themselves, even in countries where there is extensive statutory regulation.

It was argued above that there is an important distinction between governmental control or management of the market (merit regulation) and governmental activities that are not explicitly designed to control market activities. Common forms of direct government intervention in the market include credit allocation, control of new issues, restrictions on market access by non-transparent licensing procedures and regulations that hinder international openness. Such regulations restrict competition, but they may also limit risk: since competitive markets allow market professionals and investors to assume greater risk, attention must be given to the development of the regulatory tools necessary to ensure the safety and soundness of the financial sector as merit regulation is reduced and market forces play a larger role in resource allocation.

There are two important features of regulation that deserve attention. In the first place, regulation is essential to promote public confidence and to prevent market failure. Secondly, regulating market activity is not without cost. The principal costs are reduced competition through barriers to entry. The most important of these barriers are the direct result of regulations that address the informational asymmetry and risk of market failure issues discussed

above. Capital adequacy requirements obviously restrict freedom of entry to securities business; so do licensing procedures. When markets are predominantly self-regulating, there is a clear danger that they will become cartels run for the benefit of their own members rather than for the benefit of the economy as a whole. Regulation, therefore, poses a cost-benefit problem. Regulation is needed to maintain public confidence, but excessive regulation stifles competition and innovation and inhibits markets from delivering benefits to the economy as a whole. It is important to keep in mind that "economic growth and innovation spring not from markets that are designed and controlled by regulators, but from the efforts of private enterprises freely competing with each other. We have also learned that some regulation is required to insure the vitality of financial markets because investor confidence is critical to vigorous markets" [Breedon (1991)]. The role of the government regulatory authorities is to assure that the markets are operated in the public interest so that the markets are able to perform their essential economic functions: capital raising and allocative efficiency.

## 2. Regulatory Structures in Developed Markets

### A. Recent Trends in Globalization and Liberalization

In recent years, there has been a clear trend toward financial market liberalization.<sup>2/</sup> The trend toward liberalization has not been uniform, but it has included both developed and emerging securities markets. This has been evidenced by efforts to enhance market access, facilitate cross-border portfolio investment flows, widen the range of available investment alternatives, and

promote competition among the institutions providing capital market services. The trend toward financial markets liberalization no doubt has reduced the economic cost of regulation.

There also appears to be a trend toward a gradual harmonization of regulatory standards. This has resulted from global competition in financial services and the accompanying need for regulatory authorities to work together as markets have become more interdependent.

In the U.S., the passage of the Securities Act Amendments of 1975 was of great historical importance. The Act placed greater emphasis on competition in the provision of financial services by deregulating commission rates on stock transactions and by fostering the development of a national market system in securities. The amendments also gave recognition to the need for investor protection in an era of financial market liberalization by granting additional regulatory powers to the SEC [Chuppe, Haworth and Watkins (1989a) and 1989b)].

Other countries also took steps toward securities market reforms.<sup>3/</sup> Canada, whose markets are closely linked with the U.S., began by deregulating commission rates in 1983. Australia did likewise one year later. In 1986 the U.K. implemented a series of major reforms which followed several years of policy debate concerning market structure, competition, and the future course of regulation in that country. London's so-called "big bang" resulted in the de-regulation of commission rates, a new trading system on the stock exchange, and greater participation by foreign financial service firms in the U.K.'s domestic securities market.

Along with the movement toward a more competitive market, the passage of the Financial Services Act in 1986 led to the establishment of a Securities and Investments Board (SIB) to provide government mandated oversight of the securities markets and investment firms through a system of self-regulation. Subsequently, Canada, France, the Netherlands and Spain each took steps to restructure their securities markets and regulations [Chester and Scarlett (1987)]. These actions were partly a reaction to the restructuring in London, but they were also in anticipation of the development of a unified capital market in Europe which will feature greater competition and mutual recognition of regulatory standards within the 12 member European Community [Micossi (1988) and Warren (1990)].

#### B. Current Regulatory Systems in Developed Markets

While there is a great deal of variation in regulatory structures among countries, a regulatory model based on the concept of self-regulation with government oversight is most commonly employed today. In some countries, notably Canada and Germany, securities regulation is administered at the state or provincial level, rather than at the national level of government. Even in the U.S., which has a strong national system of securities regulation, individual states are also involved in the regulation of intrastate securities activities.

It is not unusual for more than one government agency to be involved at the national level in securities market regulation, depending on the existing institutional arrangements in a particular country. The prudential standards of

commercial banks participating in the securities market, for example, might be regulated by the central bank, or other regulatory agency, while securities firms, investment bankers or brokers are regulated by a securities commission, or a similar organization within the ministry of finance.

Regulatory functions may also be performed exclusively by a stock exchange, or by a securities commission or other government authority. In general, the principal of self-regulation is more extensively employed in mature markets, while emerging markets tend to rely more heavily on government oversight, or direct controls.

