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## Global Securities Markets

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# Global Securities Markets

by  
Brandon Becker†

## I. MARKET DEVELOPMENTS

Securities are increasingly traded in the markets of more than one country and offered for sale on a multinational basis. In response to this growing internationalization of the securities markets, market participants are taking steps to accommodate international trading interest.

### *A. The Eurobond and Transnational Debt Markets*

#### *1. Eurobonds*

In 1963, the Eurobond market emerged as an important international marketplace. In recent years, the growth in this market has accelerated significantly.

a. New issues of Eurobonds totalled a record \$187.7 billion during 1986. The pace of the Eurobond market has slowed, however, and based on current figures, new Eurobond issues totaled \$170.5 billion in 1987. Annual trading volume has increased to over \$3.5 trillion.

b. Eurobonds are issued in a growing number of currencies. U.S. dollar-denominated financings in 1987 still represented forty-three percent of all Eurobond offerings, even as the weakening American currency has made dollar issues less attractive to international investors. Consistent with the overall growth of the market, those financings denominated in Japanese yen, West German marks, and European Currency Units have grown to 15.7 percent, ten percent, and 5.3 percent of the market, respectively. Australian and New Zealand dollars and French francs also are represented in the market.

c. The tremendous growth and diversification of the Eurobond market is linked to interest rate and currency swaps. An estimated seventy percent of all Eurobond issues are now swapped. Overall, the swap market has grown from a volume of just one billion dollars in 1981 to, roughly, about \$300

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billion in 1986 (in 1986 interest rate swaps totalled about \$200 billion, and currency swaps totalled about \$100 billion).

2. *Transnational Debt*

- a. Foreign government issuers offered \$3.8 billion in debt in the United States in 1985, and \$4.1 billion in 1986.
- b. Foreign investors purchased \$1.1 trillion of United States Treasury securities in 1986.

B. *Internationalization of the Equity Market*

1. *Simultaneous Offerings*

There have been several multinational equity offerings in which stock of a single corporation was offered simultaneously in the United States and other countries.

- a. The \$1 billion British Petroleum offering in 1977 was the first such deal. It was followed by the \$310 million Reuters Ltd. and \$4.7 billion British Telecom offerings in 1984 and 1985, respectively.
- b. The \$7.96 billion British Gas multinational offering, which occurred on December 8, 1986, was the largest equity underwriting in history.
- c. The \$8.75 billion British Petroleum multinational offering in October 1987 was the largest single offering in British Petroleum's history, easily surpassing the British gas offering.<sup>1</sup>

2. *Rapid Growth of the Euroequity Market*

The Euroequity market, an international equity-raising vehicle modeled on the Eurobond market, is growing rapidly.

- a. Euroequity offerings totalled \$11.8 billion in 1986; on an annualized basis, the estimated total for 1987 was about \$15 billion.
- b. Canadian and European issuers were the pioneers in this marketplace, but U.S. issuers recently have begun participating regularly, issuing \$1.7 billion in 1986.

3. *Investors increasingly purchasing foreign securities*

- a. U.S. investors effected transactions (purchases plus sales) totalling \$100 billion in foreign equities in 1986, far exceeding 1985's record of \$45.7 billion. During the same period, U.S. investors were net purchasers of foreign stocks by \$1.9 billion. The record net purchase total, set in 1985, was \$3.9 billion.

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1. See Sandler, *Heard on the Street*, Wall St. J., Aug. 27, 1987, at 47, col. 3 (Eastern ed.); Marcon, *Britain Planning Dual Offering of Shares in BP*, Wall St. J., Aug. 31, 1987, at 13, col. 6 (Eastern ed.).

b. Foreign investors effected \$277.5 billion in transactions in U.S. equities in 1986, well outdistancing the 1985 total of \$159 billion. In 1986, foreign investors were net purchasers of U.S. stocks by a record \$18.7 billion.

c. Foreign investment by U.S. private sector pension funds increased from an estimated \$3.3 billion in 1980 to approximately \$45 billion in 1986.

d. A growing number of funds provide individuals with the opportunity to invest directly in foreign stocks. There are more than eighty such funds now, representing nearly a four-fold increase since 1983.

#### 4. *Several factors fostering global investment in equities*

a. Portfolio diversification can take advantage of periods in which foreign markets experience rates of growth greater than domestic markets.

b. Investors have increased familiarity with multinational companies.

c. There has been an increase in the listing and trading of foreign stocks or American Depositary Receipts [hereinafter ADRs]<sup>2</sup> on foreign stocks on the U.S. markets.

d. There has also been increased trading of U.S. stocks overseas, either through official listings on foreign exchanges or in over-the-counter [hereinafter OTC] trading by securities firms. Many companies, both U.S. and foreign, have officially listed on stock exchanges outside their home market. As of December 1986, 512 non-British corporations (including 199 U.S. companies) had their securities listed on the International (London) Stock Exchange [hereinafter ISE].

### C. *Existing Linkages*<sup>3</sup>

Electronic trading linkages and coordinated market information systems are being developed to facilitate international trading.

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2. American Depositary Receipts are documents similar to American Form Share Certificates [hereinafter AFSCs], except that they are usually created by a bank rather than by the original company which issued the shares. The original shares remain with the bank, while the ADRs, not the share certificates, circulate as bearer documents. AFSCs are company share certificates that have acquired some, but not all, of the properties of bearer documents. The certificates are issued by the company and made out in the name of the registered holder, often a bank or stockholder, who may endorse them and pass title on to another owner.

