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Proposal for a Directive
coordinating the conditions for the admission of securities
to official stock exchange quotation

(submitted to the Council by the Commission)

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Proposal for a directive
coordinating the conditions for the admission of securities
to official stock exchange quotation

Explanatory memorandum

I. Introduction

1. On 5 October 1972, the Commission laid before the Council a proposal for a directive concerning the prospectus to be published when securities are admitted to official stock exchange quotation (1). The aim of this proposal is to coordinate national provisions relating to the content, checking and distribution of the prospectus to be published when securities are admitted to official stock exchange quotation in a Member State. Thus, its principal objective is to harmonize and improve public information on the characteristics of securities admitted to quotation and on the assets, financial situation and business performance of their issuers.

The proposal, which ensures effective protection of investors and also facilitates the admission of securities to official quotation on stock exchanges situated in the various Member States, is part of the work undertaken with a view to the establishment of a European capital market.

2. The introduction of a Community prospectus would not, however, of itself lead to the creation of a European capital market. There are other obstacles to the interpenetration of securities markets, notably the present differences between the Member States as regards the conditions for the admission of securities to quotation.

(1) OJ No C 131, 13 December 1972. On 8 December 1975, the Commission presented to the Council an amended proposal for a directive.

These differences between the conditions for admission have, firstly, the effect of making it easier to obtain access to certain markets than to others. As a result securities admitted to official quotation in one Member State may be refused admission to quotation in another Member State because they do not fulfil the stricter requirements imposed there.

Secondly, the differences have the effect of imposing an extra burden on issuers applying for quotation of their securities on stock exchanges situated in different Member States, since they must provide differing supporting evidence according to the Member States concerned.

This situation may entail the same disadvantages as those resulting from differing requirements on the content of the prospectus to be published on admission to quotation, since it may influence the issuer's choice of the stock exchange on which he requests quotation of his securities and since in many cases it impedes the quotation of one and the same security on several stock exchanges situated in different Member States.

The case for the coordination of conditions for admission to quotation is the same as that for the introduction of a Community prospectus. Indeed, it is an essential complement to the prospectus.

3. The objective in coordinating the conditions for admission to quotation is to save issuers requesting the quotation of their securities on several Community stock exchanges from having to comply with widely varying requirements by establishing a catalogue of conditions and obligations applicable in all the Member States.

This coordination measure is, then, designed to facilitate the introduction of securities to official stock exchange quotation situated in the various Member States and contribute thereby to the setting up of a European securities market. It is also designed to promote equivalence of status and substance for officially quoted securities on stock exchanges in Member States and ensure effective protection of investors.

II. Coordination: the alternatives

1. In the course of preparatory work on the drawing up of the proposal, three approaches to coordination were examined.

The first consisted in the establishment of two lists of conditions for admission to quotation, one of these lists containing the conditions which must be applied in all Member States and the other enumerating the fields in which the Member States would remain free to lay down special rules for admission, it being understood that no Member State could impose conditions other than those included on the two lists.

The second solution envisaged provided for both a list of conditions which all Member States must apply and a list of conditions which they could not impose. The Member States would therefore be free to impose other conditions in addition to those included in the first list, provided that they were not included in the list of prohibitions contained in the second list.

The third solution consisted in the establishment of a "hard core" list of conditions which are fundamental in that they would be applied in all circumstances in all the Member States, though the Member States would retain the right, on the one hand, to make the conditions on this list more rigorous and, on the other hand, to lay down conditions additional to those contained in the list.

2. The first solution was discarded because it was found that there were serious obstacles to its introduction, since it would entail the establishment of two exhaustive lists of conditions for admission and would therefore require a census of all the situations with which the Member States could be faced when official quotation applications are filed. Moreover, this solution would call for periodic adaptations of the Community regulations in the future to cover the changing nature of the subject. Finally, enumeration of the fields left open to free assessment by the Member States would, owing to the divergences existing in stock exchange practices in these countries, have resulted in a very long list which would have weighed down the coordination process.

For similar reasons, the second solution was also rejected. Just as in the first solution it was found to be practically impossible to list all the conditions of admission, so in the second it seemed impossible to identify all the prohibitions. Moreover, the existence of a list of prohibitions implies that anything not specifically prohibited is authorized. To be acceptable, a list of prohibitions would therefore have to be complete, which would seem impossible to achieve.

It was therefore the third solution which was finally adopted. This solution, although it cannot yield full coordination, constitutes none the less a first step towards subsequent closer alignment of national requirements governing conditions of admission to quotation. The experience gained in applying, in the various Member States, the minimum rules for admission provided for in the directive should considerably facilitate the implementation of more extensive coordination during the second phase of harmonization. This proposal for a directive therefore represents only a first stage in a wider harmonization process.

III. Scope of the coordination

The question arose whether, in addition to the coordination of basic conditions for the admission of securities to quotation, relevant procedural formalities should also be coordinated. The main points are what supporting documents should be produced showing that the substantive requirements have been met, their presentation or appearance, requirements as to certification, the choice of languages to be used in the documents, etc. There is no doubt that such coordination would be useful, since it would mean that issuers seeking quotation on stock exchanges in several Member States would not have to cope with formalities varying unduly widely from one Member State to another.

However, apart from the rules already laid down for the prospectus to be issued on admission to quotation, it was not thought necessary to attempt coordination of these details at the present stage of work, since procedural differences do not constitute a serious obstacle to the interpenetration of stock markets and since it seems that their coordination cannot be usefully undertaken until the basic conditions, from which formal procedures often derive, are coordinated more closely.

It is therefore during the second phase of harmonization that ways and means should be considered of coordinating the requirements of the Member States on procedural formalities relating to the admission of securities to quotation.

IV. Field of application

A. Official quotation

As in the case of the prospectus to be issued on admission to quotation, the Community standard on conditions for admission to quotation should apply in respect of admission to official quotation on a stock exchange of a Member State, regardless of whether it is a main or regional

stock exchange. This standard, however, does not apply to parallel markets, whether or not subject to regulation, since the diversity of situations existing here in the various Member States constitutes a major obstacle to the extension of the standard to these markets.

