INTERNATIONAL SECURITIES MARKETS: COMPARATIVE DISCLOSURE REQUIREMENTS

Robert C. Pozen

MR. HAWES: Continuing our previous theme, the special legal and accounting problems in multinational activity, we now take on the other half of the disclosure question—the legal concepts. Bob Pozen will talk primarily about other disclosure aspects and the international developments in that area.

MR. POZEN: We should begin by recognizing that the disclosure requirements in the U.S. are higher (or some would say more burdensome) than the disclosure requirements in most other countries, with a few exceptions which I will touch upon later. Thus, as a practical matter when we talk about the international harmonization of disclosure requirements, there are really only two possibilities: first is that the U.S. will make some accommodations in its disclosure requirements; and second is that other countries will significantly increase their disclosure requirements.

1. RECENT HARMONIZATION INITIATIVES IN THE U.S.

Let us begin by looking at the SEC's willingness to make accommodations in U.S. disclosure requirements for foreign issuers. Within the last few years, the SEC has shown considerable flexibility in this area. As many of you know, in Form 20-F the SEC evolved new standards for annual reporting by foreign issuers [1]. In so doing, the SEC made four main accommodations for foreign issuers.

A. SEC Form 20-F

The first is allowing foreign issuers to use their own financial statements, but then requiring them to disclose the material differences between those financial statements and generally accepted accounting principles (GAAP), if any. This goes to what Steve Friedman was suggesting. The SEC has stated that it is not going to require, at least in Form 20-F, every foreign issuer to use GAAP; rather, such issuers can use whatever financial statements they want and then explain as clearly as possible any material differences.

A second major innovation in Form 20-F was on segment reporting, where the SEC allowed a modified version of segment reporting by foreign issuers—on a revenue basis only—plus a discussion of any material difference in the respective contributions of profits and revenues by segment. This recognized that in most countries the type of segment reporting we have in the U.S. is not required.

A third area of accommodation in Form 20-F was management remuneration. There the SEC allowed aggregated disclosure rather than the type of detailed disclosure for individual executives that is required for executives of American issuers [2].
The fourth main area was interested transactions. There the SEC said, basically, that a foreign issuer must disclose to the SEC what it is required to disclose by foreign law or exchange rules or otherwise. But if it is not required to disclose very much by those other rules, the SEC will not independently require that the foreign issuer follow the disclosure rules on interested transactions that apply to American domestic issuers.

B. 1933 Act Disclosure

More recently than Form 20-F—in the ABC release [3] and the other releases that are part of the integration program—the SEC has begun what is probably an even more important look at foreign issuers, from the viewpoint of disclosure requirements of the Securities Act of 1933. While 20-F, in addition to being an annual report form, is called a registration form, this is somewhat misleading. In fact 20-F is only a registration form under the Securities Exchange Act of 1934 with respect to listing on an exchange. When most of us think of registration forms, we think of registration forms for 1933 Act filings. If special 1933 Act registration forms for foreign issuers are to be adopted, they will be developed as an outgrowth of these integration releases.

The SEC has historically taken a somewhat stricter view towards disclosure in the 1933 Act context than in the 1934 Act context, on the theory that the 1933 Act filing is a very special event on which investors will focus. But it is probably true that the 1934 Act disclosure documents, such as Form 20-F, have a greater impact on investors than the 1933 Act documents. The 1934 Act documents, the annual and periodic reports, affect all the trading in a stock over a significant period of time, while the 1933 Act disclosure documents affect only the people who are buying in that particular offering or trading during a very limited time period. Thus, it is hoped that the SEC will use the four accommodations in Form 20-F that I just mentioned as models for similar accommodations in the forms that are evolved under the 1933 Act for foreign issuers.

As part of the same ABC release, the SEC will be deciding in which situations Form A can be used by foreign issuers. Form A is going to be the approximate equivalent of the existing Form S-16 and will allow a high degree of incorporation by reference rather than require additional disclosures in the prospectus.

In the ABC release, the SEC suggested that Form A will be available to any foreign issuer that voluntarily files 10-Ks, 8-Ks, and all other disclosure documents that American issuers are filing. It seems clear that if a foreign issuer voluntarily files the same reports as a domestic issuer, the foreign issuer should be entitled to use Form A on the same terms as a domestic issuer. However, that is a somewhat limited approach and the SEC should be willing to go further. Most important, those foreign issuers that are now filing Form 20-F should be able to piggyback the Form 20-F in 1933 Act filings, just as the domestic issuers will be piggybacking 10-Ks in their 1933 Act filings. As long as the foreign issuer is actively traded on an exchange or on NASDAQ, it should be receiving a high degree of exposure and investor attention. If the SEC accepts the basic principles of the efficient markets theory, which underlies the integration approach, the SEC should be willing to require less in the way of 1933 Act documents for foreign issuers that are actively trading on well developed markets and filing Form 20-Fs.
C. Shelf Registration

Another important development at the SEC, which has not received as much attention as the ABC release, is the SEC's proposal on shelf registration. This is contained in proposed Rule 462A [4]. It is tucked away in the proposals for revisions to the disclosure guides that were issued during the last few months. The proposal on its face would allow private foreign issuers as well as foreign governmental issuers to use shelf registration. This would be an extremely useful development for foreign issuers which, as discussed by previous speakers, face very fast-moving time constraints.

As proposed, shelf registration would be available to foreign issuers even if they have not yet begun to trade actively in the U.S. I hope the SEC will continue to take a liberal view towards that group of foreign issuers; at the very least, the SEC should recognize that there are a number of foreign issuers that are larger than foreign governments which are now allowed to use shelf registration [5]. Although such large foreign issuers may not yet have traded in the U.S., they should be given some preferential treatment because of the likelihood that their securities are followed in the U.S. and that there is fairly decent disclosure about their activities already available in the marketplace.

2. INCREASE IN DISCLOSURE STANDARDS ABROAD

A. Sixth Directive of the EEC

Turning to the second possible approach— that is, reaching harmonization through an increase in disclosure standards of other countries—the most significant development within the last few years has been the adoption of the Sixth Directive by the European Economic Community. This directive applies to initial offerings of securities that are immediately thereafter listed on exchanges in the EEC [6].

In Appendix XIV-A at the end of this Chapter, there is a detailed comparison of the Form 20-F requirements with the EEC requirements in the Sixth Directive. What is striking is the large number of similarities between these two sets of requirements. If other countries move toward the requirements of Form 20-F and the EEC's Sixth Directive, there would be a tremendous narrowing of the significant differences in international disclosure requirements.

B. Proposed EEC Directive on Disclosures to Employees

Indeed, in one area of disclosure the EEC is considering much more extensive requirements than those of the SEC: disclosures relating to the interests of employees as opposed to stockholders. Appendix XIV-C comprises a recent EEC proposal that would require semi-annual reporting of multinational firms— including American-based firms with subsidiaries in the EEC— to employees on a broad range of subjects [7]. There is an especially interesting proposal with regard to the duty of the firm to inform employees forty days in advance of any decision to merge or sell all its assets. The proposal contemplates that if there is a "substantial effect on the interests of its workers," they will have the opportunity to consult and meet with management.