3. As a technical matter, the term "linkages" might be properly limited to situations where a facility is created to route orders to buy or sell securities or futures between two markets. Under this more restrictive definition, the only international linkages currently in effect would be the linkages between the American, the Midwest Stock Exchanges, and the Toronto Stock Exchange; the Boston Stock Exchange and Montreal Stock Exchange; and the Pacific Stock Exchange and the International Futures Exchange. For purposes of this outline, however, the term "linkages" is used more broadly to encompass quotation sharing facilities, fungible options, and the relationships between a futures market and the underlying cash market or markets.

1. *Boston - Montreal Stock Exchange Linkage*

The Boston Stock Exchange [hereinafter BSE] and the Montreal Exchange [hereinafter ME] have implemented a linkage that enables ME specialists to send orders to BSE specialists in two areas: a small number of Canadian issues also listed in the United States and approximately 1,100 U.S.-listed securities. The two exchanges also may allow BSE member firms to send orders in Canadian corporation issues directly to the ME for execution. The BSE-ME linkage has three phases, the first two of which are operational.

a. *Phase I*

The Securities and Exchange Commission [hereinafter Commission] approved Phase I of the BSE-ME linkage in November 1984.<sup>4</sup> The initial phase applies to forty Canadian national issues listed in the United States and trading in the Intermarket Trading System [hereinafter ITS].<sup>5</sup> Specialists can direct marketable limit orders in eligible securities through existing electronic terminals located on the ME floor to the BSE floor. Upon execution, a report is issued to the ME member through the terminal. Trades are cleared and settled through the National Securities Clearing Corporation [hereinafter NSCC], which has formed a linkage with the Canadian Depository for Securities [hereinafter CDS], a Canadian clearing corporation and securities depository.<sup>6</sup>

b. *Phase II*

The Commission approved Phase II of the BSE-ME linkage in April 1985.<sup>7</sup> It began operating during the summer of 1985, and expands the list of linkage securities to include approximately 1,100 U.S.-listed securities traded through ITS. Trades take place through MORRE, the ME's automated small order execution system. The MORRE system accepts orders entered by ME members and routes those orders in BSE eligible securities to ME terminals on the BSE floor. Orders routed through the MORRE system are automatically priced at the best U.S. consolidated quotation. Upon receipt of the order, the specialist will expose it to the BSE floor and execute it at the

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4. See Exchange Act Release No. 21,449, 49 Fed. Reg. 44,575 (1984).

5. The ITS is an electronic communications network now linking the trading floors of seven stock exchanges in the United States. ITS was designed to stimulate communication among these exchanges concerning stocks listed on either the New York Stock Exchange [hereinafter NYSE] or the American Stock Exchange [hereinafter AMEX] and one or more of the regional exchanges. Through ITS, any broker or market maker on the floor of any participating stock exchange can locate trading partners elsewhere in the country whenever he sees, via ITS, a better price than that being quoted on his own trading floor.

6. See National Securities Clearing Corp., SEC No-Action Letter [1984-1985 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,880, at 79,317 (Nov. 26, 1984).

7. See Exchange Act Release No. 21,925, 50 Fed. Reg. 14,480 (1985).

MORRE price or better. Trades are reported and cleared in the same manner as in Phase I.

*c. Phase III*

Under a future Phase III, BSE and ME would jointly solicit order flow from United States broker-dealers in Canadian national issues. BSE member firms would be eligible to route their Canadian national business directly to ME through MORRE terminals placed in their order rooms.

*2. American - Toronto Stock Exchange Linkage*

The late-1985 linkage between the American Stock Exchange [hereinafter AMEX] and the Toronto Stock Exchange [hereinafter TSE] is the first linkage between a primary market in the United States and a primary market in a foreign jurisdiction. Trading through the AMEX-TSE linkage began on a two-way pilot basis in seven dually listed stocks; the pilot now includes twenty-one dual listings, and will later be expanded to include securities listed on either one of the exchanges.<sup>8</sup>

a. The AMEX-TSE linkage permits order flow in dually listed securities to be routed between the two exchanges on both a northbound and a southbound basis. TSE members can direct orders for execution from the TSE trading floor to the AMEX trading floor and can receive orders from AMEX for execution. Likewise, AMEX members can direct orders from the AMEX to the TSE trading floor for execution, and can receive orders from TSE.

b. Orders are transmitted between AMEX and TSE using their existing automated routing systems. Orders sent through the linkage to AMEX are routed through the Post Execution Reporting System [hereinafter PER] to the AUTOPER touch screen terminal at the appropriate specialist's location on the AMEX floor.<sup>9</sup> Orders sent through the linkage to the TSE are entered into the Market Order System of Trading [hereinafter MOST] and print out at the appropriate TSE trading post for manual execution on the TSE floor.<sup>10</sup>

c. Each exchange receives quotations in linkage stocks from the other exchange, automatically converts those quotations from U.S. dollars to Canadian dollars or vice versa, and integrates the converted bids and offers into its own market.<sup>11</sup>

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8. See Exchange Act Release No. 22,442, 50 Fed. Reg. 39,201 (1985).

9. PER is a computerized order sorting system, similar to the Designated Order Turn Around on the NYSE, for member firm, market, limit, and odd-lot orders. It transmits these orders and returns the particulars of executed orders.

10. MOST, the electronic link between TSE and AMEX, works in tandem with PER (AMEX's order system) and permits an order flow for dually listed stocks so that the order can be executed automatically on the market that gives the best price.