B. Securities affected

1. The Community rules will normally apply to any admission to quotation in a Member State of securities issued by the private or the public sector, national or foreign.

It follows that, in contrast with the proposed directive concerning the prospectus for admission to quotation, the field of application of the Community standard covers debt securities issued by governments and by regional and local authorities.

However, bearing in mind that, on the one hand, in most Member States admission to the national stock exchange of government debt securities is automatic, and, secondly, that the regulations governing the admission to a national stock exchange of debt securities issued by regional or local authorities differ widely from one Member State to another, it seemed hardly feasible at the present stage of work to lay down coordinated minimum conditions for admission to quotation on a national stock exchange for such issues. Therefore, conditions have been laid down only for debt securities issued by foreign governments, whether they are governments of Member States of the European Communities or not, and their regional or local authorities.

2. It should further be noted that the Community standard will also apply to debt securities issued by public international organizations.

3. Lastly, it was felt that the time is not ripe to extend the field of application of the proposal for a directive to securities issued by open-end collective investment undertakings, whether investment companies or unit trusts. Such coordination would be very difficult to achieve since the background against which these organizations operate varies a great deal from one Member State to another. These securities also fall outside the scope of the proposal for a directive on the prospectus for admission to quotation. It would therefore seem advisable to wait until work is complete on the coordination of legislation governing such organizations, and also until a sales prospectus for these securities, which might also serve as a prospectus for admission to quotation, is ready, before attempting to coordinate the conditions for admission to quotation of their securities.

V. General principles underlying the approach adopted

A. Conditions for admission

1. The Member States must make the admission or introduction of securities to official quotation on a stock exchange situated within their territory subject to the conditions listed in the Schedules annexed to the proposal for a directive.

So as to simplify their presentation, the conditions have been divided into the following two categories:

(a) firstly, the conditions which issuers and their securities must fulfil before admission to official quotation is granted. These conditions are listed in Schedule A for the admission of shares and in Schedule B for the admission of debt securities;

(b) secondly, the conditions or obligations to which the issuer is subject as long as his shares qualify for quotation; depending on the Member State, such obligations may derive either from legal rules or from undertakings entered into by the issuer at the time of admission to official quotation of his securities. These conditions are listed in Schedules C and D, for shares and debt securities respectively.

These conditions, as a whole, have two immediate objectives, namely:

- (a) the protection of saving by ensuring the soundness of the issuer and the proper information of the investor;
- (b) the regular operation of the market by ensuring in particular that securities admitted to official quotation are freely negotiable and not unduly concentrated.

However, there are some conditions and obligations for which the proposal for a directive simply establishes the principle and which will subsequently need more detailed treatment at Community level. This is the case, for example, for the obligation to provide continuing information stipulated in Schedules C and D for issuers whose shares or debt securities are admitted to official quotation. The directive establishes only the principle of such compulsory information. In view of the complexity of the matter, the coordination of information which has to be periodically made available to the public, in addition to the information provided for in the proposal for a fourth directive on the annual accounts of joint stock companies, will be dealt with in future work and in a separate proposal for a directive. Pending this directive, the practical application of the principle of continuing information remains within the jurisdiction of each Member State.

2. As already indicated above, the conditions provided for in this proposal for a directive are minimum conditions. In other words, the Member States may make the admission of securities to official quotation

dependent on more rigorous conditions or on additional conditions, subject, however, to the following two restrictions.

Firstly, any more rigorous or additional conditions applied by a Member State for the admission of securities to official quotation on a stock exchange situated within its territory must be of general application and must have been publicly brought into force prior to the request for admission to which they relate.

Secondly, the proposal for a directive together with Schedules A and B prohibits Member States from imposing certain more restrictive or additional conditions. The purpose of this rule is to avoid one of the objectives of the directive, namely the interpenetration of securities markets, being jeopardized by measures taken by one or another Member State on a purely national level. Thus, Article 6 of the proposal stipulates that the Member States may not, as a condition for admission, require securities to be quoted in another Member State, whether the country of origin or not. Similarly, pursuant to Schedules A and B, the Member States may not impose the following conditions:

- (a) require a foreseeable market capitalization of more than one million units of account where no regulated parallel market exists;
- (b) prohibit the distribution of securities to the public through the stock exchange;

- (c) require the physical shape, substance or appearance of securities issued in other Member States to conform to national standards.

3. The proposal for a directive provides that the Member States shall waive application of certain conditions or obligations where debt securities to be admitted are issued by:

- (a) public bodies of a Member State which enjoy a State monopoly for their operations, such as the post office, railways, broadcasting corporations, etc.;
- (b) financial institutions of a Member State which issue debt securities on tap or as repeat issues and subject to a public statute or to public supervision.

Similarly, the Member States may decide not to apply certain conditions for the admission of debt securities issued by undertakings which are from a Member State and whose borrowings and interest payments are fully, unconditionally and irrevocably guaranteed by a Member State.

Less stringent arrangements for these bodies or undertakings are justified by the fact that they themselves provide additional guarantees as compared with the other undertakings, being either subject to public supervision or guaranteed by a Member State.

B. Methods of control and powers of the competent authorities

1. For the purpose of applying the directive, the Member States must designate one or more competent authorities to decide on the admission of securities to official quotation on a stock exchange situated within their territory. These authorities may be either public or private. If the decision regarding admission depends on several authorities, the respective functions of each of these authorities must be defined precisely.

The competent authorities cannot admit a security to official quotation until all the conditions provided for by the directive are met. Before authorizing admission, they must therefore ensure that the conditions are complied with. For this purpose, the Member States must invest them with all the authority and all the powers of control necessary to carry out this task. In particular, they must be empowered to require from an issuer all the information and all the documents which they judge necessary in order to decide on a request for admission, including audit reports and other sworn statements. Similarly, the competent authorities must have the authority necessary to check that an issuer fulfils the conditions required to qualify for the exemptions provided for in Article 8 of the directive.

2. In the event of the rejection of an application for admission, the competent authorities must give reasons for this decision to the applicant.