[394]
It is unclear, however, what happens after workers and management meet if they do not reach an agreement. This proposal, I should add, has been severely criticized by some international groups, including the International Chamber of Commerce; and it is by no means certain that it will be adopted. But I think it is an important disclosure proposal worthy of attention and study.

C. Minimum Standards

There have also been other attempts to evolve certain universal or international disclosure standards. These have occurred at the United Nations and at other international institutions. Most of these attempts have been aimed at establishing what I would call minimum standards: that is, every country should refuse to allow any issuer to list or offer securities unless specified minimum standards are met.

In my view, however, the minimum standard approach seems misguided. In essence, minimum standards threaten to drive small and medium sized companies out of domestic markets. If minimum standards are set at levels that are reasonable from the viewpoint of an international securities market, countries may find that most of their small and medium sized issuers do not meet these standards. But these issuers are not the ones that have any interest in using the international securities markets. Therefore, it seems misguided to evolve minimum international standards where the issuers primarily affected are those without any role in the international securities market.

D. World Class Securities

I suggest that in the future we try to aim any international standards at the much more limited class of issuers with an interest in, and a possibility of going into, the international securities markets [8]. In that regard, we might designate a subcategory of issuers as world class issuers, and we could spend some time thinking about what should be the appropriate standards for designating companies as belonging to that class. For example, what should be the appropriate number of shareholders? How closely should these issuers be followed by analysts? What types of reports should they be making, and to whom?

If we evolve standards for identifying world class issuers, we would in effect be saying that this class of very large, well seasoned, and closely followed companies should automatically be listed on any exchange in the world and should have available to it a very short form registration for primary offerings in any market. It would be much more fruitful to focus on this class of internationally interested issuers and to help them go in and out of all the different markets in the world than to set up minimum standards that actually affect issuers with no international interest.

But I would hasten to add that if we move toward the concept of world class securities, and if certain issuers have securities traded on markets in a number of countries, we would then run into a number of practical and regulatory problems associated with trading in multiple markets—like the problems in the U.S. caused by certain securities being traded on regional markets and also in New York. If we had a truly international securities market in which the same security is traded in five different countries, we would have to deal
with problems like best execution. Since we have struggled so long with best execution in the U.S., we can just imagine how much more difficult this problem would be on a worldwide basis. I think some of the other speakers will address the problems that have already developed as a result of multiple markets in the international securities area.

NOTES

[6] 80/390/EEC, OJ No. L 100, 17.4.80. On January 13, 1981, a proposed directive was issued concerning the requirements for a prospectus to be published when securities are offered for subscription or sale to the public, OJ No. C 355, 31.12.80, p. 39. The disclosure requirements contained in this proposal are, in general, equivalent to those contained in the Sixth Directive.
### APPENDIX XIV-A

**Author:** Douglas W. Hawes

**COMPARISON OF SUBSTANTIVE PROVISIONS OF SEC FORM 20-F & THE EEC's SIXTH DIRECTIVE**

**ANNEXES A (SHARES) AND B (DEBT)**

*Indicates Same Provision in Annex B, Usually with Same Number

<table>
<thead>
<tr>
<th>Form 20-F</th>
<th>Sixth Directive</th>
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<tbody>
<tr>
<td><strong>Cover Page</strong></td>
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<tr>
<td>a) Name</td>
<td>A 311* Name</td>
</tr>
<tr>
<td>b) Jurisdiction of Incorporation</td>
<td>A 314a* Registry Number</td>
</tr>
<tr>
<td>c) Address of Principal Executive Office</td>
<td>A 313* Legislation under which company operates and legal form</td>
</tr>
<tr>
<td>d) Title of Class of Securities Registered</td>
<td>A 311 Registered office and principal administrative establishment, if different</td>
</tr>
<tr>
<td>e) Exchange on which Registered, if any</td>
<td>A 21 Indication whether shares are already public</td>
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<td></td>
<td>A 22 Information concerning shares</td>
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<tr>
<td></td>
<td>A 221 Nature of the issue and amount thereof and resolutions relative thereto</td>
</tr>
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<td></td>
<td>A 241 Description of shares</td>
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<td></td>
<td>A 225* Stock exchange or exchanges on which admission is or will be sought (see also A 21)</td>
</tr>
<tr>
<td></td>
<td>A 244* Stock exchanges on which already listed or</td>
</tr>
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<td></td>
<td>A 245* traded but not listed</td>
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<td><strong>Page 2</strong></td>
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<tr>
<td>a) Indicate number of outstanding shares of each of the issuer's classes of stock</td>
<td>A 32 Capital</td>
</tr>
<tr>
<td></td>
<td>A 321* Amount of subscribed capital</td>
</tr>
<tr>
<td></td>
<td>A 322 Amount of unissued capital, undertakings to increase capital, categories of persons having preemptive rights, terms and conditions relating to the above</td>
</tr>
<tr>
<td></td>
<td>A 323 Classes of stock not representing capital</td>
</tr>
<tr>
<td></td>
<td>A 323a* Amount of convertible securities and warrants and conditions thereof</td>
</tr>
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<td></td>
<td>A 324 Conditions in Charter governing changes in capital and rights if more stringent than law</td>
</tr>
<tr>
<td></td>
<td>A 325 Summary of operations in last three years that have changed the capital stock</td>
</tr>
<tr>
<td></td>
<td>A 328* Amount of stock of issuer held by itself or subsidiary if not shown separately on balance sheet</td>
</tr>
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</table>
Form 20-F

b) Indicate whether registrant has been filing reports with the SEC

Item I: Description of Business

a) Year Organized

b) Bankruptcy, if any

c) Nature of any other material reclassification, merger or acquisition or disposition of assets

d) Any material change in mode of conducting business

e) Principal products and services

f) Breakdown of total sales and revenue (5 years) by categories of activity and into geographic markets. If profit contribution of any category materially different, identify and discuss; but need not give actual operating profit if not required by foreign law

g) New products

h) Research and development expenditures for last two years

i) Describe distinctive aspects of registrant's operations and industry

j) Material country risks

k) Customers, suppliers

l) Regulation

m) Proprietary products

A 314* Indication of company's purpose and reference to Charter

A 312* Date of incorporation and length of life except where indefinite

A 325 Summary of capital stock changes in last three years

A 325 (See above)

A 411* Description of activities, indicating any new ones

A 417 Where information in 411-416 has been influenced by exceptional factors, so state

A 411 Description of main categories of products manufactured and sold and/or services performed; also new products

A 413 Breakdown of net turnover during the past three years by categories of activity and into geographical markets ("homogenous activity which contributes significantly to turnover shall be considered a separate category of activity" — Council minutes)

B 413 Net turnover for two years (for debt issue)

A 411 See above (also 43 below)

A 43 Information concerning policy on research and development over past three years where significant

A 417 Where the information in 411-416 is influenced by exceptional factors, so state

(See 417 above)