11. See Exchange Act Release No. 24,869, 52 Fed. Reg. 34,030, 34,031 (1987) (approving currency conversion procedures).

d. TSE displays exchange rates by currency dealers. AMEX displays on its floor the TSE price in U.S. and Canadian dollars simultaneously.<sup>12</sup>

e. The AMEX-TSE linkage presently only provides for the execution of marketable limit orders<sup>13</sup> of up to 1,000 shares at the best available quote on the receiving exchange. After gaining additional experience with two-way trading of "at the market" orders, the linkage may be expanded to include "away from the market" orders.

f. AMEX-TSE linkage trades are cleared and settled following the same procedures established for the BSE-ME link. Specifically, all such trades are submitted as locked-in compared trades<sup>14</sup> and are settled in United States dollars by NSCC through its present link with CDS.

### 3. *Midwest - TSE Linkage*

The Midwest Stock Exchange [hereinafter MSE]-TSE linkage operates in the same manner as the AMEX-TSE linkage. It began as a pilot program in six dually-listed securities on April 10, 1986. Eighteen securities are now eligible for trading through the link. Only marketable limit orders are processed, and marketable agency orders are guaranteed best execution at the best available quotes, up to 500 to 1,000 shares, depending upon the specialist and the issue. The quotations in linkage stocks are distributed on both exchanges. TSE receives the national best bid and offer distributed by the Consolidated Quotation System. MSE receives the best bid and offer quoted on TSE. Currently, there are twenty TSE members using the link for northbound trades and six TSE members using the link for southbound trades. The exchanges expect to expand the group of eligible securities and to include dually listed securities which are also listed on the New York Stock Exchange [hereinafter NYSE].<sup>15</sup>

### 4. *National Association of Securities Dealers - ISE Linkage*

The quotation sharing pilot program between the National Association of Securities Dealers, Inc. [hereinafter NASD] and ISE, which began on April 22, 1986, is the first linkage between a U.S. self-regulatory organization and an exchange not located in North America.<sup>16</sup>

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12. *Id.*

13. A marketable limit order is an instruction to buy or sell that has a maximum (buy) or minimum (sell) price established by the customer.

14. A "locked-in compared trade" is a trade executed through an automated system whereby the system creates a compared transaction between parties and, therefore, immediately processes it.

15. See Exchange Act Release No. 23,075, 51 Fed. Reg. 11,854, 11,855 (1986).

16. See Exchange Act Release No.23,158, 51 Fed. Reg. 15,989, 15,990 (1986). In the United States, stock exchanges and financial securities markets are regulated by outside governmental bodies. However, these exchanges and markets also exercise some degree of self-regulation, either singly or as part of larger organizations. Although in practice all securities markets operate under a combination of statutory and nonstatutory (self) regulation, the degree to which each is externally or internally regulated varies from country to country.

a. NASD's automated quotation system, NASDAQ, displays price quotes for the 100 ISE stocks included in the Financial Times - Stock Exchange Index and for 188 non-British stocks in which there is an active London market off the ISE floor.

b. ISE's automated quotation system, SEAQ, displays firm quotes for 200 NASD companies and seventy non-British companies whose ADR's are traded on NASD.

c. The Commission recently approved for a two-year period a modified version of the original proposal.<sup>17</sup>

### 5. *European Options Exchange - AMEX Major Market Index Linkage*

On August 21, 1987, the Commission approved the first international fungible options contract to be jointly cleared by the Options Clearing Corporation [hereinafter OCC]. Specifically, AMEX licensed the European Options Exchange [hereinafter EOE] to trade an options contract on AMEX's Major Market Index [hereinafter XMI]. EOE commenced trading the XMI option on August 24, 1987.

a. EOE will trade options on the XMI that are fungible with XMI options traded on AMEX.<sup>18</sup>

b. OCC, a registered clearing agency under section 17A of the Securities Exchange Act [hereinafter Exchange Act]<sup>19</sup> that issues, clears and settles all U.S. standardized option contracts, will issue, clear, and settle the XMI options traded on EOE.<sup>20</sup>

c. XMI option positions established on AMEX now can be closed out on EOE and vice versa.<sup>21</sup>

### 6. *Chicago Mercantile Exchange - Singapore Linkage*

In 1984, a linkage between the Chicago Mercantile Exchange [hereinafter CME] and the Singapore International Monetary Exchange was established to permit members of each exchange to trade currency futures contracts on the other exchange. The currencies traded included Japanese yen, German marks, British pounds sterling and Eurodollars.

17. See Exchange Act Release No. 24,979, 52 Fed. Reg. 37,684, 37,687 (1987).

18. See Exchange Act Release No. 24,831, 52 Fed. Reg. 32,368, 32,369 (1987).

19. Securities and Exchange Act of 1934, 15 U.S.C. § 78a (1987).

20. See Exchange Act Release No. 24,832, 52 Fed. Reg. 32,377 (1987). After the preparation of this outline, the Commission entered into a MOU with Canada. See Understanding on Sharing of Information on Stock Exchanges, Jan. 7, 1988, United States-Canada, — U.S.T. —, T.I.A.S. No. —.

21. "Closing out" procedures are synonymous with "buy-in" procedures: when a seller of securities fails to deliver the securities within the period stipulated, the buyer can buy them elsewhere if he or she has given prior notice to the seller, and may charge the seller all costs and differences involved.