However, the Member States may empower the competent authorities to turn down an application for admission without giving reasons for the rejection to the applicant. Such powers may be used only for the purpose of protecting the inventor.

Similarly, the Member States may authorize the competent authorities to make an application for admission subject to any special conditions which they consider appropriate in order to ensure the protection of the investor and of which the applicant has been explicitly informed.

This is in fact a discretionary power, which in certain conditions enables the competent authorities who have received an application to refuse it or make stipulations invoking criteria other than those defined

beforehand by the Member State concerned. This type of discretionary power exists in all Member States. In the interest of the investor and of the smooth operation of the market, there is a case for retaining it, at least for the time being, because it enables situations to be dealt with of a kind that are difficult to foresee and consequently scarcely susceptible of prior regulation. Moreover, the competent authorities must inform the contact group set up by the directive of any decision to turn down an application for admission taken against securities issued in a Member State, giving reasons, and this rule should strongly curtail any possible dangers of abuse of powers in this field.

3. Apart from the powers necessary for decisions on admission to official quotation, the directive confers certain other powers on the authorities of the Member States.

Thus, the competent authorities must inform the public, complying with appropriate warning procedures, where the issuer is not respecting the obligations incumbent upon him as a result of the admission of his securities to official quotation.

Similarly, the competent authorities must request from issuers of quoted securities all the information which they consider necessary to ensure the protection of the investor or the smooth operation of the market.

Finally, the competent authorities may suspend quotation if this is required for the regular operation of the market or is in the public interest. In certain circumstances, they may even discontinue quotation altogether.

In the interests of the public protection of the investor, it has also been felt desirable that the Member States should authorize the competent authorities to establish official quotation of securities even though no application has been made. This power may be exercised where there is in fact a market in the relevant security and where the major interest of present or future shareholders requires that transactions relating to these securities should be subject to the disciplines and controls associated with official quotation.

VI. Cooperation between Member States and the creation of a Contact Committee

As with the prospectus for admission to quotation, it was judged desirable, with a view to facilitating the interpenetration of national securities markets, and promoting harmonized application of the directive, to make collaboration between the Member States compulsory in certain cases and to set up a Contact Committee, composed of representatives of the Member States and of the Commission. Clearly defined powers are conferred on the Contact Committee, these powers being, however, in one particular case wider than those of the Contact Group provided for by the proposal for a directive on the prospectus for admission to quotation: the Contact Committee will act as a regulating committee in adjusting, in the light of the economic situation, the minimum market capitalization provided for in the first paragraph of Schedule A, point I 2. The procedure provided for the alteration of this amount should allow the amount to be adjusted fairly quickly.

II

(Preparatory Acts)

COMMISSION

Proposal for a Directive coordinating the conditions for the admission of securities to official stock exchange quotation

(Submitted by the Commission to the Council on 12 January 1976)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g),

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas the Sixth Council Directive No ... of ... on the coordination of the safeguards required in the Member States to protect the interests both of members and of third parties concerning the content, checking and distribution of the prospectus to be published when securities issued by companies within the meaning of the second paragraph of Article 58 of the Treaty are admitted to official stock exchange quotation, and the Council recommendation, of the same date, have as their object the alignment of the safeguards provided for the protection of the interests of investors; whereas they are also designed to facilitate the admission of securities from the same issuer to official quotation on several stock exchanges situated in the various Member States; whereas, therefore, they contribute towards the establishment of a European capital market;

Whereas the coordination of the conditions for the admission or introduction of securities to the same

official quotation on stock exchanges has the same objectives and therefore follows logically the introduction of a Community prospectus for admission to quotation;

Whereas the coordination is such as to make equivalent the protection of investors at Community level, by virtue of the more uniform safeguards which it will provide for them in each Member State; whereas it will facilitate the admission to official quotation of securities originating in other Member States and the quotation of the same security on several stock exchanges in the Community; whereas consequently it will allow greater interpenetration of national securities markets;

Whereas during the initial stage the coordination should be sufficiently flexible to take account of the current divergences between the structures of securities markets in the Member States; whereas such flexibility is, moreover, necessary to enable the Member States to take account of the particular situations with which they would be confronted;

Whereas for these reasons harmonization should be limited in this first stage to the establishment of minimum conditions for the admission of securities to official quotation on stock exchanges of Member States;

Whereas although this proposal therefore does not provide for full coordination of the conditions for admission to quotation, it nevertheless constitutes a first step towards subsequent closer alignment of the regulations of the Member States in this field,

HAS ADOPTED THIS DIRECTIVE:

Section I

General provisions and field of application

Article 1

The Member States shall make the admission or introduction of securities to official quotation on a stock exchange situated within their territory subject to the provisions of Articles 3 to 19 inclusive of this Directive.

Article 2

For the purposes of this Directive:

- (a) 'open-end collective investment undertakings' shall mean investment companies and unit trusts whose securities are or have been issued continuously or in closely spaced blocks and/or are at the request of the holders repurchased or redeemed, directly or indirectly, from the assets of these undertakings;
- (b) 'closed investment companies' shall mean investment companies other than those referred to in (a) above;
- (c) 'unit of account' shall mean the unit of account as defined by the Commission Decision of 18 December 1975 ⁽¹⁾.

Article 3

1. Securities issued by open-end collective investment undertakings shall not fall within the scope of this Directive.

2. This Directive shall also not relate to the admission of securities issued by a Member State or its regional and local authorities to official quotation on a stock exchange situated within the territory of that Member State.

Article 4

1. The admission of securities to official stock exchange quotation shall be subject to the conditions listed in Schedules A and B, annexed to this Directive, which relate to shares and debt securities respectively.

2. The issuers of a security admitted to official quotation shall observe the obligations listed in

Schedules C and D, annexed to this Directive, which relate to shares and debt securities respectively.

3. Certificates representing shares may be admitted only if the issuer of the shares represented fulfils the conditions provided for in Schedule A, points I.1 to I.3 and if the certificates representing the shares fulfil the conditions provided for in Schedule A, points II.1 to II.6.