A 42* Summary information regarding the extent to which the company is dependent upon patents, licenses, or other contracts
<table>
<thead>
<tr>
<th>Form 20-F</th>
<th>Sixth Directive</th>
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</thead>
<tbody>
<tr>
<td>n) Cyclicality</td>
<td>A 44a Information on any significant interruptions in the company's business in the recent past</td>
</tr>
<tr>
<td>o) Energy and raw material supply</td>
<td>A 45 Average numbers employed by main business activity and changes over last three years, if material</td>
</tr>
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<td></td>
<td>A 46 Investment policy</td>
</tr>
<tr>
<td></td>
<td>A 461 Description of main investments made in other companies over past three years and current year</td>
</tr>
<tr>
<td></td>
<td>A 462 Principal investment made other than in other companies (geographic distribution and method of financing)</td>
</tr>
<tr>
<td></td>
<td>A 463 Future investments (like 462) which are committed</td>
</tr>
<tr>
<td>Item 2: Management's Discussion and Analysis of Statements of Income</td>
<td>Ch. 7 The company's recent development and prospects</td>
</tr>
<tr>
<td></td>
<td>A 71* Except as waived by the competent authority, general information and the trend of the company's business since the end of the last fiscal year</td>
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<tr>
<td></td>
<td>A 72* Except as waived by the competent authority, information on the company's prospects for at least the current financial year</td>
</tr>
<tr>
<td>Item 3: Description of Property</td>
<td>A 415* Location and size of the company's principal establishments (those accounting for 10% of turnover or production) and summary information about real estate owned</td>
</tr>
<tr>
<td>a) Description of plants, mines, etc. and basis of ownership (fee, lease, etc.)</td>
<td>A 416* For mining, etc., description of deposits, reserve estimates, economic conditions, etc.</td>
</tr>
<tr>
<td></td>
<td>A 417* (See above)</td>
</tr>
<tr>
<td>Item 4: Control of Registrant</td>
<td>A 326 As far as known to company, the natural or legal persons who, directly or indirectly, severally or jointly, exercise or could exercise control over the company. Particulars of the proportion of capital held by the above persons giving the right to vote</td>
</tr>
<tr>
<td>a) Whether registrant is controlled by another corporation or government</td>
<td>A 327* If company is part of a group, a description of group and company's position</td>
</tr>
</tbody>
</table>
b) If voting securities are in registered form, list owners of 10% or more and give holdings

c) Describe arrangements known to registrant which may, at a subsequent date, result in a change of control

Item 5: Directors and Officers

Item 6: Remuneration of Directors and Officers

a) Aggregate remuneration of officers and directors as a group

b) Pension, retirement plans, etc. for officers and directors. If individual information is published elsewhere, include that

Item 7: Options to Purchase

a) Securities from registrant or subsidiaries

Item 8: Pending Legal Proceedings

a) Describe material pending legal proceedings including the name of the court or other forum, date instituted, parties, alleged factual basis and relief sought; also include legal proceedings known to be contemplated by governmental authorities

[400]
Form 20-F

Item 9: Nature of Trading Market

a) Describe nature and extent of principal non-U.S. and U.S. trading markets

Item 10: Capital Stock to be Registered

a) Outline dividend, liquidation, pre-emptive and conversion rights, redemption and sinking fund provisions, and assessability

b) If rights of shareholders may be modified otherwise than by vote of majority

c) State whether or not any restriction on repurchase of shares while dividend or sinking fund in arrears

Sixth Directive

A 225 Stock exchange or exchanges on which listing is sought
A 243 Respective dates on which shares will be listed on or dealt in
A 244 If shares of the same class are already listed on one or more stock exchanges, so indicate
A 245 If shares of the same class have not yet been admitted to listing, but are dealt in one or more other markets, which are subject to regulation, so indicate and describe

A 22 Information concerning the shares to be admitted to listing
A 221 Resolutions, etc. creating said shares; nature of issue and amount thereof
A 241 Description of shares, number and par or nominal value
A 221a In a business combination for shares, indication of where documents available to public
A 222 Concise description of the rights attaching to the shares: voting, dividend, liquidation; time limit after which dividend lapses and party who benefits therefrom
A 223 Arrangements for transfer of shares and any restrictions on negotiability
A 224 Date on which entitlement to dividend arises
A 226 Paying agents
A 230 Pre-emptive rights of shareholders
A 234 Procedure for exercise of pre-emption
A 23 Information concerning the previous issue, public or private, of the shares to be admitted to listing where effected within one year
A 222 (See above)
Item 12: Debt Securities to be Registered

Outline

a) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement, guarantees

b) Lien priorities

c) Maintenance provisions (asset ratios, etc.), dividend restrictions

d) Provisions relating to issuance of additional securities, modification of the terms of the securities, etc.

e) Particulars relative to the trustee

f) Name and address of paying agent

g) Currency in which payable and basis for determination

h) Relevant laws or decrees

[For debt securities Annex B of the Sixth Directive governs]

B 22 Legal information
B 221 Resolutions creating debt, type of operation and amount
B 21 Condition of loan
B 211 Amount of loan, nature and denominations
B 212 Issue and redemption prices and nominal interest rates
B 213 Procedures for the allocation of other advantages
B 215 Amortization provisions
B 2181 Period of loan and any interim due dates
B 2182 Due dates for interest
B 222 Nature and scope of guarantees (see also Article 8:1)
B 224 Subordination provisions
B 226 Whether registered or bearer certificates
B 227 Restrictions on transferability
B 323a Amount of convertible debt securities, etc. and conditions covering conversion, etc.
B 214 Tax on the income from debt securities withheld at country of origin or country of listing
B 219 Indication of yield to maturity and method of calculation

B 221 Number of debt securities which have been or will be created if predetermined
B 223 Trustee or other representative of debt holders, name and office and conditions of such representation and conditions relating to replacement; location of contract with trustee for public inspection
B 216 Paying agents in the country of admission
B 217 Currency of the loan; if denominated in units of account, the contractual status thereof; currency option
B 225 Legislation under which debt securities have been created and courts competent in the event of litigation
Form 20-F

i) Default provisions

Item 12: Other Securities to be Registered

If securities other than capital stock or long-term debt are to be issued, outline briefly the rights evidenced thereby

Item 13: Exchange Controls and Other Limitations Affecting Security Holders

Item 14: Taxation

a) Outline taxes and withholding provisions to which U.S. security holders are subject under the laws and regulations of the foreign country of origin

Item 15: Changes in Securities and changes in Security for Registered Securities

a) Describe material modifications in any class of registered securities
b) Effect on class of registered securities of issuance or modification of other securities if material
c) Describe material withdrawal or substitution of assets securing a registered class of securities
d) Names and addresses of any substitute trustees or paying agents (in last fiscal year)

Item 16: Defaults Upon Senior Securities

a) State nature of any material default with respect to any indebtedness exceeding 5% of total consolidated assets
b) State nature of any material arrearage or delinquency with class of registered preferred

Sixth Directive

B 218 Time limits
B 2182 Time limit on the validity of claims to interest and repayment of principal
B 225 (See above)

[See Annex C Layout for listing particulars for the admission of certificates representing shares—does not apply if only shares represented are themselves admitted, e.g., shares held by a depository]