Where universal banking is prevalent, securities market and commercial banking functions may be combined along with other business activities. Banks are sometimes required to set up separate securities affiliates, or divisions within the bank, to perform capital market activities. This may facilitate the regulation of capital market activities by a specialized agency. It may also reduce the potential for the transfer of risk to bank depositors, or to the government in those cases where deposits are government insured. Alternatively, the central bank (or other bank government authority) may play an important, but not necessarily extensive, role in regulating securities market activities. In Germany, which is noted for having a system for universal banking, the regulation of the operations of the individual stock exchanges falls within the domain of the individual states, with many regulatory responsibilities delegated to the stock exchanges through a system of self-regulation.

In the world's largest securities markets, significant regulatory responsibilities have been delegated by the government authorities to private sector market practitioners. This so-called self-regulatory model (with government oversight) has been used in the U.S. since the passage of the Securities Exchange Act of 1934. Japan also has employed a self-regulatory model since the adoption of the Securities and Exchange Law of 1948. With the adoption of the Financial Services Act in 1986, the United Kingdom was brought under a system of self-regulation with government oversight of the securities market and related institutions. Although, the basic conceptual model is the same, there are, of course, many differences in the regulatory standards employed in each market.

In the U.S., the Securities and Exchange Commission ("SEC") was established in 1934 as an independent regulatory agency with a broad mandate to protect investors. In general, the SEC is responsible for the registration and supervision of broker-dealers, mutual funds and other market professionals. It administers the full disclosure program, regulates secondary market trading in securities, and is responsible for preventing market manipulations and insider trading through surveillance and enforcement programs.

The SEC does not practice merit regulation. Nevertheless, some of the individual states practice merit regulation for intrastate securities offerings under their respective jurisdictions. The U.S. disclosure system, administered by the SEC, is based on the principal that investors can make informed decisions once adequate information is disclosed. Market forces are relied upon to

determine whether a particular issue should be brought to the market. The U.S. system is highly competitive; entry into the securities business is open to both domestic and foreign firms on the same basis. Furthermore, the competitive impact of regulatory proposals and actions must be taken into account by the SEC in establishing regulatory standards.

In Japan, the Securities and Exchange Law was patterned after the U.S. regulations in place at that time. A separate Securities Bureau within the Japanese Ministry of Finance ("MOF") is responsible for regulating securities markets and firms. The Securities and Exchange Council, whose members are appointed by the MOF, was established in 1952 to provide policy advice on matters related to the securities markets [JSRI (1990)].

Japan's Securities Bureau is responsible for supervising a wide range of securities activities. In addition, futures trading is also regulated by the Securities Bureau. In the U.S., a separate regulatory body (the Commodity Futures Trading Commission [CFTC]) is responsible for the regulation of futures markets. Although there has been a pronounced trend toward liberalization, Japanese regulators traditionally have tended to exert direct control over the markets and market participants.

Although disclosure principles are well established in Japan, merit regulation has been widely practiced with respect to new securities offerings. Commission rates remain fixed on the Tokyo Stock Exchange. Further, new financial products generally have been approved at a slower pace than has been

the case in other major financial centers. Interestingly, unlike the U.S. and U.K., Japanese stock markets employ price limits on individual stocks.

Prior to the passage of the Financial Services Act, the U.K. relied upon a system of practitioner based regulation. The London Stock Exchange regulated its own members without the benefit of formal government oversight. This created a system of fixed commissions for market transactions, restrictions on foreign ownership of firms and the separation of brokers from jobbers (market makers). The result was a gradual decline in London's importance as a financial center. The reforms of the market, which were implemented between 1986 and 1988, abolished fixed commissions and the separation of brokers from jobbers, permitted foreign ownership and established the Securities and Investments Board ("SIB") as the key regulatory authority.

The SIB was established to regulate securities and investment activities through a network of self-regulatory organizations (SROs). These SROs, which cover all of the main areas of financial activity, are associations whose rules of business conduct have to be approved by the SIB. The SIB's powers are extensive.

The SIB, which is overseen by the Department of Trade and Industry, is self-funded by the private sector through fees levied on regulated entities. Anyone conducting an investment business in the U.K. is subject to supervision by the SIB, or by a self-regulatory organization. Government securities



activities, however, must be conducted through separately capitalized subsidiaries supervised by the Bank of England.

Because the changes in the U.K. were both far-reaching and concentrated in a short period of time, it is possible to examine their effects on the market, and particularly on competition. The abolition of fixed commissions led to lower trading costs, particularly for large customers, and the emergence of "executions only" services (analogous to discount brokers in the U.S.) for private clients. Another important change was the drop in the average "touch." The touch is the spread earned by a market maker, i.e. the difference between the bid and offer prices. The following table shows changes in the touch as a result of London's "big bang."