4. The issuers of certificates representing shares admitted to official quotation shall ensure that the obligations provided for in Schedule C, points 2 to 3, are observed and provide, on the shares represented and their issuer, all the information required by Schedule C, points 3 to 6.

Article 5

1. Subject to the prohibition provided for in Article 6 and those provided for in Schedules A and B, the Member States may make the admission of securities to official quotation subject to more rigorous conditions than those listed in Schedules A and B or to additional conditions, provided that they are of general application and that they have been publically brought into force prior to the request for admission to official quotation to which they relate.

2. The Member States may, within the same limits as those provided for in paragraph 1 above, make the issuers of a security admitted to official quotation subject to more rigorous obligations than those listed in Schedules C and D or to additional obligations.

Article 6

The Member States shall not make the admission to official quotation of securities subject to the condition that these securities be admitted to official stock exchange quotation in a Member State.

Article 7

Where a Member State applies one of the optional derogations provided for in Schedules A and B to the conditions for admission to official quotation listed there, this application shall be general.

Article 8

1. The Member States shall waive application of the conditions provided for in Schedule B, Section A.I

⁽¹⁾ OJ No L 327, 19. 12. 1975, p. 4.

(legal position of the undertaking — capacity of the undertaking to meet its commitments) where a request for admission to official quotation is made for debt securities issued by:

- (a) public bodies of a Member State which enjoy a State monopoly in the exercise of their activities;
- (b) financial institutions of a Member State which issue on tap or as repeat issues debt securities admitted to official quotation, on condition that these financial institutions are subject to a public statute or to public supervision ensuring the protection of the investor.

2. The Member States may waive application of the obligation provided for under Schedule D, point A.3 (continuing information) where an application for admission to official quotation is made for debt securities issued by the bodies or institutions referred to in paragraph 1 above.

3. The Member States may waive application of the conditions provided for under Schedule B, Section A.I (legal position of the company — capacity to meet its commitments) and of the obligations provided for under Schedule D, points A.2, A.3 and A.4 (alteration of the memorandum or articles of association — continuing information — additional information) where an application for admission to official quotation is made for debt securities issued by undertakings which are from a Member State and whose borrowings and interest payments are fully, unconditionally and irrevocably guaranteed by a Member State.

4. Where a Member State applies one of the optional derogations provided for in paragraphs 2 and 3 above, this application shall be general.

Section II

Methods of control and powers of the competent authorities

Article 9

1. The Member States shall designate the competent national authority or authorities to decide on the admission of securities to official quotation on a stock exchange situated within their territory. They shall inform the Commission accordingly, indicating, if appropriate, how the powers have been allocated.

2. The competent authorities may admit a security to official quotation only where they are satisfied that

at least all the requirements imposed by this Directive are complied with.

3. The competent authorities shall be invested with all the authority and all the powers of verification necessary for their work. They shall have in particular the authority to require the issuer, for whose securities admission to official quotation is sought, to furnish any information and produce any documents and certificates which they consider necessary in order to decide on this application. For the same purpose, they shall also be empowered to require any audits or inspections which they consider appropriate. They must also have authority to check that an issuer meets the conditions provided for in Article 8 of this Directive with a view to obtaining the exemptions provided for in that Article.

Article 10

1. In the event of the rejection of an application for admission of a security to official quotation, the competent authorities shall give explicit reasons for this decision to the applicant.

2. Each Member State shall provide for a right of appeal to the courts against a decision to refuse an application.

Article 11

Notwithstanding Articles 5 and 10 respectively, the Member States may invest the competent authorities with powers, to be invoked only for the purpose of protecting the investor:

- (a) to make an application for the admission of a security to official quotation subject to any special condition which they consider appropriate and of which the applicant has been explicitly informed;
- (b) to reject an application for the admission of a security to official quotation without giving explicit reasons for the rejection to the applicant.

Article 12

The competent authorities may not admit to official quotation a security already officially quoted in another Member State, where the issuer is failing to comply with the obligations resulting from admission in that other Member State.

Article 13

The competent authorities shall inform the public where an issuer of officially quoted securities is failing to comply with the obligations resulting from admission.

Article 14

1. The competent authorities shall request an issuer whose securities are admitted to official quotation to provide them without delay with all the information which they consider appropriate in order to protect the investor and ensure the smooth operation of the market. The issuer shall be required to provide this information to the competent authorities.

2. In the case referred to in paragraph 1 above and, more generally, where the competent authorities consider that particular circumstances resulting from the situation or operations of the issuer or from the dealings in his officially quoted securities require certain information to be passed on to the public, they shall invite the issuer to publish this information in the form and within the time limits which they consider appropriate and, if necessary, shall act in place of the issuer so as to ensure such publication under conditions of professional secrecy.

Article 15

1. The competent authorities may suspend a quotation, where the smooth operation of the market is or may become temporarily jeopardized, or where such suspension is in the interest of the investor.

2. The competent authorities may discontinue a quotation altogether, where they are convinced that, because of particular circumstances, normal and regular dealings in the relevant security are not possible.

Article 16

The competent authorities may, in exceptional cases, establish official quotation of a security without application where there is in fact a market in the security, if it is in the interest of the investor to make the relevant dealings subject to the disciplines and controls of official quotation.

Article 17

Where application for admission relates to certificates representing shares, the application shall be

considered only if the competent authorities take the view that the issuer of these certificates provides proper safeguards for the protection of the investor.

Section III

Methods of publishing the information to be made available to the public*Article 18*

1. The information which issuers of a security admitted to official quotation on a stock exchange situated within a Member State are required to make available to the public in accordance with the provisions of Schedules C and D shall be published in one or more newspapers distributed throughout the country or shall be made available to the public in the form of notices to be displayed in places indicated by announcements to be published in one or more newspapers distributed throughout the country.

2. The information referred to in paragraph 1 above shall be published in the language or languages of the Member State in which this information must be made public.

Section IV

Procedures for cooperation between Member States*Article 19*

1. Where official quotation of a security is applied for simultaneously in respect of several stock exchanges situated in different Member States, the competent authorities of the Member States concerned shall establish between themselves all the contacts necessary to ensure maximum coordination of the conditions and formalities required for the admission of the security concerned.