A 222a*Tax on income from the shares withheld at source in the country of origin and/or the country of listing. Indicate whether the issuer assumes responsibility for the withholding of tax at source
Form 20-F

**Item 17: Interest of Management in Certain Transactions**

**Describe**

a) Material transactions in last three years or any presently proposed transactions to which registrant is a party in which a director, officer, Item 4(a) security holder, or relative thereof living in the same house is a party

b) The extent to which any director, officer or associate thereof is indebted to registrant and the details

**Signatures**

**Item 18: Financial Statements and Exhibits**

**Instructions**

1. File same financial statements, schedules and accountant's certificates required for 10-K

Any material variation in accounting principles or practices from U.S. GAAP or Form S-X to be disclosed and to the extent practicable, the effect of each such variation given

**Sixth Directive**

A 623 Information about the nature and extent of interest of administrative management and supervisory bodies in transactions which are unusual in nature or conditions during preceding and current fiscal year as well as executory arrangements made in prior fiscal years

A 624 Total of all outstanding loans by company to the above (623) as well as any guarantees provided by the company for their benefit

A 11* Identity of legal or natural persons assuming responsibility for listing particulars

A 12* Declaration by above persons that document is in accord with facts and no omissions likely to affect its implications

A Ch.5 Information concerning the company's assets and liabilities, financial situation, and profits and losses

A 511* Last three balance sheets and profit and loss accounts set out as a comparative table. Notes on annual accounts for last fiscal year. Must not be more than 18 months old. [B 511 only 2 years plus interim]

A 56* Where company is dominant entity in a group, details in Ch. 4-7 shall be given for whole group

B 514 As of recent date:

a) total loan capital outstanding guaranteed and not guaranteed

b) other indebtedness

c) contingent liabilities

A511a* If company prepares consolidated accounts only, it shall include those accounts; if both consolidated and unconsolidated, include both (competent authority may permit omission of one if they do not provide significant additional information)
Form 20-F

2. SEC may permit omission of one or more statements or the substitution of comparable statements. SEC may also permit omission of one or more GAAS or substitution therefor.

Independent accountants' certificate

Instructions As to Exhibits

A. Registration Statements to Include

1. Charter and by-laws
2. Copies of acquisition, re-adjustment or succession described in Item 1 or 8
3(a) Specimen copies of securities to be registered and of instruments defining rights of long-term debt holders
(b) Certain instruments may be omitted
4(a) Copies of every material executory contract not in the ordinary course of business entered into not more than two years before. See Rule 24b-2 for confidential treatment.

Sixth Directive

A514a* Source and application of funds for three years
A 511b Per share amounts for three years adjusted for increases or decreases in shares showing details
A 511c Amount of dividends per share for three years
A 512* If more than nine months has elapsed since the end of last fiscal year, an interim financial statement covering at least the first six months. Any significant change since last fiscal year or interim must be described in a footnote
A 513* If unconsolidated or consolidated accounts do not comply with EEC Council Directives and do not give a true and fair view of the company's assets and liabilities, financial position and profits and losses, more detailed or additional information must be given
A 551* Consolidation principles applied (including equity accounting)
A 52* Details relative to the company's participation in a group (equity accounting type interests)
[A 521-531 give details]
A 54 Some details for investments not covered by A 52 where company owns at least 10% of capital
A 73* Names, addresses and qualifications of the official auditors who audited company's account for the last three years; any qualifications or refusals to report

Article In a business combination the documents describing the transaction must be available at the office of the issuer and its fiscal agent

A 221a
### Form 20-F

4(b) Certain contracts of registrants in ordinary course of business must also be filed:

1. Where directors, officers or promoters are parties
2. It is of such materiality as to call for reference under Item 1, 3 or 17, or
3. Registrant's business is substantially dependent upon it, e.g., requirement's contract

### Sixth Directive

[The Sixth Directive at Sections A 232-A 239 and B 241-B 1247 contains items relating to the particular distribution such as underwriting arrangements which in U.S. would be found in a 1933 Act registration.]
OUTLINE OF CURRENT DISCLOSURE ISSUES

I. RECENT HARMONIZATION INITIATIVES

A. SEC Form 20-F

1. Almost all non-North American issuers may use Form 20-F to list and register a class of securities on a national securities exchange, and may also file annual reports on Form 20-F. Thus, it is unique in that it is an initial registration and periodic filing form.

2. As proposed in 1977, Form 20-F would basically have required foreign issuers to follow the rules applicable to domestic issuers. These proposals were severely criticized by the commentators.


a. Description of Business: Proposal would have required foreign issuers to report the revenues, income and assets for each industry and geographic segment. As adopted, Form 20-F requires quantitative disclosure on a revenue basis only, plus a narrative discussion if revenue and profit contributions of the respective segments differ significantly. In addition, Form 20-F requires the disclosure of sales and revenues by geographic markets.

b. Remuneration of Directors and Officers: Proposal would have required identification of three highest paid directors or officers and the disclosure of the aggregate remuneration as well as similar benefits paid to these three persons. As adopted, Form 20-F limits disclosure to aggregate remuneration and similar benefits paid to all directors and officers as a group.

c. Interest of Management in Certain Transactions: Proposal would have required a description of material transactions between the issuer and its management. As adopted, Form 20-F requires these disclosures on interested transactions only to the extent such information is already made public pursuant to foreign laws or otherwise.

d. Financial Statements: Financial statements of foreign issuers do not have to comply with GAAP or Regulation S-X; instead, a discussion of any material differences from GAAP or Regulation S-X must be included, and quantification is encouraged to the extent feasible.

B. Sixth Directive of EEC

1. The Sixth Directive contains disclosure requirements for securities when they are first listed on a stock exchange of an EEC member state. (80/390/EEC OJ No. L 100, 17.4.80).

a. A detailed comparison between the Sixth Directive and Form 20-F is attached as Appendix A to this chapter. While the similarities between the specific disclosure items in these two sets of rules are striking, there are some significant differences in general coverage.
b. The Sixth Directive requires a prospectus to be disseminated to investors; Form 20-F is a form to be filed with the SEC. The Sixth Directive requires a prospectus to be delivered when a new class of securities is listed, and when a new issue of securities of the same class is sold because such a new issue must itself be listed according to the Listing Directive, described below. By contrast, Form 20-F is filed when a new class of securities is listed and annually with regard to such class, but not in the event that new securities of such class are issued because such a new issue is subject to the disclosure requirements of the Securities Act of 1933. Thus, a comparison should also be made between the new issue requirements of the Sixth Directive and the disclosure requirements of the Securities Act of 1933. See also, Proposal for a Council Directive coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when securities are offered for subscription or sale to the public, OJ No. C 355, 31.12.80, p. 39.