7. *International Futures Exchange (Bermuda) Ltd. - Pacific Stock Exchange*

On November 12, 1986, the Commission approved an agreement between the International Futures Exchange (Bermuda) Ltd. [hereinafter INTEX] and the Pacific Stock Exchange [hereinafter PSE] that allows the simultaneous trading on PSE and INTEX of options and futures, respectively, on the Financial News Composite Index [hereinafter FNCI]. Members of both exchanges have access to each others' futures and options markets. INTEX recently enacted a rule that allows it to provide information concerning transactions or positions of any INTEX members in FNCI futures and options. This information can be given to any exchange or market that trades options on FNCI or the underlying stock that comprise the FNCI.<sup>22</sup>

D. *Proposed Linkages*

1. *NASD - Singapore Stock Exchange Linkage*

NASD is also negotiating a two-way agreement with the Singapore Stock Exchange [hereinafter SSE] for the exchange of end-of-day quotation reports. NASD intends to file a rule change and expects the link to begin operating by December 1, 1987. The link would involve two transmissions daily, one each way, of closing quotes and volume information on approximately fifty NASDAQ stocks traded on both markets.

2. *Philadelphia Stock Exchange - ISE Linkage*

The Philadelphia Stock Exchange [hereinafter PHLX] and ISE have proposed to trade fungible contracts in the six foreign currencies in which PHLX currently trades options. Under this proposal, quotations and available trade information from each exchange will be disseminated on the floor of the other exchange, but no formal trading linkage between them is contemplated at this time.<sup>23</sup>

3. *Reuters - Instinet*

Instinet provides subscribers with an automated execution and negotiation service for U.S. equities, options, and ADRs. Reuters is the world's largest electronic publisher and specializes in delivering financial data to subscribers via computer. In November 1986, Instinet agreed to be acquired by Reuters. For nearly two years, Reuters has exercised exclusive rights under an international marketing agreement to represent Instinet outside the United States.

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22. See Exchange Act Release No. 23,795, 51 Fed. Reg. 41,884 (1986).

23. See Exchange Act Release No. 22,343, 50 Fed. Reg. 34,955 (1985). See also Exchange Act Release No. 22,354, 50 Fed. Reg. 35,340 (1985).

#### 4. *CME - Reuters*

On August 28, 1987, the CME Board approved an agreement for the development of the Pre or Post Market Trade System [hereinafter PMT]. PMT will allow the creation of a CME global order entry and automated transaction system for futures and futures-options contracts. It will operate before and after CME regular trading hours and will benefit CME customers worldwide. The system will use the resources, technological capabilities, and global communications network of Reuters.

#### *E. Policy Considerations for Exchange Linkages*

The Commission generally has encouraged the development of intermarket linkages as a means of facilitating transnational trading. Transactions involving foreign jurisdictions with secrecy or blocking laws may, however, raise important regulatory concerns.<sup>24</sup>

In reviewing rule changes by national securities exchanges developing electronic linkages, the Commission has been careful to insure that adequate arrangements have been made for market surveillance and information sharing in connection with enforcement investigations.

##### 1. *United States - Canadian Linkages*

The Commission is fortunate to have existing procedures for cooperation in enforcement investigations among the Canadian provincial governments and the Commission. Nevertheless, the Commission is concerned over the effect that the recently adopted Canadian blocking statute might have on this cooperative relationship.<sup>25</sup> In reviewing proposed linkages involving ME and TSE, therefore, the Commission has worked closely with the parties to develop private contractual agreements providing for cooperation and active information sharing, and with the Provincial regulatory authorities to provide further assurance of cooperation in enforcement investigations.

##### a. *BSE - ME Agreement*

ME maintains an audit trail of all securities transactions that occur on its floor, and its record retention policies insure that a complete audit trail can be reconstructed if a given trade is challenged. ME also has trading regulations similar to BSE rules relating to manipulative trading practices.

BSE and ME have agreed to cooperate in the investigation of any questioned trades, and to transfer investigatory information to each other or to

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24. Secrecy laws are confidentiality laws that protect private interests in bank records, and may be waived with the express or implied consent of the customer. Blocking laws generally concern national interests in prohibiting the disclosure, copying, inspection, or removal of documents located in the territory of the enacting state. They cannot be waived by private parties because they protect national rather than private interests.

25. See Foreign Extraterritorial Measures Act, ch. 49, Can. Gaz. 1867 (1984).

the regulatory authority governing either. BSE and the *Commission des Valeurs Mobilières du Québec* [hereinafter CMVQ] have assured the Commission that the Canadian blocking statute will not hinder the sharing of information.<sup>26</sup>

b. *AMEX - TSE Agreement*

TSE has a computerized audit trail, an on-line display of trades and quotes, which is monitored by the Toronto surveillance staff, and a system to flag unusual price movements. TSE rules prohibit manipulative and deceptive methods of trading and transactions not in accordance with just and equitable principles of trade.

AMEX and TSE have agreed to exchange trade and market data, and to cooperate in the investigation of any questions arising out of transactions through the linkage. Both TSE and the Ontario Securities Commission have assured the Commission that the newly adopted Canadian blocking statute will not interfere with AMEX or Commission access to information.<sup>27</sup>

2. *AMEX - EOE Agreement*

AMEX and EOE entered into a Surveillance Sharing Memorandum that provides for the exchange of surveillance information as needed by the two exchanges to carry out their respective surveillance functions.

a. Each exchange will conduct routine surveillance of trading in XMI options in its marketplace.

b. Each exchange will report all transactions in XMI options and grant the other exchange access to that information.

c. OCC will deliver to each exchange the combined clearing information regarding the previous day's activity in XMI options on both exchanges.

d. Each exchange may request the assistance of the other exchange with regard to investigating a complaint or other questions arising from XMI transactions. Upon receipt of such a request, AMEX or EOE will be required, using its best efforts and in accordance with its respective rules, to cooperate and provide the requested information.

e. In limited circumstances, AMEX or EOE can refuse to provide information. First, each exchange may refuse if the information involves details concerning the identity and trading activity of specific customers or member

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26. See Letter from Richard G. Ketchum, Director, Division of Market Regulation, and Gary G. Lynch, Director, Division of Enforcement, SEC, to Paul Guy, Chairman, *Commission des Valeurs Mobilières du Québec* (Apr. 30, 1986); Letter from Paul Guy, Chairman, *Commission des Valeurs Mobilières du Québec*, to Richard G. Ketchum, and Gary G. Lynch (Aug. 26, 1987) (copies of these letters available on file at the offices of the *International Tax & Business Lawyer*).