2. In the event of an application being made for the admission to official quotation on a stock exchange situated within a Member State of a security admitted to official quotation in another Member State, the competent authorities of the Member State where the request is made shall contact the competent authorities of the Member State in which the security is already quoted, with the aims, in particular, of simplifying as far as possible the conditions and formalities required for the admission of the security concerned and of ensuring that the issuer carries out the obligations incumbent upon him by virtue of the admission of that security to official quotation.

3. In the event of admission to official quotation on a stock exchange situated within a Member State

being sought for a security for which admission to official quotation on a stock exchange situated within another Member State has been refused, the competent authorities of the Member State in which the application has been made shall ask the competent authorities in the other Member State to give the reasons for this refusal. The competent authorities questioned shall communicate these reasons without delay; the reasons shall be communicated in such a way as to comply with the requirements of professional secrecy.

Where official quotation of a security is applied for simultaneously in respect of several stock exchanges situated in different Member States, any competent authority intending to refuse the application shall without delay inform the competent authorities of the other Member States concerned of this intention and of the reasons for it; the reasons shall be communicated in such a way as to comply with the requirements of professional secrecy.

4. In order to allow the competent authorities to exercise the powers provided for in this Article, any applicant for the admission of a security to official quotation on a stock exchange situated within a Member State must state whether a similar application is being or has already been made in another Member State.

Section V

Contact Committee

Article 20

1. A Contact Committee shall be set up attached to the Commission.

Its function shall be:

- (a) to facilitate, without prejudice to the provisions of Articles 169 and 170 of the EEC Treaty, harmonized application of the Directive through regular meetings dealing in particular with practical problems arising;
- (b) to facilitate the establishment of a concerted attitude between the Member States on the more rigorous or additional conditions and obligations which they may require pursuant to Article 5 of this Directive and on the information received by the Commission pursuant to Article 22;
- (c) to advise, if necessary, the Commission on the supplements, amendments or adjustments to be made to the Directive pursuant to Article 21.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The Chairman

shall be a representative of the Commission. The Commission's services shall provide the Secretariat.

3. The Committee shall be convened by the Chairman, either on his own initiative or at the request of one of the members.

Article 21

1. For the purpose of adjusting, in the light of the requirements of the economic situation, the minimum capitalization provided for in the first paragraph of Schedule A, point I.2, the representative of the Commission shall submit to the Committee proposals for the measures to be taken. The Committee shall deliver its opinion within the period laid down by the Chairman. Its decisions shall require 43 votes in favour, the votes of the Member States being weighted as provided for in Article 14 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties.

2. a) The Commission shall adopt the measures envisaged where these are in accordance with the opinion of the Committee.

(b) Where the measures envisaged are not in accordance with the opinion of the Committee or where the Committee has not delivered an opinion, the Commission shall without delay lay before the Council a proposal concerning the measures to be taken. The Council shall act by a qualified majority.

(c) Where the Council fails to act within three months of receipt of a proposal, the measures proposed shall be adopted by the Commission.

Article 22

1. The competent authorities shall be required to inform the Commission of any decision, together with the reasons, to refuse an application for admission to official quotation on a stock exchange situated within their territory of a security issued within another Member State.

2. The Commission shall inform the Contact Committee of this refusal. The deliberations of the Committee on the matter shall be covered by the obligation of professional secrecy.

Section VI

Final provisions

Article 23

1. Within 12 months of notification of them of this Directive, the Member States shall put into effect all

measures necessary for complying with its provisions and shall inform the Commission immediately of such measures.

national law which they adopt in the areas covered by this Directive.

Article 24

2. The Member States shall communicate to the Commission the texts of the essential provisions of

This Directive is addressed to the Member States.

ANNEX I

SCHEDULE A

CONDITIONS FOR THE ADMISSION OF SHARES TO OFFICIAL QUOTATION ON
STOCK EXCHANGES OF MEMBER STATES OF THE EUROPEAN COMMUNITIES

I. Conditions relating to companies for whose shares quotation is sought

1. *Legal position of the company*

The legal position of the company must be in conformity with the laws and regulations to which it is subject, as regards both its formation and its operation under the memorandum and articles of association.

Proof that this condition is fulfilled need not be provided where securities of the company are already officially quoted on the same stock exchange.

2. *Minimum capital of company*

The foreseeable market capitalization of the shares for which admission is sought, or, if it is impossible to establish this amount, the net assets of the company must be at least one million units of account.

Member States may, however, by way of derogation from the first paragraph, provide that shares may be admitted to official quotation even when the condition laid down in that paragraph is not fulfilled, provided that the competent authorities have ascertained that there will be an adequate market for these shares.

A higher expected market capitalization or higher net assets may be required by a Member State for admission to official quotation only if another regulated, recognized and open market exists in this State which operates normally and has less stringent requirements in this matter than those referred to in the first paragraph.

The condition laid down in the first paragraph is not applicable in the case of the admission to official quotation of a further block of shares of the same class as those already admitted.

3. *The company's profit-making capacity*

The company must give proof of its profit-making capacity for the previous two closed financial years and provide satisfactory evidence that it will maintain a profit-making capacity for the current financial year and the following financial year.

In the event of the conversion, merger, splitting up or re-organization of companies, the profit-making capacity as defined in the first paragraph is assessed in the light of the situation of the company or companies involved in these transactions and/or the situation of the company or companies resulting from the transactions.

Member States may, however, notwithstanding the first paragraph, provide that shares issued by a company may be admitted to official quotation even when the conditions laid down in that paragraph are not fulfilled:

- (a) where the company has not yet made up accounts for two financial years but is able to provide satisfactory evidence that it will have a profit-making capacity for the current financial year and the following financial year;
- (b) where the company, because of the nature of its activities, will not have a profit-making capacity until the more distant future, but is able to provide satisfactory evidence that it will realize this profit-making potential;
- (c) in the case of a closed investment company.