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Table 1: Market Makers' Touch <sup>a/</sup> Before and After the Big Bang  
(percentage of share price & f1,000s)

	<u>Alpha</u>	<u>Category of Stock <sup>b/</sup></u>	
		<u>Beta</u>	<u>Gamma</u>
Pre-Big Bang:			
Average touch at normal size (%)	0.8	1.8	3.4
Value of average quotation (f'000)	320.8	58.9	15.3
Post-Big Bang:			
Average touch at 1,000 share (%)	0.6	1.4	2.8
Value of average quotation (f'000)	4.8	2.5	1.9
Average touch at largest SEAQ <sup>c/</sup> quote (%)	0.8	1.7	3.2
Value of average quotation (f'000)	279.1	83.1	13.9

Notes:

- <sup>a/</sup> The touch is the difference between a market maker's bid and offer prices.
- <sup>b/</sup> UK stocks are classified according to their liquidity: alpha stocks are the most frequently traded, betas less frequently, and so on.
- <sup>c/</sup> SEAQ is the stock exchange's automatic quotation system, whereby bid and offer prices are circulated. Market makers must execute orders at their quoted prices. Prices are allowed to vary depending on size of the order.

Source: Bank of England Quarterly Bulletin, February 1987.  
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The table shows two important things. First, the average touch fell as a direct result of increased competition among market makers. Second, the liquidity of the market improved. Generally, the touch will widen for less-liquid stocks and for large orders, because the market maker faces a greater risk of unbalancing his book and being unable to reverse a position quickly. The data in the table show the greater liquidity in the beta and gamma stocks and the small increment in the touch. Of course, it remains to be seen whether these gains will be

lasting, but it does appear that London has become more competitive as a global financial center since big bang.

Despite the major changes in regulatory regimes during the 1980s, further changes are likely in the years ahead. One recent change in the U.S. which is of particular importance internationally is the relaxation of the terms under which foreign issuers can raise funds by private placements in the United States.<sup>4/</sup> In the U.S. and Japan there has been a general separation of commercial banking and the investment banking functions of underwriting and dealing in corporate securities. The lines of separation are less clear today than at the start of the 1980s, and there is a widespread expectation that continuing restrictions will be relaxed.<sup>5/</sup> Nevertheless, within the U.S. and Japan there remain significant questions concerning the future role of commercial and investment banks in the economy and the optimal regulatory structure to manage risk and protect depositors and investors.

Another development currently underway is the European Community's movement toward a unified capital market ("EC 1992"). As a result, the 12-member European Community is in the process of adjusting to the EC directives concerning securities market and banking regulations. The EC directives provide for certain minimal standards and the mutual recognition of each country's regulatory safeguards. The end result will be a more competitive European capital market. The events in Europe may also be viewed as part of the global trend toward the integration of financial markets which has important implications for both developed and emerging securities markets [Padoa-Schioppa (1988), Key (1989) and Chuppe, Haworth and Watkins (1989b)].

### 3. Regulatory Systems in Emerging Markets

The clear trend in OECD markets has been one of regulatory liberalization and increased openness to the international market, in the form of international investment and participation in the markets themselves. Obviously, these changes have had implications for developing countries as well. In this section, a brief overview of regulatory systems in emerging markets is provided, before turning to a more detailed review of the Korean system.

Although a variety of regulatory structures have evolved in both developed and emerging securities markets, certain elements are common to nearly all markets. The type of regulatory structure that is appropriate for a particular emerging market will depend on the types of market participants that conduct a securities business, the level of market development and the extent to which infrastructure associated with the operation of a securities market is in place.

At the early stages of market development, governments or quasi-government organizations (e.g., a government operated stock exchange) tend to exert a greater influence on the market. This often occurs because the basic infrastructure for a securities market is not in place. It would be difficult, for example, for a market to rely entirely upon disclosure principles in countries where accounting standards do not even exist, or the level of investors' knowledge of securities instruments is low. While most developing countries tend to rely upon self-regulation to some extent to supplement government regulation, the concept of self-regulation is less clearly defined

than in mature markets. Moreover, in most emerging markets, the regulatory authorities have a mandate to foster the development of the market as well as to perform basic regulatory functions.

The extent of government delegation of regulatory responsibilities to a stock exchange or dealers' association varies greatly from country to country. In instances where the stock exchange is owned by the government, the concept of self-regulation is less clear than in markets where the stock exchange is owned by the private sector.

The type of regulatory structure will also depend on the extent specialized financial firms perform the functions of broker, dealer, or investment banker. In some developing countries, notably the Philippines and Turkey, commercial banks are the principal providers of investment banking services. In contrast, specialized securities firms play a larger role in some of the largest emerging markets, notably, Korea, Taiwan, Thailand, India and Mexico. Yet, in each of these countries, securities commissions have been established (or, in the case of Thailand is in the process of being established) as the principal regulatory body for capital market activities. India, which has both securities and merchant banking firms, recently established a Securities and Exchange Board (SEBI). Legislation empowering the Board with statutory powers has not yet been enacted. The SEBI is expected to have broad regulatory responsibilities over India's securities markets and market participants.