27. See Letter from Tory, Tory, DesLauriers & Binnington, Counsel to TSE, to Huntley W.F. McKay, Vice President, TSE (June 18, 1985); Letter from Ermanno Pascutto, Director, Ontario Securities Commission, to Richard G. Ketchum, Director, Division of Market Regulation, and Gary G. Lynch, Director, Division of Enforcement (Sept. 24, 1985) (copies of these letters available on file at the offices of the *International Tax & Business Lawyer*).

firms and disclosure either would not serve the interest of maintaining fair and orderly securities and option markets and/or protecting the investing public, or would be inconsistent with the laws applicable to such exchange or with its rules and regulations. Second, however, AMEX and EOE exchanged letters noting that with regard to client information it is difficult to imagine situations where either exchange's failure to provide requested customer identity and trading activity would serve the interest of maintaining fair and orderly securities and option markets and/or protecting the investing public at the same time that no legal impediments to the exchange of such information applied.<sup>28</sup>

### 3. *United States - United Kingdom Linkages*

#### a. *NASD - ISE Linkage*

The Commission found that the NASD-ISE quotation sharing arrangement did not raise significant concerns regarding the enforcement of the U.S. securities laws because:

(1) NASD and ISE agreed to provide each other access to the regulatory information necessary for the effective surveillance and investigation of trades in securities subject to the pilot program. NASD and ISE also confirmed that the Commission and U.K. regulatory authorities would have access to shared information.

(2) The pilot program provided only for sharing quotations on specified securities, and did not contemplate a trading linkage. In addition, only market professionals would have access to the U.K. quotations, and to some extent they already could receive this information through foreign vendor systems. Finally, the NASD and ISE quotation information would not be integrated into a single stream in either market.

#### b. *Memorandum of Understanding*

On September 23, 1986, the Commission and the U.K. Department of Trade and Industry entered into a Memorandum of Understanding [hereinafter MOU] providing for assistance in both regular market oversight and specific enforcement investigations.<sup>29</sup> Specifically, the MOU provides that the two countries will render assistance in cases involving insider trading, market manipulation, and misrepresentations relating to market transactions, as well as assistance in the oversight of investment businesses and brokerage firms. The MOU is an interim understanding which will terminate upon entry into

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28. See Letter from Gordon L. Nash, Lord, Day & Lord, counsel to AMEX, to Howard Baker, Senior Vice President, AMEX (Aug. 3, 1987); Letter from Maxim L. Laumen, Legal Counsel, EOE, to Howard Baker, Senior Vice President, AMEX (Aug. 4, 1987) (copies of these letters available on file at the offices of the *International Tax & Business Lawyer*).

29. Understanding on the Sharing of Information in Matters Relating to Securities and Futures, Sept. 23, 1986, United States-United Kingdom, — U.S.T. —, T.I.A.S. No. —, reprinted in 25 I.L.M. 1431 (1986).

force of a treaty between the United States and the United Kingdom. The MOU should facilitate Commission review of future U.S.-U.K. linkages.<sup>30</sup>

#### 4. Other

##### a. United States - Japan MOU

The Japanese Ministry of Finance (Securities Bureau) and the Commission entered into a MOU on May 23, 1986.<sup>31</sup> The MOU provides for the exchange of surveillance and investigatory information on a case-by-case basis. The MOU notes that the interaction of the Japanese and U.S. securities markets will continue to grow and should be encouraged. It further emphasizes that there should be established procedures for the sharing of surveillance and investigative information by each government in carrying out its responsibility to enforce its securities laws. Such sharing arrangements will improve protection of investors, ensure adequate supervision of securities companies and other securities-related business, and prevent fraudulent securities transactions.<sup>32</sup>

##### b. INTEX - PSE

The Bermuda Minister of Finance has indicated that he favors the agreement between INTEX and PSE for regulatory surveillance and has assured the PSE that he could foresee no circumstances that would warrant invocation of Bermuda's Protection of Trading Interest Act of 1981 to frustrate the surveillance sharing agreement.<sup>33</sup>

### F. Extended Trading Hours

Securities markets are extending hours to facilitate increased international trading.

#### 1. NYSE AMEX, TSE, and NASDAQ

In late 1985, NYSE advanced its traditional opening from 10:00 a.m. to 9:30 a.m.<sup>34</sup> AMEX, TSE, and the NASDAQ system followed NYSE by also moving up the start of trading thirty minutes. This development has increased the overlap between the trading hours of the North American markets and the European markets, principally on ISE.

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30. *Id.*

31. Understanding on the Sharing of Information, May 23, 1986, United States-Japan, — U.S.T. —, T.I.A.S. No. —, reprinted in 25 I.L.M. 1429 (1986).

32. *Id.*

33. See Letter from Mansfield M. Brock, Jr., Financial Secretary for Ministry of Finance to Pacific Stock Exchange (Oct. 20, 1986) (copy of this letter available on file at the offices of the *International Tax & Business Lawyer*).