2. The Listing Directive of the EEC has two main parts: it sets minimum requirements to be met before securities may be listed on stock exchanges in EEC member states, and prescribes the continuing obligations of the issuers of such listed securities. (79/279/EEC, OJ No. L 66, 16.3.79).
   a. The first part is roughly analogous to the criteria proposed by the SEC for qualified securities to trade in the national market system. Securities Exchange Act Rel. No. 15,926 (June 15, 1979). That is, the requirements go mainly to the characteristics of the issuer and its trading market.
   b. The second part is roughly analogous to the annual reporting requirements in Form 10-K for domestic issuers (or Form 20-F for foreign issuers). But the information required by the Schedules of the Listing Directive must be made publicly available in a widely distributed newspaper; this is closer to the annual report to shareholders in the United States. On the other hand, the Listing Directive is limited to listed securities, while the 10-K requirements apply to listed securities and OTC securities meeting Section 12(g) standards--500 shareholders and $1 million in assets. In addition, the Listing Directive has a requirement, analogous to Form 8-K requirements, to apprise shareholders of significant developments affecting security prices.

3. The proposed Information Directive would require companies whose securities are admitted to official listing on a stock exchange in an EEC member state to publish a half-yearly report. (OJ No. C 29, 1.2.79). It has been proposed in revised form. (23 OJ No. C 210, 10.19.80). This Directive is roughly analogous to the requirements of Form 10-Q for domestic issuers (and Form 6-K for foreign issuers).

II. TWO SPECIFIC ISSUES OF CURRENT IMPORTANCE

A. 1933 Act Disclosure

1. While the revisions in Form 20-F under the Securities Exchange Act of 1934 are laudable, they need to be matched by similar revisions in the 1933 Act forms. Form 20-F pertains only to reporting standards for already issued securities of foreign issuers; therefore, they are of much less utility if the standards for issuing these securities in the first place are unduly stringent.

2. The SEC has provided some relief in 1933 Act filings by allowing:
   a. foreign issuers to make only aggregate disclosure on management remuneration, Securities Act Rel. No. 6157 (Nov. 29, 1979);
b. foreign issuers filing Form 20-F to use Form S-16 for rights offering to existing U.S. shareholders, Securities Act Rel. No. 6156 (Nov. 29, 1979);

c. foreign governments and political subdivisions thereof to file an annual shelf registration statement with a core prospectus that can be supplemented quickly by post-effective amendments at the time of the offering, Securities Act Rel. No. 6240 (Sept. 10, 1980).

3. However, there are still significant constraints on 1933 Act filings which are not present in Form 20-F:

a. Description of Business—in 1933 Act filings, foreign issuers still must comply with the full industry and geographic segment disclosure requirements, although these have been significantly reduced in Form 20-F;

b. Interest of Management in Certain Transactions—in 1933 Act filings, foreign issuers still must disclose material transactions between the registrant and its management, although such disclosures are required by Form 20-F only if already being made public, pursuant to foreign laws or otherwise; and

c. Financial Statements—in 1933 Act filings, foreign issuers must go much further than in Form 20-F not only to discuss material differences between GAAP and foreign accounting principles but also to reconcile such differences in a quantitative manner. Reg. 4-01(a); Securities Act Rel. No. 6233 (Sept. 2, 1980).

4. In connection with its integration proposals, Securities Act Rel. No. 6235 (Sept. 2, 1980), the SEC asked several questions about the application of such proposals to offerings by foreign issuers. The integration proposals envisage three filing modes:

a. Form A for S-16 issuers, which would have a high degree of incorporation by reference;

b. Form B for middle-tier companies along the lines of S-7 issuers which could either deliver an annual report along with the prospectus, or include certain information from the report in the prospectus; and

c. Form C for all the remaining companies which is basically a streamlined version of Form S-1. See Securities Act Rel. No. 6331 (Aug. 6, 1981), in which these forms have been reproposed as Forms S-1, S-2 and S-3.

5. The SEC questions about the applicability of these integration proposals to foreign issuers included:

a. Whether the criteria for Forms A and B should be used for foreign issuers or whether a different classification system is appropriate;

b. Whether the present distinctions between North American and other foreign issuers should be maintained;

c. Whether the existence of a primary market outside the United States should lead to different disclosure requirements for foreign issuers;

d. Whether foreign laws impede or restrict the information foreign issuers may file with the SEC;

e. Whether the composition of investors in foreign securities are different than investors in domestic securities and, if so, the implications for disclosure requirements; and
f. Whether the information required by Form S-1 that is not required by Form 20-F is important for investors, analysts, or other interested persons.

B. Proposed EEC Directive on Disclosure to Employees

1. In many European countries, there are legal requirements for consultation by corporate directors with labor unions or appointment of labor representatives to corporate boards.
   a. For discussion of Dutch requirement for consultation with labor representatives before entering merger agreements, see International Faculty for Corporate and Capital Market Law, Annual Report 1980 at 6.
   b. For discussion of German experience with labor representatives on corporate boards, see Vagts, "Reforming the Modern Corporation: Perspectives from the German," 80 Harv. L. Rev. 23 (1966).
   c. See also EEC Directive of February 2, 1975, providing for disclosure and consultation by corporations with labor unions in cases of collective dismissals; and EEC Directive of February 14, 1977, providing for similar procedures in cases of relocation of enterprises.

2. On October 1, 1980, the EEC Commission approved "Proposal for Informing and Consulting the Employees of Undertakings with Complex Structures, in Particular Transnational Undertakings".
   a. An unofficial English translation of the proposal follows this outline.
   b. Proposal has been submitted to the EEC Council and now must undergo lengthy review process in EEC institutions and by member states.

3. Firms Covered by Directive
   a. Multinational firms headquartered outside an EEC member state, with at least one subsidiary in an EEC member state having at least 100 employees.
   b. Multinational firms headquartered within an EEC member state, with at least one subsidiary in an EEC member state having at least 100 employees.
   c. National firms headquartered within an EEC member state and with at least one subsidiary having at least 100 employees within that same state.
   d. Does not apply to EEC firms with no subsidiaries in EEC member states (e.g., divisions only), or to American firms doing business in EEC member states through means other than subsidiaries (e.g., agents only).

4. Periodic Disclosures (at least every 6 months)
   a. Management of parent company must forward certain information to the management of its subsidiaries which in turn must communicate without delay to employees' representatives in each subsidiary.
   b. Such information shall in general be sufficient to give "a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole."
   c. In specific, the information shall cover the following subjects: structure and manning, economic and financial situation, probable development of business, probable employment trends, rationalization
plans, introduction of new working methods, and "all procedures and plans liable to have a substantial effect on employees' interests."

5. Important Decisions
a. These are generally defined as: closure or transfer of an establishment; restrictions, extensions or substantial modifications of activities; major organizational modifications; and the beginning or ending of long-term cooperation with other firms.
b. Not later than 40 days before the adoption of such decision, parent management must forward certain information to subsidiary management, which in turn must forward without delay such information to the employees' representatives and ask for their opinion in not less than 30 days.
c. The required information includes the details of the grounds for the decision, its consequences for the employees concerned, and the measures planned for such employees.
d. If, in the opinion of the employees' representatives, the proposed decision "is likely to have a direct effect on the employees' terms of employment or working conditions", subsidiary management must consult with these representatives on the measures planned for the affected employees.