The exceptions provided for at (a) and (b) above may not be allowed by Member States in which another regulated, recognized and open market exists which operates normally and whose requirements as regards profit-making capacity do not prevent the shares in question being admitted to this market; this does not apply if the company shows that it cannot raise its capital other than by having its shares admitted to official quotation and that it is in the public interest that the capital be raised.

The conditions laid down in the first paragraph are not applicable in the case of the admission to official quotation of a further block of shares of the same class as those already admitted.

II. Conditions relating to the shares for which quotation is sought

1. *Legal position of the shares*

The legal position of the shares must be in conformity with the laws and regulations to which they are subject.

2. *Negotiability of the shares*

The shares must be freely negotiable.

Member States may treat as freely negotiable shares, shares which are not fully paid up, if arrangements have been made to ensure that negotiability of these shares is not hampered and dealing is made transparent by providing the public with all appropriate information.

For shares which may be acquired only subject to approval, Member States may, by way of derogation from the first paragraph, admit them to official quotation only if the use of the approval clause does not interfere with dealing.

3. *Public issue preceding admission*

In the case of public issue preceding admission to official quotation, the first quotation may be made only after the closure of the period during which application for subscription may be submitted.

4. *Distribution of shares*

A sufficient number of shares must be distributed to the public in the Member State in which admission to official quotation is applied for, at the latest at the time of admission.

This condition is not applicable where the shares in question are to be distributed to the public through the stock exchange. In this case, admission to official quotation may be granted only if the competent authorities are convinced that a sufficient number of shares will be distributed through the stock exchange within a short period.

Where admission to official quotation is sought for a further block of shares of the same class, the competent authorities may assess whether a sufficient number of shares has been distributed to the public by reference to all the shares issued and not only this further block.

Where the shares in question are already officially quoted in one or more other States, Member States may, by way of derogation from the first paragraph, admit the shares to official quotation if a sufficient number of shares is distributed to the public in at least one of the States in which the shares are officially quoted.

Shares will not be deemed to be distributed in sufficient number if the shares of the same class held by the public do not represent at least 25 % of the subscribed capital of the company. However, Member States may authorize the competent authorities to consider that a sufficient number is distributed even if this percentage is not attained, where, in view of the large number of shares of the same class and the extent of their distribution to the public, they feel that the market will operate properly with this lower percentage.

5. Quotation of shares of the same class

The application for admission to official quotation must be for all the shares of the same class already issued.

By way of derogation from the first paragraph, Member States may provide that the condition laid down in that paragraph does not apply to applications for admission not covering all the shares of the same class, where the shares of this class for which admission is not sought belong to blocks serving to maintain control of the company or are not negotiable for a certain time under agreements, provided that the public is informed of such situations and that there is no danger of prejudicing the interests of the holders of the shares for which admission is sought.

6. Physical shape, substance or appearance

For shares issued by companies from another Member State, it is necessary and sufficient that their physical shape, substance and appearance comply with the standards laid down in this other Member State. Where the physical shape, substance or appearance does not conform to the provisions in force in the Member State in which quotation is applied for, the competent authorities of this State will make this known to the public.

The physical shape, substance and appearance of shares issued by companies from non-member States must be such as to ensure that investors' interests are safeguarded.

7. Quotation in the country of origin or in the country in which the major proportion of the shares is held

Shares of companies from non-member States must have been admitted to official quotation either in the country of origin or in the country in which the major proportion of the shares is held.

Member States may, however, by way of derogation from the first paragraph, provide that shares may be admitted to official quotation even when the condition laid down in that paragraph is not fulfilled, provided that the competent authorities have ascertained that the reason why the shares are not quoted in the country of origin or in the country in which the major proportion is held is not the need to protect the interests of investors.

ANNEX II

SCHEDULE B

CONDITIONS FOR THE ADMISSION OF DEBT SECURITIES TO OFFICIAL
QUOTATION ON STOCK EXCHANGES OF MEMBER STATES OF THE EUROPEAN
COMMUNITIESA. ADMISSION TO OFFICIAL QUOTATION OF DEBT SECURITIES ISSUED BY AN
UNDERTAKING

I. Conditions relating to undertakings for whose debt securities quotation is sought

1. *Legal position of the undertaking*

The legal position of the undertaking must be in conformity with the laws and regulations to which it is subject, as regards both its formation and its operation under the memorandum and articles of association.

Proof that this condition is fulfilled need not be provided where securities of the undertaking are already officially quoted on the same stock exchange.

2. *Capacity of the undertaking to meet its commitments*

The undertaking must provide sufficient evidence that it is able to meet the commitments resulting from the issue of the loan stock for which quotation is sought.

II. Conditions relating to the debt securities for which quotation is sought

1. *Legal position of debt securities*

The issue concerned must conform to the laws and regulations to which it is subject.

2. *Negotiability of debt securities*

The securities must be freely negotiable.

Member States may treat as freely negotiable securities, securities which are not fully paid up, if arrangements have been made to ensure that negotiability of these securities is not hampered and dealing is made transparent by providing the public with all appropriate information.

3. *Public issue preceding admission*

In the case of public issue preceding admission to official quotation, the first quotation may be made only after the closure of the period during which applications for subscription may be submitted. This provision is not applicable in the case of tap issues of debt securities when the closure date of the subscription period is not fixed.

4. *Distribution of debt securities*

A sufficient number of securities must be distributed to the public in the Member State in which admission to official quotation is applied for, at the latest at the time of admission.

This condition is not applicable where the securities in question are to be distributed to the public through the stock exchange. In this case, admission to official quotation may

be granted only if the competent authorities are convinced that a sufficient number of securities will be distributed through the stock exchange within a short period.

Where admission to official quotation is sought for debt securities issued on tap or as repeat issues by financial institutions, the competent authorities may assess whether a sufficient number of securities has been distributed to the public by reference to all the securities issued and not only the new issue.

Where the securities in question are already officially quoted in one or more other States, Member States may, notwithstanding the first paragraph, admit the securities to official quotation if a sufficient number of securities is distributed to the public in at least one of the States in which the securities are officially quoted.