While universal banking is permitted in the Philippines, independent securities firms have historically played a prominent role in the securities

markets. The central bank regulates the prudential standards of the universal banks, while the Philippines Securities and Exchange Commission regulates the activities of securities firms, the new issues market and the two stock exchanges. In Turkey, universal banks play a dominant role in the capital markets, yet, the number of securities intermediaries and independent brokers has been growing in recent years. A Capital Markets Board regulates both securities intermediaries and the capital market activities of banks, while the Treasury Department has overall responsibility for the regulation of the banks. Currently, individual brokers are regulated solely by the stock exchange.

In Thailand, both securities companies and finance companies are active participants in the securities markets. Currently, both are under the supervision of the central bank. There is, however, a policy debate in that country concerning the desirability of limiting the securities business only to specialized securities firms. In Thailand, the stock exchange, which is government owned, has direct responsibility for the supervision of the market place. By tradition, the head of the Fiscal Policy Office, within the Ministry of Finance, normally serves as Chairman of the stock exchange. Thailand is in the process of establishing a securities regulatory body whose duties and responsibilities will be determined by legislation.

#### 4. The Korean Regulatory Experience

The Korean securities market has been among the largest of the emerging securities markets for several years, and grew rapidly in the 1980s. Stock market capitalization grew from 2,527 billion Won (US\$3.8 billion) in 1980 to

95,477 billion Won (US\$140.9 billion) in 1989. During this period, annual turnover on the Korean Stock Exchange also increased rapidly from 1,134 billion Won (US\$1.9 billion) to 81,200 billion Won (US\$121.3 billion) [see IFC Fact Book (1990)]. Reflecting this growth, the number of branch offices of Korean securities companies expanded from 229 in 1980 to 521 at mid-year 1989, while the number of employees grew from 4,816 to 22,194.

A. The Regulatory Structure

The basic regulatory framework in Korea was established in 1962 with the adoption of the Korean Securities and Exchange Law ("KSE Law"). The extent of government control over the market, while liberalized in the 1980s, remains extensive in Korea.

The basic system is one of self-regulation with extensive government oversight and control over markets, securities firms and international participation. There are three key institutions in this system, the Korean Securities' Dealers Association (KSDA), the Korean Stock Exchange (KSE) and the Korean Securities and Exchange Commission (KSEC).

The KSDA was established in 1953. All securities companies in Korea are required to be members of the KSDA, which has operated as a self-regulatory body since it was founded. The KSDA has a wide range of responsibilities for self-regulation, training securities market professionals, the mediation of conflicts among member firms and the registration of over-the-counter stocks.

The KSE, established in 1953, was converted into a government controlled corporation in 1963, but was privatized and reorganized into a membership organization in 1988 [KSDA (1989), KSEC (1989 and 1987)]. It has self-regulatory responsibilities for the listing and delisting of securities, market surveillance and listed companies' disclosure. Any corporate development that might affect the value of a listed company's shares must be reported to the KSE. A listed company must also make direct disclosures to the investing public of important events that may affect the value of shares traded on the stock exchange [KSE (1989)].

The KSEC was established as a regulatory body subject to overall policy guidance from the Ministry of Finance (MOF) by the KSE Law of 1962. Actions adopted by the KSEC must be reported to the MOF. If the MOF believes it is in the public interest, it may "repeal or suspend" resolutions adopted by the KSEC [BOK (1985)]. Nevertheless, the KSEC has broad authority to make decisions concerning the Korean securities markets and the administration of the KSE Law. The KSEC, however, is not an independent agency as that term is normally applied in the context of the U.S. regulatory system. The Securities Supervisory Board ("SSB") serves as the executive body of the KSEC whose Chairman also serves as Governor of the SSB [Horch (1989), Park (1989) and KSEC (1989)].

The KSEC has a broad range of regulatory responsibilities related to the operation of the stock exchange and over-the-counter market, corporate disclosure, margin trading, takeover activity and accounting and auditing practices. Besides regulating the securities market and market participants, the KSEC, in conjunction with the MOF, also exerts a substantial degree of direct



control over the domestic market, market participants, and cross-border securities activities by domestic and international issuers, securities firms and investors. In addition to its regulatory functions, the KSEC has a broad mandate to facilitate the development of the Korean securities markets.

The KSEC also has set guidelines for the financial management of listed companies, dividend policy and the issuance of new securities in both domestic and international markets. Large acquisitions are also controlled by the KSEC. Prior approval must be obtained from the KSEC for any purchases over a specified amount (i.e., 10 percent) of outstanding shares of a listed company. The KSEC controls the terms and interest rate on margin loans. It also determines the issues eligible for margin trading, margin requirements and the maximum amount of credit that may be extended by securities firms.