6. Enforcement and Administration
a. If subsidiary management does not comply with requirements outlined in paragraphs 4 or 5 above, employees' representatives first have recourse to management of the parent. In addition, "appropriate penalties" are to be established by EEC member countries.
b. Employees' representatives must "maintain discretion as regards information of a confidential nature," and may not divulge "secrets regarding the undertaking or its business." EEC member countries "shall impose appropriate penalties in cases of infringement of the secrecy requirement."
c. Proposed directive contemplates possibility of a body representing employees of all subsidiaries of a corporation in EEC member countries—that is, a genuinely transnational union.
d. Proposal contemplates that each EEC member country will "introduce the laws, regulations and administrative provisions necessary to comply with the Directive," thus leaving the details to be worked out by each country.

III. GENERAL APPROACHES
A. Current Approach of Voluntarism
1. Regulation is increased as the degree of voluntary entry by the foreign issuer into the domestic securities markets increases.
2. Maximum regulation if foreign issuer registers securities offering in domestic country and lists on domestic exchange.
3. Minimum regulation if securities of foreign issuer are traded in the OTC market of the domestic country without any participation or support by foreign issuer.
B. Voluntarism in the U.S.

1. Securities of all foreign issuers are, in the view of the SEC, subject to the antifraud prohibitions in Sections 10(b) and 14(3). SEC Amicus Curiae Brief, Brascan Ltd. v. Edper Equities Ltd., 477 F. Supp. 773 (S.D.N.Y. 1979).

2. Securities of foreign North American securities—primarily Canadian issuers:
   a. In general, are treated the same as U.S. issuers.
   b. Thus, the exemptions and special reporting forms mentioned below are generally not available to foreign North American issuers.

   a. Subject to reporting requirements in Section 13(a) of the 1934 Act, though can use Forms 20-F and 6-K.
   b. Subject to FCPA—Sections 13(b)(2) and 30A of the 1934 Act.
   c. Subject to tender offer provisions in Section 14(d) of the 1934 Act.
   d. Exempt by Rule 3a12-3 from the short-swing trading provisions in Section 16 and the proxy provisions in Sections 14(a), 14(b), 14(c), and 14(f) of the 1934 Act.

4. Securities of foreign issuers subject to continuous reporting obligations solely because of Section 15(d) of the 1934 Act which applies to securities issued pursuant to a registration statement filed with the SEC.
   a. Reporting obligations can be fulfilled by filing Forms 20-F and 6-K.
   b. Subject to FCPA—Sections 13(b)(2) and 30A.
   c. Like domestic 15(d) issuers, foreign 15(d) issuers are not subject to Sections 14(a), 14(b), 14(c), 14(d), 14(f), or 16.

5. Securities of foreign issuers whose securities are traded on the OTC market in U.S., but which have neither been listed on an exchange nor issued in an offering registered with the SEC.
   a. In general, Section 12(g) of the 1934 Act imposes obligations, similar to those for listed issuers, if the issuer of the OTC securities has more than 500 shareholders of record and $1 million in assets.
   b. However, Rule 12g3-2(a) exempts from all these obligations a foreign issuer if it has fewer than 300 U.S. shareholders of record even if it has more than 500 total shareholders.
   c. Rule 12g3-2(b) exempts from all these obligations a foreign issuer, regardless of the number of its U.S. shareholders of record, if it furnishes to the SEC for public inspection copies of the material investor information it makes public in its local jurisdiction or sends to its shareholders either voluntarily or pursuant to foreign law or exchange requirements.
   d. Query: what are the obligations of Section 15(d) foreign issuers that also meet the criteria of Section 12(g) in light of Rule 12g3-2(d)?
C. Limits of Voluntarism

1. No international coordination
   a. Each country applies its own laws to the extent that foreign issuer enters the domestic market.
   b. Possible incentive for each country to set standards of relatively low level to attract foreign offerings.

2. Role of U.S. standards
   a. U.S. standards have been relatively high and have been used as a model by other countries to some degree.
   b. The ability of U.S. to retain relatively high standards was premised on very strong desire by foreign issuers to tap the U.S. capital markets.
   c. But the dominance of the U.S. as the source of capital has declined as a result of the growth of European and other markets.
   d. To the extent that international capital raising and securities trading move outside the U.S. boundaries, it will become more difficult for U.S. regulators to oversee these markets.

D. Minimum Standards

1. Explanation
   a. This approach would involve an international agreement on minimum regulatory standards to be applied by all signatory countries, though each country could impose additional standards.
   b. EEC Directive on listing sets minimum standards for trading of securities on exchanges in member countries, though each country may impose additional non-discriminatory standards.
   c. The International Federation of Exchanges has tried to establish minimum standards for listing on the major exchanges in the world.

2. Evaluation
   a. It would reduce the incentive for each country to lower standards so as to attract more foreign capital, and would provide a starting point for creating an international trading market in securities.
   b. But there is great pressure to set minimum standards quite low so that exchanges would not have to delist a substantial number of issuers.
   c. Moreover, most issuers that might have to be delisted because of minimum standards are relatively small and not interested in foreign trading.

E. Maximum Standards for World Class Securities

1. Explanation
   a. This approach would involve an international agreement on maximum regulatory standards which, if met, would automatically entitle the issuer to distribute stock in any country and to list on any exchange in the world. Once maximum standards were set, no regulatory body or exchange could impose additional standards.
b. The standards would be designed to cover securities of world class issuers. The standards would therefore be fairly high, perhaps at the level of securities trading on the NYSE or AMEX.

2. Evaluation

a. Maximum standards would be an important first step toward an international securities market since they would be aimed at the very large issuers which might have an interest in issuing securities and trading in various countries.

b. But the maximum standards approach would fall far short of an integrated international market system with composite quotation, reporting, and clearing systems. At the same time, an increase in multiple trading locations for the same security would create additional regulatory problems such as in the area of best execution.

c. Maximum standards would not require delisting of small companies since an exchange could set lower standards for securities other than world-class securities.