Securities will not be deemed to be distributed in sufficient number if the securities relating to the same loan issue and held by the public do not represent at least 25 % of the amount of the issue. However, Member States may authorize the competent authorities to consider that a sufficient number is distributed even if this percentage is not attained, where, in view of the large number of securities relating to the same loan issue and the extent of their distribution to the public, they feel that the market will operate properly with this lower percentage.

5. *Quotation of debt securities relating to the same loan issue*

The application for admission to official quotation must be for all the securities relating to the same loan issue.

6. *Physical shape, substance and appearance of debt securities*

1. For securities issued by undertakings from another Member State, it is necessary and sufficient that their physical shape, substance and appearance comply with the standards laid down in this other Member State. Where the physical shape, substance or appearance do not conform to the provisions in force in the Member State in which quotation is applied for, the competent authorities of this State will make this known to the public.

2. However, the physical shape, substance and appearance of securities issued in a single Member State must conform to the standards in force in this Member State.

3. The physical shape, substance and appearance of securities issued by undertakings from non-member States must be such as to ensure that investors' interests are safeguarded.

III. Other conditions

1. *Minimum amount of the loan*

The amount of the loan may not be less than 200 000 units of account. This provision is not applicable in the case of tap issues where the amount of the loan is not fixed.

2. *Convertible debentures or debentures with warrants attached*

Convertible debentures or debentures with warrants attached may be admitted to official quotation only if the related shares are already quoted on the same stock exchange or are to be admitted simultaneously.

However, Member States may, notwithstanding the first paragraph, provide for the admission to official quotation of convertible debentures or debentures with warrants attached even when the condition laid down in that paragraph is not fulfilled, provided that the competent authorities have ascertained that holders have at their disposal all the information necessary to form an opinion concerning the value of the shares to which these debentures relate, where:

(a) when the debentures are admitted to official quotation, these shares are already officially quoted on another stock exchange in the same Member State, or on a

stock exchange in another Member State or on a stock exchange in a non-member State, provided that this latter stock exchange, in the view of the competent authorities, offers investors every guarantee; or

- (b) although these shares are not officially quoted when the debentures are admitted, an application for official quotation will be made, not later than the opening date of the conversion or subscription period, in the Member State in which the application for the admission of the debentures to official quotation is made and the competent authorities have ascertained that no obstacle exists to their subsequent admission to official quotation.

B. ADMISSION TO OFFICIAL QUOTATION OF DEBT SECURITIES ISSUED BY THE CENTRAL GOVERNMENT OR REGIONAL OR LOCAL AUTHORITIES OF ANOTHER STATE OR BY A PUBLIC INTERNATIONAL ORGANIZATION

1. Capacity to meet commitments resulting from the loan

Central governments, regional or local authorities and public international organizations must provide sufficient evidence that they are able to meet the commitments resulting from the issue of the loan stock for which admission to quotation is sought.

Proof that this condition is fulfilled need not be provided by Member States.

Member States may, notwithstanding paragraph 1, provide that the condition laid down in that paragraph does not apply to non-member States and public international organizations, where their competent authorities have ascertained that these issuers offer investors every guarantee.

2. Negotiability of debt securities

The securities must be freely negotiable.

3. Public issue preceding admission

In the case of public issue preceding admission to official quotation, the first quotation may be made only after the closure of the period during which applications for subscription may be submitted. This provision is not applicable where the closure date of the subscription period is not fixed.

4. Distribution of debt securities

A sufficient number of securities must be distributed to the public in the Member State in which admission to official quotation is applied for, at the latest at the time of admission.

This condition is not applicable where the securities in question are to be distributed to the public through the stock exchange. In this case, admission to official quotation may be granted only if the competent authorities are convinced that a sufficient number of securities will be distributed through the stock exchange within a short period.

Where the securities in question are already officially quoted in one or more other States, Member States may, by way of derogation from the first paragraph, admit the securities to official quotation if a sufficient number of securities is distributed to the public in at least one of the States in which the securities are officially quoted.

Securities will not be deemed to be distributed in sufficient number if the securities relating to the same loan issue and held by the public do not represent at least 25 % of the amount of the issue. However, Member States may authorize the competent authorities to consider that a sufficient number is distributed even if this percentage is not attained, where, in view of the large number of securities relating to the same loan issue and the extent of their distribution to the public, they feel that the market will operate properly with this lower percentage.

5. *Quotation of debt securities relating to the same loan issue*

The application for admission to official quotation must be for all the securities relating to the same loan issue.

6. *Physical shape, substance and appearance of debt securities*

For securities issued by the central government or regional or local authorities of a Member State, it is necessary and sufficient that their physical shape, substance and appearance comply with the standards laid down in that Member State. Where the physical shape, substance or appearance does not conform to the provisions in force in the Member State in which quotation is applied for, the competent authorities of this State will make this known to the public.

The physical shape, substance or appearance of securities issued by the central government or regional or local authorities of a non-member State or by a public international organization must be such as to ensure that investors' interests are safeguarded.

ANNEX III

SCHEDULE C

OBLIGATIONS OF COMPANIES WHOSE SHARES ARE ADMITTED TO OFFICIAL
QUOTATION ON A STOCK EXCHANGE OF A MEMBER STATE OF THE EUROPEAN
COMMUNITIES

1. *Quotation of newly issued shares of the same class*

Without prejudice to the provisions of Schedule A, II, 5, paragraph 2, in the case of a new issue of shares of the same class as those already officially quoted, the company is required to apply for admission to the same official quotation for these new shares, either a year after their issue at the latest or when they become freely negotiable.

2. *Treatment of shareholders*

- (a) The company must ensure that holders of shares of the same class are given equal treatment in respect of all the rights attaching to these shares. This does not prevent limits being placed on the number of votes that an individual shareholder may have at the general meeting under national laws or the memorandum and articles of association of the company.
- (b) The company must ensure that on each stock exchange in a Member State on which its shares are officially quoted, all the necessary information and facilities are available without any cost to shareholders, to enable these to exercise their rights. In particular, it must:
 - enable shareholders to vote by proxy,
 - publish notices concerning the allocation and payment of dividends, the holding of meetings, the issue of new shares, allotment, subscription, renunciation and conversion operations,
 - designate as its agent a financial institution at which shareholders may exercise their financial rights.