In Korea, securities firms are licensed by the Ministry of Finance ("MOF") to act as brokers, dealer or underwriters. In 1989, all 25 Korean securities firms operating at that time were licensed to engage in each of these three basic securities activities. As a result of actions taken in 1983, large Korean securities firms (i.e., those with capital stock in excess of 20 billion Won) were permitted to guarantee corporate bonds, underwrite and sell commercial paper and serve as underwriters in overseas securities offerings.

B. Liberalization in the 1980s

At the start of the 1980s, Korea recognized the need to make its domestic securities market responsive to developments in world financial markets. In 1981, Korea was the world's 26th largest market measured by stock market capitalization and the 18th largest in terms of the dollar volume of trading. By the end of the decade, Korea had become the world's tenth largest stock market measured by equity market capitalization and fifth largest measured by the dollar volume of trading. Yet, the regulatory framework is rather restrictive for so large a market. For example, according to the IFC Fact Book, 17 emerging markets that are smaller than Korea have a more liberal policy toward foreign purchases of locally listed stocks. Moreover, Korea was one of only four emerging market countries in 1989 that limited foreign portfolio investment to special funds only. Seventeen others were classified by the IFC as free or relatively free at the end of 1989, while only four emerging markets were completely closed to foreign portfolio investment at that time.

In the 1980s, a number of steps were undertaken to liberalize the Korean domestic securities market and to open up the market to foreign financial service firms and investors. Yet, the extent of change has been somewhat limited, given the rapid pace of globalization of securities markets, financial market liberalization and economic integration in the 1980s. The results of the liberalization process in Korea are summarized in Table 2.

Table 2: Regulation and Control of the  
Korean Securities Markets: 1980-1989

<u>Market Activity</u>	<u>1980</u>	<u>1989</u>
Domestic Listed Issues	Listing Standards	Listing Standards
OTC Market		
Stocks	None	Controlled
Bonds	Yes	Yes
Pricing of New Issues	Controlled	Partially de-controlled
Market Access by Securities Firms		
Domestic	Controlled	Controlled
Foreign	None	Limited Access
Banks	None	Limited Access
Margin Loans	Controlled	Controlled
Brokerage Commissions	Fixed	Partially deregulated
Ownership of KSE	Government	Private
Takeover Activity	Controlled	Controlled
Foreign Portfolio Investment in Korea		
Direct	None	None
Special Funds	None	Limitations
Int Bonds	None	Limitations
Korean Portfolio Investment Abroad		
Direct	None	None
Special Funds	None	None
Foreign Listings on KSE	None	None
Korean Listings Abroad		
Bonds	None	Limitations
Stocks	None	None
Korean Securities Firms Abroad	None	Liberal Policy

There are two aspects of the regulatory framework that are particularly interesting. The first is connected with restrictions on foreign participation, and the second with the continued practice of administrative control over the market in the form of merit regulation.

### Internationalization

In January, 1981 the Korean Government announced a policy that would lead to the gradual internationalization of the Korean securities market. The announced plan called for liberalization through a four-step process. First, indirect access to the Korean market was planned by means of international funds. Next, beginning in 1985, foreign securities firms were supposed to be able to establish branch offices in Korea on the basis of reciprocity and foreign investors were to be granted limited direct access to the Korean securities market. Finally, Korean investors were to be permitted to freely invest in foreign securities in the early 1990s [KSE (1982), KSEC (1984, Park (1989))]. Of these four steps, only the first has been fully carried out. In November 1990, the Government announced a revised plan for a two-stage liberalization. The plan would allow ten foreign securities firms to open branch offices; however, only firms that have had representative offices in Seoul for two years could do so. A license permitting broking, dealing and underwriting would require operating capital of 20 billion Won (\$28 mn). Joint ventures (with foreigners owning less than 50 percent of the equity) would be allowed to obtain a seat on the Stock Exchange, but only if the existing 25 Korean member firms agree.

The second stage of the liberalization program is expected to occur in 1992, when foreigners will be allowed to invest directly in Korean equities.

As indicated above, there has been some limited foreign access to the Korean market. On November 19, 1981 two international trusts were offered to foreign investors. This event was important because foreign portfolio investors were able to gain access to the Korean securities market for the first time by this means. The Korean International Trust was launched as the first in a series of international funds with an initial offering of US\$15 million. On August 22, 1984 the Korea Fund, a closed-end fund listed on the New York Stock Exchange, became available to U.S. investors. Subsequently, on April 4, 1987, a second closed-end fund (the Korea-Europe Fund) was listed on London's International Stock Exchange. The size of these funds was expanded through second and third offerings. These funds proved very popular with investors, and moved to large premiums over net asset value: the downturn in the Korean market that began in mid-1989, however, has eroded these premiums sharply.