34. See Exchange Act Release No. 22,473, 50 Fed. Reg. 41,283 (1985).

## 2. *The Chicago Board of Trade*

The Chicago Board of Trade [hereinafter CBOT] extended its trading hours for treasury bond contracts to include trading Monday through Thursday, from six p.m. to nine p.m. This extended trading is geared towards the Pacific Basin markets where U.S. treasury bond and note futures and options are traded. As a result, beginning in the second half of May, 1987, the Japanese Ministry of Finance allowed Japanese institutions to trade proprietary accounts on foreign futures exchanges. Still pending is a proposal to extend trading hours on CBOT to include Sunday evening, which would allow its trading to coincide with the Monday morning opening on the Tokyo Stock Exchange.

## 3. *PHLX*

On June 29, 1987, the Commission approved a rule change filed by PHLX to extend its trading hours for foreign currency options to include Sundays through Thursdays from seven p.m. to eleven p.m.<sup>35</sup>

## 4. *The Chicago Board of Options Exchange*

The Chicago Board of Options Exchange recently formed a committee to consider moving up the start of its morning trading hours to approximately four a.m., Chicago time, in order to coincide with European trading hours.

### *G. Clearance and Settlement*

Since 1980, United States clearing agencies have been developing links with foreign clearing agencies to more efficiently and safely process international securities transactions. To facilitate this process, the Commission staff has issued no-action letters to certain foreign clearing agencies, permitting them to establish automated securities processing links with their U.S. counterparts without registering as clearing agencies in the United States.

#### 1. *CDS - NSCC Link*

CDS, which operates in Montreal and Toronto, has become a member of NSCC. The CDS-NSCC link processes OTC transactions between U.S. and Canadian broker-dealers and transactions that occur through the BSE-ME linkage.<sup>36</sup> This linkage has been expanded to facilitate trading between U.S. and Canadian exchanges. The CDS-NSCC link also processes transactions that occur through the AMEX-TSE and MSE-TSE linkages.

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35. See Exchange Act Release No. 24,652, 52 Fed. Reg. 25,680 (1987).

36. See National Securities Clearing Corp., SEC No-Action Letter, [1984-1985 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,835, at 79,212 (Oct. 24, 1984); *id.*, ¶ 77,880, at 79,317 (Nov. 26, 1984).

2. *Vancouver Stock Exchange Service Corp. - Midwest Clearing Corporation Linkage*

The Vancouver Stock Exchange Service Corp. has become a member of the Midwest Clearing Corporation. That link processes OTC and exchange-listed trades between U.S. and Canadian broker-dealers.<sup>37</sup>

3. *Midwest Securities Trust Company/Midwest Clearing Corporation - CDS linkage*

The Midwest Securities Trust Company/Midwest Clearing Corporation [hereinafter MSTC/MCC] has entered into a cross-membership arrangement with CDS to clear and settle trades executed electronically through the MSE-TSE linkage.<sup>38</sup>

4. *MSTC/MCC - ISE Linkage*

The MSTC/MCC has established an automated link with ISE to process member firm trades in eligible U.S. securities executed in the London upstairs market.<sup>39</sup>

5. *MCC/MSTC - Société Interprofessionnelle pour la Compensation des Valeurs Mobilières Linkage*

MCC/MSTC also has reached an agreement to establish a linkage agreement with the *Société Interprofessionnelle pour la Compensation des Valeurs Mobilières* [hereinafter SICOVAM]. On July 22, 1987, the Division of Market Regulation issued a no-action letter approving a limited linkage whereby MSTC maintains custody of U.S. securities held by SICOVAM participants.<sup>40</sup>

6. *OCC-EOE Linkage*

OCC and EOE have established a link to support EOE member trades in XMI options, which are traded on a fully fungible basis, on AMEX and on

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37. See Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Michael Wise, Associate Counsel, MSTC/MCC (Sept. 21, 1986) (copy of this letter available on file at the offices of the *International Tax & Business Lawyer*).

38. See Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Michael Wise, Associate Counsel, MSTC/MCC (Mar. 21, 1986) (copy of this letter available on file at the offices of the *International Tax & Business Lawyer*).

39. See Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Michael Wise, Associate Counsel, MSTC/MCC (June 25, 1986) (copy of this letter available on file at the offices of the *International Tax & Business Lawyer*). An "upstairs" or "third market" transaction is a securities deal which takes place in a broker's office, with the broker locating both sides of the transaction, rather than on a trading floor or in competition with other dealers and market makers. Commission and exchange regulations ensure that such trades will not occur at prices less favorable to the client than those prevailing in the general market.

40. See letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Jeffrey Lewis, Associate Counsel, MCC/MSTC (July 22, 1987) (copy of this letter available on file at the offices of the *International Tax & Business Lawyer*).

EOE. This constitutes the first time that options traded on U.S. and non-U.S. exchanges are cleared and settled in an integrated and fungible manner.<sup>41</sup>

### 7. *Proposed Registration of International Securities Clearing Corporation*

The International Securities Clearing Corporation [hereinafter ISCC], a wholly-owned subsidiary of NSCC, has filed an application for clearing agency registration with the Commission.<sup>42</sup> ISCC intends to act as a bridge between U.S. and foreign clearing organizations and is developing a clearing linkage with ISE's TALISMAN system. ISCC is operating a pilot program with TALISMAN to process a limited number of ISE trades by four U.S. broker-dealers.<sup>43</sup>

## II.

### GLOBAL TRADING RELEASE

#### A. *Commission Request for Comments*

In April 1985, the Commission solicited comments on a broad range of issues concerning the increasing internationalization of the world's securities markets.