3. *Alteration of the memorandum or articles of association*

- (a) A company from a Member State planning to alter its memorandum or articles of association must communicate the plans of such alterations to the competent authorities of this Member State if its shares are quoted there or, otherwise, to those of the Member State in which the major proportion of its shares are officially traded.

A company from a non-member State planning such alterations must communicate the plans to the competent authorities of the Member State in which the major proportion of its shares are officially traded.

- (b) These plans must be communicated to the competent authorities at the latest when the general meeting which is to decide on the proposed alterations of the memorandum or articles of association is called.

4. *Continuing information*

The company must periodically, and half-yearly at least, make available to the public sufficient information to enable the public to evaluate the assets and financial position of the company and the general progress of its business, without prejudice to the publication of the annual accounts and annual report, and consolidated accounts and annual report of the group, as required by national law.

5. *Additional information*

- (a) The company must inform the public without delay of major new developments in its sphere of activity which are not public knowledge and which may, by virtue of their effect on its assets and financial position or on the general progress of its business, lead to large movements in the prices of its shares.
- (b) The company must inform the public without delay of any changes in the rights attaching to the various classes of shares.
- (c) The company must inform the public of any changes in the information published previously on the structure of the major holdings of its capital, as soon as such changes come to its notice.

6. *Equivalence of information*

- (a) A company whose shares are officially quoted on stock exchanges in different Member States must ensure that equivalent information is made available to each of these markets.
- (b) A company whose shares are officially quoted on stock exchanges in one or more Member States and in one or more non-member States, must make available to the markets of the Member State or States in which its shares are quoted the same information as is available to the markets of the non-member State or States in question.

ANNEX IV

SCHEDULE D

OBLIGATIONS OF ISSUERS WHOSE DEBT SECURITIES ARE ADMITTED TO OFFICIAL QUOTATION ON A STOCK EXCHANGE OF A MEMBER STATE OF THE EUROPEAN COMMUNITIES

A. DEBT SECURITIES ISSUED BY AN UNDERTAKING

1. *Treatment of holders*

- (a) The undertaking must ensure that all holders of securities relating to the same loan issue are given equal treatment in respect of all the rights attaching to these securities.
- (b) The undertaking must ensure that on each stock exchange in a Member State on which its debt securities are officially quoted, all the necessary information and facilities are

available without any cost to holders, to enable these to exercise their rights. In particular, it must:

- publish notices concerning the holding of meetings of the holders of debt securities, the payment of interest, the exercise of any conversion, subscription or renunciation rights, and redemption,
- designate as its agent a financial institution at which the holders of debt securities may exercise their financial rights.

2. *Alteration of the memorandum or articles of association*

- (a) An undertaking from a Member State planning to alter its memorandum or articles of association must communicate the plans of such alterations to the competent authorities of this Member State if its debt securities are quoted there or, otherwise, to those of the Member State in which the major proportion of its debt securities are officially traded.

An undertaking from a non-member country planning such alterations must communicate the plans to the competent authorities of the Member State in which the major proportion of its debt securities are officially traded.

- (b) These plans must be communicated to the competent authorities at the latest when the general meeting which is to decide on the proposed alterations of the memorandum or articles of association is called.

3. *Continuing information*

The undertaking must periodically, and half-yearly at least, make available to the public sufficient information to enable the public to evaluate the assets and financial position of the undertaking and the general progress of its business, without prejudice to the publication of the annual accounts and annual report, and consolidated accounts and annual report of the group, as required by national law.

4. *Additional information*

- (a) The undertaking must inform the public without delay of major new developments in its sphere of activity which are not public knowledge and which may, by virtue of their effect on its assets and financial position or on the general progress of its business, lead to large movements in the prices of its debt securities. As regards index-linked debt securities and those whose interest rate depends on a given parameter, the undertaking must also publish information about the application of the index-linked criteria and of the parameter for determining the interest rate.
- (b) The undertaking must inform the public without delay of new loan issues and in particular of guarantees they may carry.
- (c) Where the debt securities officially quoted are convertible debentures or debentures with warrants attached, the undertaking must inform the public without delay of any changes in the rights attaching to the various classes of shares.

5. *Equivalences of information*

- (a) An undertaking whose debt securities are officially quoted on stock exchanges in different Member States must ensure that equivalent information is made available to each of these markets.
- (b) An undertaking whose debt securities are officially quoted on stock exchanges in one or more Member States and in one or more non-member States, must make available to the markets of the Member State or States in which its debt securities are quoted, the same information as is available to the markets of the non-member State or States in question.

B. DEBT SECURITIES ISSUED BY THE CENTRAL GOVERNMENT OR REGIONAL OR LOCAL AUTHORITIES OF A FOREIGN STATE OR BY A PUBLIC INTERNATIONAL ORGANIZATION

1. *Treatment of holders*

- (a) Central governments, regional or local authorities and public international organizations must ensure that all holders of securities relating to the same loan issue are given equal treatment in respect of all the rights attaching to these securities.
- (b) Central governments, regional or local authorities and public international organizations must ensure that on each stock exchange in a Member State on which their debt securities are officially quoted, all the necessary information and facilities are available without any cost to holders, to enable these to exercise their rights. In particular, they must:
 - publish notices concerning the holding of meetings of the holders of debt securities, the payment of interest and redemption,
 - designate as their agent a financial institution at which the holders of debt securities may exercise their financial rights.

2. *Equivalence of information*

- (a) Central governments, regional or local authorities and public international organizations whose debt securities are officially quoted on stock exchanges in different Member States must ensure that equivalent information is made available to each of these markets.
 - (b) Central governments, regional or local authorities and public international organizations whose debt securities are officially quoted on stock exchanges in one or more Member States and in one or more non-member States, must make available to the markets of the Member State or States in which their debt securities are quoted, the same information as is available to the markets of the non-member State or States in question.
-