In 1985, companies listed on the Korean Stock Exchange were granted limited authorization to raise capital in the international bond market through the issuance of convertible bonds, bonds with warrants, and depository receipts in overseas markets, but restrictions were placed on the number of offerings that could be brought to the market, use of proceeds and conversion into shares. In 1987, the Korean Government allowed convertible bonds issued by large Korean corporations in international markets to be converted into shares. Foreign investors as a group are able to hold 15 percent of the paid-in capital of large Korean companies that have issued convertible bonds in international markets.

However, an individual foreign investor or institution may not hold more than 3 percent. In 1988, Korea took steps to liberalize the issuance of Eurobonds by Korean companies so that the proceeds of an offering could be repatriated. In order to take advantage of this liberalization, the funds had to be used to retire existing bank loans. Prior to this policy change, Korean companies had been required to invest overseas the proceeds of international bond offerings [KSDA (1989)].<sup>9/</sup>

These restrictions on foreign investment have been paralleled by restrictions on the ability of foreign firms to provide financial services in Korea. In the 1980s, foreign securities firms gained only limited access to the Korean securities markets and were not permitted to become members of the stock exchange. Moreover, foreign firms could not act as brokers or investment advisors, but were free to provide research services and deal in Eurobonds on behalf of Korean investors.

Not surprisingly, the impact of these restrictions has been to limit competition in the provision of financial services in the 1980s. The net income of securities firms grew from 5 billion Won in 1983 to 466 billion Won in 1988, yet the number of licensed securities companies fell from 27 in 1980 to only 25 in 1983 and, thereafter, remained constant [KSDA (1989)]. Some competition is provided by other financial institutions, since commercial banks, merchant banks and finance companies are permitted to engage in a limited range of securities activities. However, only securities firms are authorized to underwrite equity securities and corporate bonds.

Even with its rapid growth in the 1980s, the Korean securities market has been rather slow to open up to foreign participation and investment. The KSEC maintains tight restrictions on foreign portfolio investment and foreign securities firms' participation in the Korean securities market. Direct foreign portfolio investment is prohibited.

#### Merit Regulation

There was considerable liberalization of restrictions on the domestic market over the 1980s, even though some important restrictions remained in place. In this section, these measures are reviewed.

Partial deregulation began in 1981. The issuing criteria for non-guaranteed corporate bonds were relaxed along with issuance criteria for new shares. Underwriting commissions were reduced in order to stimulate new issues of securities [KSE (1982)]. On April 1, 1982 the KSL was revised in several important respects regarding the issuance of registration statements for public offerings, insider trading and the supervision of securities companies.

In 1983, tax privileges granted listed companies were reduced so that all companies would be taxed at the same 30 percent rate except for large unlisted companies. The tax laws had been used as a means both to stimulate public offering of shares and to create disincentives for companies that had elected not to go public [KSE (1983)].

In 1983, foreign securities firms were granted permission to make capital contributions in Korean securities firms. However, foreign securities firms were not authorized to become members of the Korean Stock Exchange. At the same time, large Korean securities firms (those with capital stock above 20 billion Won) were authorized to expand beyond the traditional activities permitted under the existing KSE Law.

In 1983, the Government also announced that new issues of securities could be offered at market price under specified conditions. The standards were redefined in 1988. Consequently, corporations were required to both satisfy certain standards and calculate a theoretical value for the shares based on a specific formula. To offer shares at the market price, the market price had to equal or exceed 1.1 times the par value and meet an annual investment returns test for the prior two years. The company must also expect rising net income over the next two years [KSDA (1989)].

A further liberalization in the domestic securities market occurred in 1987 with the opening of an over-the-counter market for non-listed stocks. The over-the-counter market had previously been limited to bond issues. The following year the KSE, which had operated as a government-run non-profit corporation since 1963, was privatized into a membership organization. The system of fixed brokerage commissions on the stock exchange was relaxed somewhat, being replaced by a system that permitted limited negotiation. In 1988, Korea accessed to the status of an IMF "Article 8 Nation," and the Government also announced a plan of deregulation with respect to the management of securities companies [KSE (1989)].



Financial market liberalizations were accompanied by programs to privatize Korean state-owned enterprises. This helped increase equity market capitalization and brought new investors into the Korean securities market. The shares of Pohang Iron and Steel Company were privatized in 1988 with a listing on the Korean Stock Exchange followed in 1989 by the privatization of shares in Korea Electric Power Corporation. Korea encouraged small investor participation in these privatization programs by reserving shares in the public offering for company employees and moderate-to-low income wage earners [Korea (1989)].

The liberalizations in the securities markets also took place at a time when Korea was attempting to reduce government controls over the banking sector. In the 1970s, Korea used extensive credit controls and other means to direct bank funding to favored industries. This, of course, led to a misallocation of resources and prudential problems in the banking sector. It may also have contributed to the rapid expansion of the securities market to the extent that non-favored enterprises were denied access to bank credit.