The Global Trading Release requested comments on what conditions and structures should characterize the international trading markets—possibly including international consolidated reporting, consolidated quotations, and intermarket linkages—and on how the resulting international trades should be compared, cleared, and settled.<sup>44</sup>

#### B. *Comments Received*

The Commission received thirty comment letters in response to the Release, and published a staff summary of the comments in January 1986.

1. Commentators viewed the increasing tendency for securities to be traded outside their market of origin and for investors to seek investment opportunities in foreign securities or markets as a positive development.

2. They indicated that market professionals and international investors do the majority of international trading, and will continue to dominate the global markets. They also indicated that trading in those markets generally

41. See Exchange Act Release No. 24,404, 52 Fed. Reg. 16,469 (1987).

42. See Exchange Act Release No. 23,514, 51 Fed. Reg. 29,184 (1986).

43. See Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Karen L. Saperstein, Associate General Counsel, ISCC (Sept. 10, 1986) and letter from Jonathan Kallman to Robert J. Woldow, General Counsel and Corporate Secretary, ISCC (Dec. 10, 1986) (copies of these letters available on file at the offices of the *International Tax & Business Lawyer*).

44. Request for Comments on Issues Concerning Internationalization of the World Securities Market, 50 Fed. Reg. 16,302 (1985).



occurs on an upstairs in-house basis, and involves foreign stocks more frequently than U.S. stocks.

3. They stated their belief that global trading markets would continue to grow in size and importance, but differed on whether trading through linked exchanges or an upstairs dealer network ultimately would predominate.

4. Despite differing perspectives, commentators believed that increased dissemination of quotation and trade information would facilitate the growth of global trading markets, although some expressed reservations about the practicability of immediately developing international consolidated quotation<sup>45</sup> and transaction reporting systems.

5. They also recognized that the Commission has an important role to play in the internationalization process, but generally cautioned that international trading markets should be allowed to develop further on their own, without extensive involvement of the Commission at this point.

6. They did indicate that the facilitation of intermarket trading linkages and international clearance and settlement facilities was an appropriate area for Commission action.

7. They also suggested that the Commission might play a useful role in encouraging agreement among the active trading markets regarding minimum standards (e.g., settlement) for automated clearance and settlement systems.

### *C. Commission Reaction to Comments*

The Commission considered the Release and the comment summary at a public meeting in May, 1986, and endorsed the view of commentators that it should proceed cautiously in responding to the growth of transnational trading.

1. The Commission directed the Division of Market Regulation staff to continue discussing with market participants issues of concern in the internationalization area and to organize a roundtable on the internationalization of the securities markets.

2. The Commission also instructed the staff to facilitate the development of international linkages between securities markets and clearing agencies and to ensure that such linkages incorporate adequate market surveillance and information sharing arrangements.

3. In addition, the Commission instructed the staff to discuss with NASD the possibility of expanding the scope of NASD afterhours trade reporting requirements.

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45. A consolidated quotation system collects the current bid, asking prices, and sizes of listed stocks from all market centers. These bids and sizes are then disseminated to subscribers.

### III. MULTINATIONAL OFFERINGS RELEASE

In February 1985, the Commission issued a Release soliciting comments on methods of harmonizing disclosure and distribution practices for multinational offerings by non-governmental issuers.<sup>46</sup>

#### *A. Focus on the United Kingdom and Canada*

The Commission chose the United Kingdom and Canada for initial consideration because issuers from their markets frequently use the U.S. markets and because their disclosure requirements are more similar to the U.S. requirements than are those of other countries.

#### *B. Reciprocal and Common Prospectus Approaches*

The Release discussed two conceptual approaches to facilitate multinational securities offerings.

1. Under the reciprocal approach, each of the participating jurisdictions would accept a prospectus used by the issuer in its own country as long as it meets certain minimum standards.

2. Under the common prospectus approach, the participating jurisdictions would agree on disclosure standards for offering documents that could be used in two or more of the three countries.

3. Under both approaches, foreign companies offering securities in the United States would be subject to the same liability standards as domestic issuers.

#### *C. Summary of Comments Received*

The Commission received seventy comment letters in response to the Release and published a staff summary of the comments in January 1986.<sup>47</sup>

1. A significant majority of commentators endorsed the Commission's initiative and generally favored the reciprocal approach. The advantages cited include ease of implementation, respect for different customs and traditions of fairness and disclosure, and reduced printing, underwriting, and expert fee costs.

2. Although several commentators believed that the common prospectus approach was ideal, they generally recognized that it would be costly and difficult to achieve because of differences in disclosure requirements, distribution methods, and liability provisions in the United States, United Kingdom, and Canada.

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46. See Exchange Act Release No. 6,568, 50 Fed. Reg. 9,281 (1985).

47. REPORT TO THE SENATE COMM. ON BANKING, HOUSING AND URBAN AFFAIRS AND THE HOUSE COMM. ON ENERGY AND COMMERCE ON THE INTERNATIONALIZATION OF THE SECURITIES MARKET, Ch. V (July 1987); *id.* at Appendix A, Global Trading Release; *id.* at Appendix B, International Roundtable.

3. Many commentators noted that differences in accounting standards and distribution practices in the three countries need to be reconciled in some manner in order for the reciprocal approach to be successful.

4. Many commentators also stated that the reciprocal approach should be made available to only world class issuers as defined by various criteria, e.g., assets and revenues, records of profitability, or trading markets.

#### *D. Current Commission Action*

The Commission staff is currently developing a reciprocal approach to be explored with Canadian and British regulation. The initial discussions likely will focus on debt offerings of world-class issuers, and rights and exchange offerings.