d. But maximum standards could not be so high that they could be utilized only by U.S. issuers. On this point, the results of an informal survey of selected countries are shown below:
### Foreign Issuers that Meet Listing Requirements for New York or American Stock Exchange in Selected Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Companies which meet NYSE or AMEX Listing Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Kingdom</td>
<td>NYSE - estimated 220 British companies</td>
</tr>
<tr>
<td></td>
<td>AMEX - estimated 400-450 additional British companies</td>
</tr>
<tr>
<td>Sweden</td>
<td>NYSE - 14 Swedish companies appear to meet all criteria</td>
</tr>
<tr>
<td></td>
<td>AMEX - 15 additional Swedish companies appear to meet</td>
</tr>
<tr>
<td></td>
<td>all criteria</td>
</tr>
<tr>
<td>Belgium</td>
<td>NYSE - 11 Belgian companies appear to meet all criteria</td>
</tr>
<tr>
<td></td>
<td>other than those relating to number of public shareholders and value of publicly-held shares</td>
</tr>
<tr>
<td></td>
<td>AMEX - 15 additional Belgian companies appear to meet all criteria other than those relating to number of public shareholders and value of publicly-held shares</td>
</tr>
<tr>
<td></td>
<td>(All shares issued by Belgian companies are bearer certificates, so information about the number of public shareholders and the aggregate market value of publicly-held shares is not available)</td>
</tr>
<tr>
<td>Japan</td>
<td>NYSE - 260 companies listed meet net tangible assets</td>
</tr>
<tr>
<td></td>
<td>- 80 companies listed also meet pre-tax income</td>
</tr>
<tr>
<td></td>
<td>- 250 companies listed meet requirements re aggregate market value of publicly-held shares</td>
</tr>
<tr>
<td></td>
<td>AMEX - 660 companies listed meet net tangible assets</td>
</tr>
<tr>
<td></td>
<td>- 200 companies listed also meet pre-tax income</td>
</tr>
<tr>
<td></td>
<td>- over 600 companies meet requirements on aggregate market value of publicly-held shares</td>
</tr>
<tr>
<td></td>
<td>(The response from Japan did not indicate whether information was being provided only with respect to Japanese companies or for all companies listed on the Stock Exchange, including foreign companies)</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>NYSE - 7 listed companies meet net tangible assets</td>
</tr>
<tr>
<td></td>
<td>- none meet requirements for pre-tax income</td>
</tr>
<tr>
<td></td>
<td>AMEX - 11 listed companies meet net tangible assets</td>
</tr>
<tr>
<td></td>
<td>- 8 listed companies meet requirements for pre-tax income</td>
</tr>
<tr>
<td></td>
<td>(All shares listed are bearer shares, so information about the number of public shareholders and the aggregate value of publicly-held shares is not available)</td>
</tr>
</tbody>
</table>
APPENDIX XIV-C

PROPOSAL FOR A DIRECTIVE ON PROCEDURES
FOR INFORMING AND CONSULTING THE EMPLOYEES OF UNDERTAKINGS WITH
COMPLEX STRUCTURES, IN PARTICULAR TRANSNATIONAL UNDERTAKINGS

The Council of the European Communities,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof;

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the European Parliament,

Whereas the Council adopted on 21 January 1974 a Resolution concerning a social action programme [1];

Whereas in a common market where national economies are closely interlinked it is essential, if economic activities are to develop in a harmonious fashion, that undertakings should be subject to the same obligations in relation to Community employees affected by their decisions, whether they are employed in the Member State to whose legislation the undertaking is subject or in another Member State;

Whereas the procedures for informing and consulting employees as embodied in legislation or practiced in the Member States are often inconsistent with the complex structure of the entity which takes the decisions affecting them; whereas this may lead to unequal treatment of employees affected by the decisions of one and the same undertaking; whereas this may stem from the fact that the information and consultation procedures do not apply beyond national boundaries;

Whereas this situation has a direct effect on the operation of the common market and consequently needs to be remedied by approximating the relevant laws while maintaining progress as required under Article 117 of the Treaty;

Whereas this Directive forms part of a series of directives and proposals for directives in the field of company and labour law;

SECTION I - SCOPE AND DEFINITIONS

Article 1

This Directive relates to:

- procedures for informing and consulting employees employed in a Member State of the Community by an undertaking whose decision-making centre is located in another Member State or in a non-member country (Section II);

- procedures for informing and consulting employees where an undertaking has several establishments, or one or more subsidiaries, in a single Member State and where its decision-making centre is located in the same Member State (Section III).

Article 2

For the purposes of this Directive the following definitions shall apply:

(a) Employees' representatives


(b) Management

The person or persons responsible for the management of an undertaking under the national legislation to which it is subject.

(c) Decision-making centre

The place where the management of an undertaking actually performs its functions.

Article 3

1. For the purposes of this Directive an undertaking shall be regarded as dominant in relation to all the undertakings it controls, referred to as subsidiaries.

2. An undertaking shall be regarded as a subsidiary where the dominant undertaking, either directly or indirectly (a) holds the majority of votes relating to the shares it has issued, or (b) has the power to appoint at least half of the members of its administrative, management or supervisory bodies where these members hold the majority of the voting rights.

SECTION II - INFORMATION AND CONSULTATION PROCEDURES IN TRANSNATIONAL UNDERTAKINGS

Article 4

The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more subsidiaries in at least one other Member State shall be required to disclose, via the management of those subsidiaries, information to employees' representatives in all subsidiaries employing at least 100 employees in the Community in accordance with Article 5 and to consult them in accordance with Article 6.

Article 5

1. At least every six months, the management of a dominant undertaking shall forward relevant information to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole.

2. This information shall relate in particular to:

(a) the structure and manning 
(b) the economic and financial situation 
(c) the situation and probable development of the business and of production and sales 
(d) the employment situation and probable trends 
(e) production and investment programmes 
(f) rationalization plans 
(g) manufacturing and working methods, in particular the introduction of new working methods 
(h) all procedures and plans liable to have a substantial effect on employees' interests.

3. The management of each subsidiary shall be required to communicate such information without delay to employees' representatives in each subsidiary.

4. Where the management of the subsidiaries is unable to communicate the information referred to in paragraphs (1) and (2) to employees' representatives, the management of the dominant undertaking must communicate such information to any employees' representatives who have requested it to do so.

5. The Member States shall provide for appropriate penalties for failure to comply with the obligations laid down in this Article.

**Article 6**

1. Where the management of a dominant undertaking proposes to take a decision concerning the whole or a major part of the dominant undertaking or of one of its subsidiaries which is liable to have a substantial effect on the interests of its employees, it shall be required to forward precise information to the management of each of its subsidiaries within the Community not later than 40 days before adopting the decision, giving details of:
   - the grounds for the proposed decision,
   - the legal, economic and social consequences of such decision for the employees concerned,
   - the measures planned in respect of these employees.

2. The decisions referred to in paragraph (1) shall be those relating to:
   (a) the closure or transfer of an establishment or major parts thereof, 
   (b) restrictions, extensions or substantial modifications to the activities of the undertaking, 
   (c) major modifications with regard to organization, 
   (d) the introduction of long-term cooperation with other undertakings or the cessation of such cooperation.

3. The management of each subsidiary shall be required to communicate this information without delay to its employees' representatives and to ask for their opinion within a period of not less than 30 days.

4. Where, in the opinion of the employees' representatives, the proposed decision is likely to have a direct effect on the employees' terms of employment or working conditions, the management of the subsidiary shall be required to hold consultations with them with a view to reaching agreement on the measures planned in respect of them.

5. Where the management of the subsidiaries does not communicate to the employees' representatives the information required under paragraph (3) or does
not arrange consultations as required under paragraph (4), such representatives shall be authorized to open consultations, through authorized delegates, with the management of the dominant undertaking with a view to obtaining such information and, where appropriate, to reaching agreement on the measures planned with regard to the employees concerned.

6. The Member States shall provide for appropriate penalties in case of failure to fulfill the obligations laid down in this Article. In particular, they shall grant to the employees' representatives concerned by the decision the right of appeal to tribunals or other competent national authorities for measures to be taken to protect their interests.