Liberalizations in the banking sector were intended to eliminate preferential lending rates and to reduce the Government's involvement in the banking sector through a privatization program. All nationwide city banks in which the Government had been a major shareholder were privatized. The Bank of Korea's policy actions were designed to move from a system of direct credit control to an indirect system based on reserve requirements, open market operations and rediscount facilities [Cho 1986 and Kim (1988)].

Throughout this period of liberalization, the Government actively promoted the development of the stock market. The primary focus of this effort was a system of tax incentives and disincentives for certain large closely held companies that did not choose to enter the public market. However, government directives even required certain large closely held companies to go public.

In certain respects, government involvement in the market has remained very strong. Perhaps the clearest indication of this is the official response to the decline in the stock market that began in mid-1989. Worried that the fall in the market would have an adverse impact, the Government launched, in May 1990, a two trillion Won (US\$2.8 billion) market stabilization fund. It was later doubled in value. Modelled after a fund set up in Japan in the mid-1960s to stabilize the Tokyo market, the purpose of the fund was to brake the rapid fall in share prices that was thought to be harming investor confidence. By the end of 1990, it was estimated that the Korean stabilization fund had acquired almost 5 percent of listed shares. Korea has not been alone in introducing such a fund in response to market weakness: there was, for example, a similar operation in Thailand, itself a repeat of a similar fund introduced on the Bangkok market after the global equity crash in October 1987. Such funds may well be too small to have any impact on the market beyond sending a signal and acting as a confidence booster, but to the extent that they materially affect prices, it is not at all clear that they are desirable. If severe monetary tightening threatens to produce a recession, then asset purchases by the authorities may be an appropriate way to inject liquidity into an economy: but a deliberate attempt by the Government to maintain share prices at what it regards as desirable levels is hardly consistent with allowing the market to perform its economic roles.

5. Regulatory Policy Implications for Emerging Markets

Securities markets can facilitate the efficient allocation of resources in the economy and can also help foster competition in the financial sector by providing an alternative to government directed funding or to supplement existing sources of private funding through the banking system. For securities markets to allocate resources to their most productive uses, regulation should be confined to that needed to correct the market failures that arise in unregulated markets. This has a number of important implications.

Firstly, it is more desirable to allow the market to set prices than to have direct government intervention in the pricing and selection of issues. Markets can perform their allocative function only if prices are competitively based upon the independent judgment of investors with adequate information. To accomplish efficient pricing, therefore, it must be the case that investors have access to consistent and reliable financial information about listed companies. To accomplish this, standardized accounting rules and clear disclosure requirements need to be in place. The relative quality of issues traded in the market can be maintained through adequate listing standards or by establishing objective guidelines (minimum criteria in terms of profits, revenues, assets or net worth) for new issues. Subject to meeting these minimum standards, market forces should then determine the relative merits of a particular security offering. It should be noted that accounting standards and disclosure rules are more important as a market moves from governmental control over pricing to market determination. Supervision of the market trading systems will also be needed to prevent market manipulations and to ensure that insiders do not use privileged

information to the disadvantage of public investors. Governments are probably better employed in educating investors about the risks and rewards of owning marketable securities than in trying to determine the prices of those securities.

Secondly, restrictions on entry into the financial services sector are appropriate to the extent they are concerned with capital adequacy and measurable competence requirements. Throughout the world, however, such restrictions have sometimes been concerned with limiting competition for established firms than with correcting possible market failures.

Thirdly, restrictions on foreign share ownership can find no justification in the economic theory of regulation. To the extent governments wish to restrict foreign participation in their economies, such restrictions should apply whether or not corporations are listed. Moreover, there are good reasons for believing that foreign investment can help market development. The activities of foreign institutional investors can improve the flow of information about company prospects. To the extent that institutional investors are less likely to suffer from informational asymmetry than individual investors, market development can be aided by allowing foreign institutions to invest and by encouraging the development of domestic institutions.

It is abundantly clear that regulatory regimes are far more complex in reality than would be suggested by theory. Moreover, the example of Korea, widely recognized as a successful example of stock market development, could be taken to indicate that an interventionist regime is no barrier to such development. Nonetheless, one consequence of the Korean regime has been the

entry barriers faced by new providers of financial services, and it is not clear that these have served a purpose beyond enhancing the profitability of existing providers.

One further important observation is the following. There appears to be a trend towards the harmonization of regulatory structures in the world. This is happening with respect to both the form and the content of regulations. There has been a tendency in recent years to strengthen government oversight of markets with an appropriate delegation of regulatory responsibility to stock exchanges, or other self-regulatory organizations. This is happening in all three of the most important areas of regulation: the new issues market and related disclosure, accounting and listing standards; secondary market trading activities including market surveillance and enforcement; and, thirdly, the regulation of market practitioners through registration and prudential standards. Developing countries anxious to allow their markets to provide a link with the world capital market cannot afford to ignore this.