### IV.

#### INTERNATIONALIZATION ROUNDTABLE

On several occasions, Congress has directed the Commission to prepare a comprehensive study of the increasing internationalization of the world's securities markets.<sup>48</sup> On February 17, 1987, the Commission sponsored a roundtable discussion that focused on secondary market issues and primary offerings in the international context. A summary of the roundtable has been prepared by the Division of Market Regulation.

#### *A. Issues at the Morning Session*

The morning session discussed: (1) the existence, at least for institutional trading, of a 24-hour market; (2) the continued pre-eminence of the home market for customer activity and necessary liquidity; (3) the need to further develop international clearance and settlement mechanisms; (4) the necessity of intergovernmental and self-regulatory information and surveillance sharing agreements; (5) the need to develop methods to disseminate market information, both quotes and last sale information; and (6) the desirability of the Commission's reactive approach to dealing with developments in the internationalization arena.

#### *B. Issues at the Afternoon Session*

The afternoon session discussion was summarized as follows: (1) The roundtable endorsed a territorial approach to applying the U.S. securities laws, an increased flexibility with respect to registration requirements for off-shore sales to institutions and subsequent trading between institutions, an easing of flowback restrictions, and the reciprocal prospectus approach, although some questioned whether a reciprocal prospectus would be used by

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48. See H.R. REP. NO. 155, 99th Cong., 1st Sess. 6-8 (1985); see also S. REP. NO. 426, 99th Cong., 2d Sess. 23-24 (1986).

many issuers. (2) The participants reached a consensus that the staff of the Division of Market Regulation had taken a reasonable step-by-step approach to the application of anti-manipulation Rules 10b-6 and 10b-7 to multinational offerings, although it was clear that the application of these rules in the international context continued to present complex issues. (3) Lastly, the group addressed the question of registration of foreign broker-dealers.

## V.

### ANTI-MANIPULATION RULES

Rules 10b-6 and 10b-7 under the Exchange Act are the principal anti-manipulation provisions applicable to securities distributions occurring wholly or partially in the United States.<sup>49</sup> The application of these rules to foreign persons during such distributions is currently the subject of considerable discussion and analysis.

On September 29, 1987, the Division of Market Regulation issued a letter to ISE granting exemptions from Rules 10b-6 and 10b-7. The exemptions permit ISE member firms to engage in "passive market making" activities<sup>50</sup> while such firms or their affiliates are participating in a distribution in the United States of the securities of a U.K. issuer.

The exemptions were developed in a cooperative effort between the Commission's staff and ISE's staff in response to a request from the ISE that the Commission accommodate the ISE's new market making rules, which appeared to be in conflict with Rule 10b-6.<sup>51</sup>

## VI.

### BROKER-DEALER REGISTRATION

Increased international activities by U.S. and foreign broker dealers, as well as by their respective affiliates, raise difficult questions regarding the broker-dealer registration requirements in section 15 of the Exchange Act. The following example illustrates this procedure.

#### *A. Debevoise & Plimpton (Citibank), August 13, 1986*

Citibank agreed to acquire eighty percent of Vickers de Costa Securities [hereinafter Vickers]. Vickers is a holding company with New York [hereinafter Vickers N.Y.], London and other foreign subsidiaries [hereinafter Vickers Foreign Securities Subsidiaries]. Vickers N.Y. acts as a NASDAQ market maker in foreign securities and ADRs. In order to address Glass-Steagall

49. 17 C.F.R. § 240.10b-6,-7 (1987).

50. Passive market making refers to the ability of the UK firms to provide depth and liquidity in the UK securities market by continuing to act as market makers, but the firms may not lead the market either in price or size of quotations.

51. See Letter from Richard G. Ketchum, Director, Division of Market Regulation, to Dan Sheridan, Assistant Director, ISE (Sept. 29, 1987) (copy of this letter available on file at the offices of the *International Tax & Business Lawyer*).

restrictions, Citibank and Vickers proposed to enter into the following contractual arrangement: Vickers N.Y. would continue as a NASDAQ market maker; Vickers N.Y.'s quotes would reflect a previously entered firm quote from a foreign securities subsidiary; and if Vickers N.Y.'s bid or offer were hit, Vickers N.Y. would do a simultaneous riskless principal transaction with a Vickers Foreign Securities Subsidiary.

The Commission exempted the Vickers Foreign Securities Subsidiaries from registering based on the following additional representations. On a weekly basis the Vickers Foreign Securities Subsidiaries will, before the opening of trading, enter buy and sell "not held" orders with Vickers N.Y. for each security for which it is a market maker; Vickers Foreign Securities Subsidiaries will not engage in other securities activities in the United States; all U.S. customers who are parties to transactions between Vickers N.Y. and the Vickers Foreign Securities Subsidiaries will be customers of Vickers N.Y.; Vickers N.Y. will provide the Commission, on request, information regarding trading activities of the Vickers Foreign Securities Subsidiary; Citicorp will use its best efforts to obtain the consent of customers of Vickers Foreign Securities Subsidiaries to provide information to the Commission in connection with its investigation; Citicorp will cause Citibank, N.Y. to be designated as agent for service of process for the Vickers Foreign Securities Subsidiaries; and Vickers N.Y. will conduct an additional voluntary net capital computation intended to ensure that it has sufficient capital to meet the settlement obligations of the Vickers Foreign Securities Subsidiaries.

*B. NASD, May 7, 1986*

The Commission staff issued a no-action letter exempting from registration requirements ISE market makers whose quotations are disseminated in the United States through NASDAQ as a result of the NASD/ISE quotation exchange agreement.<sup>52</sup>

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52. The letter emphasized that the no-action letter was contingent on the market makers not engaging in other activities in the United States (e.g., institutional sales, dissemination of research).