Article 7

1. Where in a Member State a body representing employees exists at a level higher than that of the individual subsidiary, the information provided for in Article 5 relating to the employees of all the subsidiaries thus represented shall be given to that body.

2. The consultations provided for in Article 6 shall take place under the same conditions with the representative body referred to in paragraph (1).

3. A body representing all the employees of the dominant undertaking and its subsidiaries within the Community may be created by means of agreements to be concluded between the management of the dominant undertaking and the employees' representatives. If such a body is created, paragraphs 1 and 2 shall be applicable.

Article 8

Where the management of the dominant undertaking whose decision-making centre is located outside the Community and which controls one or more subsidiaries in the Community does not ensure the presence within the Community of at least one person able to fulfill the requirements as regards disclosure of information and consultation laid down by this Directive, the management of the subsidiary that employs the largest number of employees within the Community shall be responsible for fulfilling the obligations imposed on the management of the dominant undertaking by this Directive.

Article 9

1. The management of an undertaking whose decision-making centre is located in a Member State of the Community and which has one or more establishments in at least one other Member State shall disclose, via the management of those establishments, information to the employees' representatives in all of its establishments in the Community employing at least 100 employees in accordance with Article 5 and consult them in accordance with Article 6.

2. The management of an undertaking whose decision-making centre is located in a non-member country and which has at least one establishment in one Member State shall be subject to the obligations referred to in paragraph (1).

3. For the purposes of applying this Article, the terms "dominant undertaking" and "subsidiary" in Articles 4 to 8 shall be replaced by the terms "undertaking" and "establishment" respectively.
SECTION III - PROCEDURES FOR INFORMING AND CONSULTING THE EMPLOYEES OF UNDERTAKINGS WITH COMPLEX STRUCTURES WHOSE DECISION-MAKING CENTRE IS LOCATED IN THE COUNTRY IN WHICH THE EMPLOYEES WORK

Article 10

The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more subsidiaries in the same Member State shall be required, via the management of its subsidiaries, to disclose information to employees' representatives in all subsidiaries employing at least 100 employees in that State in accordance with Article 11 and to consult them in accordance with Article 12.

Article 11

1. At least every six months, the management of a dominant undertaking shall forward relevant information to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole.

2. This information shall relate in particular to:
   (a) structure and manning
   (b) the economic and financial situation
   (c) the situation and probable development of the business and of production and sales
   (d) the employment situation and probable trends
   (e) production and investment programmes
   (f) rationalization plans
   (g) manufacturing and working methods, in particular the introduction of new working methods
   (h) all procedures and plans liable to have a substantial effect on employees' interests.

3. The management of each subsidiary shall be required to communicate such information without delay to employees' representatives in such subsidiary.

4. Where the management of the subsidiaries is unable to communicate the information referred to in paragraphs (1) and (2) above to employees' representatives, the management of the dominant undertaking must communicate such information to any employees' representatives who have requested it to do so.

5. The Member States shall provide for appropriate penalties in case of failure to fulfill the obligation laid down in this Article.

Article 12

1. Where the management of a dominant undertaking proposes to take a decision concerning the whole or a major part of the dominant undertaking or of one of its subsidiaries which is liable to have a substantial effect on the interests of its workers, it shall be required to forward precise information to the management of each of its subsidiaries within the Community not later than 40 days before adopting the decision, giving details of:
   - the grounds for the proposed decision
   - the legal, economic and social consequences of such decision for the employees concerned
   - the measures planned in respect of these employees.
2. The decisions referred to in paragraph (1) shall be those relating to:
(a) the closure or transfer of an establishment or major part thereof,
(b) restrictions, extensions or substantial modifications to the activities of the undertaking,
(c) major modifications with regard to organization,
(d) the introduction of long-term cooperation with other undertakings or the cessation of such cooperation.

3. The management of each subsidiary shall be required to communicate this information without delay to its employees' representatives and to ask for their opinion within a period of not less than 30 days.

4. Where, in the opinion of the employees' representatives, the proposed decision is likely to have a direct effect on the employees' terms of employment or working conditions, the management of the subsidiary shall be required to hold consultations with them with a view to reaching agreement on the measures planned in respect of them.

5. Where the management of the subsidiaries does not communicate to the employees' representatives the information required under paragraph (3) or does not arrange consultations as required under paragraph (4), such representatives shall be authorized to open consultations, through authorized delegates, with the management of the dominant undertaking with a view to obtaining such information and, where appropriate, to reaching agreement on the measures planned with regard to the employees concerned.

6. The Member States shall provide for appropriate penalties in the case of failure to fulfill the obligations laid down in this Article. In particular, they shall grant to the employees' representatives concerned the right of appeal to tribunals or other competent national authorities for measures to be taken to protect their interests.

Article 13

1. Where in a Member State a body representing employees exists at a level higher than that of the individual subsidiary, the information provided for in Article 11 relating to the employees of all the subsidiaries thus represented shall be given to that body.

2. The consultations provided for in Article 12 shall take place under the same conditions with the representative body referred to in paragraph (1).

3. A body representing all the employees of the dominant undertaking and its subsidiaries within the Community may be created by means of agreements to be concluded between the management of the dominant undertaking and the employees' representatives, unless provision is made for it by national law. If such a body is created, paragraphs 1 and 2 shall be applicable.

Article 14

1. The management of a dominant undertaking whose decision-making centre is located in a Member State of the Community and which has one or more establishments in the same Member State shall be required to disclose, via the management of the subsidiaries, information to the employees' representatives in all its subsidiaries employing at least 100 employees in accordance with Article 11 and to consult them in accordance with Article 12.
2. For the purposes of applying this Article, the terms "dominant undertaking" and "subsidiary" in Articles 10 to 13 shall be replaced by the terms "undertaking" and "establishment" respectively.

SECTION IV - SECRECY REQUIREMENTS

Article 15

1. Members and former members of bodies representing employees and delegates authorized by them shall be required to maintain discretion as regards information of a confidential nature. Where they communicate information to third parties they shall take account of the interests of the undertaking and shall not be such as to divulge secrets regarding the undertaking or its business.

2. The Member States shall empower a tribunal or other national body to settle disputes concerning the confidentiality of certain information.

3. The Member States shall impose appropriate penalties in cases of infringement of the secrecy requirement.

SECTION V - FINAL PROVISIONS

Article 16

This Directive shall be without prejudice to measures to be taken pursuant to Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies [1] and Directive 77/187/EEC or to the freedom of the Member States to apply or introduce laws, regulations or administrative provisions which are more favorable to employees.

Article 17

1. The Member States shall introduce the laws, regulations and administrative provisions necessary to comply with this Directive not later than ....... * They shall forthwith inform the Commission thereof.

2. The Member States shall communicate to the Commission the texts of laws, regulations and administrative provisions which they adopt in the area covered by this Directive.

Article 18

Within two years from the date fixed in Article 17, the Member States shall transmit to the Commission all information necessary to enable it to draw up a report to be submitted to the Council relating to the application of this Directive.

Article 19

This Directive is addressed to the Member States.


*Date to be specified at the time of adoption by the Council.

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