The trend toward the liberalization of financial markets in both developed and developing countries is part of a general recognition that free markets normally work better than government controls. As governments move toward market-oriented policies, securities markets often become an important component of the capital market and market regulation tends to supplant direct controls. This appears true in both domestic and international securities markets.<sup>17</sup> In the 1980s, Korea, like other developed and emerging market countries, began to rely more heavily on the private sector and market forces to direct the allocation of resources in its economy. This has important

implications for the regulation of securities markets. As market forces supplant government management or control of the market, it is important that investor safeguards be maintained. In some markets, this may involve building sound regulatory structures for the first time to replace outmoded systems of government control and management of the financial sector. Such systems need to be developed in the light of the market failures that make them necessary and should provide the least possible opportunity for rent extraction by any individual interest group.

The challenge of developing appropriate regulatory safeguards is perhaps greatest for those nations that have chosen to move from a centrally planned to a market economy. In countries where the basic institutional structures are not in place, private property rights must be defined, adequate accounting systems must be established, and specialized institutions must be developed to perform the functions of broker, dealer and investment banker. These may be created either within the existing financial sector, or, by creating an environment conducive to the organization of new business entities that will perform these important economic functions. The basic building blocks for a securities markets must be established along with appropriate regulatory safeguards.

Endnotes

1. The International Finance Corporation (IFC) has defined emerging securities markets to include the securities markets of developing and newly industrialized nations. The equity market capitalization of the emerging markets grew from US\$ 86.1 billion to US\$ 611.1 billion between year-end 1980 and 1989.

2. For a discussion of these trends, see: Chuppe, T., H. Haworth and M. Watkins, "Global Finance: Causes, Consequences and Prospects for the Future," Global Finance Journal, Volume 1, Number 1, Fall 1989, JAI Press, Inc., Greenwich, Connecticut and London, England. A more comprehensive discussion of this topic is contained in an unpublished paper by the same authors entitled "The Securities Markets in the 1980s: A Global Perspective," Office of Economic Analysis, U.S. Securities and Exchange Commission, Washington, D.C., January 16, 1989. Also, see "Factors Affecting The Trend Toward Internationalization of Securities Markets," The Internationalization of Securities Markets, Staff Report to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce, U.S. Securities and Exchange Commission, Washington, D.C., July 27, 1987, Chapter 2, pp. 1-88; and G. Broker, Trends in Banking Structure and Regulation in OECD Countries: Competition in Banking, OECD, Paris, 1989.

3. See: "Securities Markets in the 1980s: A Global Perspective" and "Global Finance: Causes, Consequences and Prospects for the Future," op.cit.

4. On April 19, 1990 the SEC adopted Rule 144A. It was intended to offer increased liquidity to the private placement market and facilitate foreign issuers' access to U.S. institutional investors. Rule 144A liberalizes the private placement market by providing a "safe harbor" from registration for resale of securities to qualified institutional buyers ("QIBs"). QIBs are no longer required to hold such securities for a two-year period before they can be sold. The potential for an active secondary market in unregistered securities among QIBs was created with the adoption of the rule. In order to qualify, an institutional investor must own and manage \$100 million in securities. Banks and savings and loans associations must meet an additional net worth test in order to qualify. In order to take into account the effects of deposit insurance, banks and savings and loans must have a net worth of at least \$25 million. Broker-dealers are considered qualified if they own or manage \$10 million in securities, or if they act as riskless principals for QIBs. Investment bankers will not likely underwrite an issue rated lower than A because the firm will be subject to 100 percent capital charge under the SEC's net capital rule. In effect, the security will be treated like a non-liquid asset. Securities rated at least A by two rating agencies receive a capital charge ('haircut') of only 10 percent under the net capital rule. The adoption of the Rule provides an easy avenue for a U.S. or foreign issuer to launch an international offering in both the U.S. and the Eurobond market with relative ease. Foreign issuers can also gain access to a relatively large number of U.S. institutional investors. It is

too early to judge the ultimate impact of the Rule. The resale market for privately placed issues has the potential to evolve into a global trading market closely linked to the Eurobond market.

5. For a review of some likely reforms in the U.S.A., see Goldman Sachs, Economic Research: Financial Market Perspectives, December 1990.

6. "Korea Sets Timetable for Financial Market Reform," Financial Times, London, November 14, 1988, at page 27 and "Liberalization Hints Give Boost to South Korean Stock Market," Financial Times, London, October 18, 1988.

7. Indeed, the pace of financial market liberalization often occurs faster in international markets than in domestic markets. Regulatory liberalization appears to have facilitated the rapid growth of the non-U.S. dollar currency sectors of the international bond markets during the 1980s. See Chuppe, T. H. Haworth, M. Watkins, "Public Policy Toward the International Bond Markets in the 1980s," Advances in Financial Planning and Forecasting, Volume IV, Part B, JAI Press, Inc., forthcoming 1990.



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