

RESPONSE PAPERS

PROBLEMS OF ENFORCEMENT AND COOPERATION IN THE MULTINATIONAL SECURITIES MARKET: A FRENCH PERSPECTIVE

ROBERT BORDEAUX-GROULT*

This paper briefly describes the organization and authority of the French *Commission des Opérations de Bourse* (COB). Against this backdrop, the paper then reviews the possibilities for cooperation by the COB with the Securities and Exchange Commission (SEC) and other foreign regulatory authorities, with particular emphasis on the two hypothetical cases posed for this symposium.

1. GENERAL DESCRIPTION OF THE FRENCH REGULATORY AGENCY

1.1. *Establishment of the COB*

The COB is the principal entity regulating securities transactions in France. The COB was established in 1967, modeled in large part on the SEC. Unlike the SEC, however, the COB was also established to encourage the development as well as the regulation of the financial markets. Thus, to encourage the desired growth and broaden the base of stockholders, it was necessary to enhance investor confidence in the markets.¹

The COB was created in response to abuse of French financial markets. For example, the French markets were increasingly affected by anonymous circulars regarding various publicly traded companies. These circulars were distributed by persons who would then profit from the fluctuations in market prices caused by the circulation of their own pamphlets. Though formally under the Ministry of the Economy

* A partner in the Paris office of Cleary, Gottlieb, Steen & Hamilton. The author acknowledges the assistance of Douglas S. Glucroft, an associate in the Paris office of Cleary, Gottlieb, Steen & Hamilton and of Mrs. Marie-Claude Robert, Director of External Relations, *Commission des Opérations de Bourse*.

¹ JURIS CLASSEUR [J. CL.], *Commercial Banque et Bourse*, fasc. 1200, 6-7. This section of the JURIS CLASSEUR contains one of the most complete discussions available of the COB that is kept current.

and Finance, in practice the COB has a great measure of autonomy.² The COB can hire staff outside normal civil service procedures and rules. This ability enables the COB to recruit people most qualified for those positions available. On the other hand, the COB is often required to coordinate its activities and initiatives with the *Chambre Syndicale des Agents de Change* (the security industry trade association sanctioned by the state).

1.2. Organization of the COB

The COB is much smaller, as well as much younger, than the SEC. In 1985, it employed ninety-nine people and had a total budget of approximately thirty million francs, of which approximately eighty percent was devoted to staff salaries.³ In 1986, its budget increased to forty million francs and its staff to 110.⁴

The COB is comprised of a chairman, four members and a representative of the Ministry of the Economy and Finance (*Commissaire du Gouvernement*). Their terms are four years, renewable once. The chairman is chosen by the *Conseil des Ministres*, and the four members are chosen by the Minister of the Economy and Finance. The four members usually include one securities dealer, one banker, one executive from a listed company and a magistrate. Most of the staff of the COB, headed by a general secretary, is organized into five principal divisions. They are (1) the Inspection Division, which is responsible for contacts with the stock exchanges, market surveillance and investigations concerning trading; (2) the Accounting Division, which conducts investigations concerning the financial statements of any company that is publicly traded and handles relations with auditors; (3) the Legal Division, which receives complaints from the public with respect to possible violations of law; (4) the Investment Division, which regulates the activities of real estate investment companies and mutual funds; and (5) the Information Division, which reviews the prospectuses and other announcements published by the listed companies and which handles the listing and delisting of securities.

² *Id.*

³ 1985 RAPPORT AU PRÉSIDENT DE LA RÉPUBLIQUE by the *Commission des Opérations de Bourse*, at 145-46 [hereinafter 1985 ANNUAL REPORT]; Interviews with Marie-Claude Robert, Director of External Relations, the COB (December 3, 1986 and February 17, 1987) [hereinafter Interviews, Mrs. Robert].

⁴ *Libération*, February 5, 1987, at 17 (Interview with Mr. Yves Le Portz, chairman of the COB) [hereinafter *Libération*]; Interviews, Mrs. Robert, *supra* note 3.

1.3. *The COB's Authority to Conduct Investigations*

The following is a selective summary of the COB's authority and responsibilities, with emphasis on its powers to conduct investigations — the aspect most pertinent to a review of international cooperation.

The COB's basic mission is to protect investors and to ensure the proper functioning of French financial markets. As such, the COB's jurisdiction covers only companies whose securities are quoted on a French *bourse* or which appear on the over-the-counter list. In 1985, approximately 1340 issuers had securities listed on the French *bourses* and more than 380 others had securities listed on over-the-counter lists.⁵ On the Paris *bourse*, approximately 200 foreign companies' securities were listed.⁶ For these companies, the COB is responsible for the verification of the information provided to stockholders and the public. It may require corrective measures with respect to deficiencies in such information and may publish a report on its findings.⁷ It may also act upon complaints from the public or from stockholders with respect to the companies under its supervision. In 1985, it received 575 such complaints, and in 1986 approximately 2000.⁸

In order to accomplish the foregoing, the COB has broad investigative powers.⁹ Until recently, the COB had a very small staff of inves-

⁵ For this and a variety of other statistics on the French stock markets, see 1985 ANNUAL REPORT, *supra* note 3, at 173-264 and *L'Année Boursière 1985*, published by the French *Compagnie des Agents de Change* [hereinafter *L'Année Boursière*].

⁶ *L'Année Boursière*, *supra* note 5, at 11. (There are *bourses* in seven French cities — Bordeaux, Lille, Lyon, Marseilles, Nancy, Nantes and Paris.) The COB is based in Paris, and has regional offices in Lyon and Nancy.

⁷ The COB has developed an elaborate array of rules and procedures regarding disclosure and solicitation, a review of which is beyond the scope of this paper.

⁸ 1985 ANNUAL REPORT, *supra* note 3, at 261; *Libération*, *supra* note 4.

⁹ *Ordonnance no. 67-833 instituant une commission des opérations de bourse et relative à l'information des porteurs de valeurs mobilières et à la publicité de certaines opérations de bourse* (Ordinance No. 67-833 of September 28, 1967, creating a stock exchange commission) Article 5, CODE DE COMMERCE [C. COM.] art. 5 (74e ed. Dalloz 1967), at 76-78 [hereinafter *Ordonnance*]. This Article sets forth the statutory basis of the COB's investigative power. Its translation reads as follows:

5. In order to perform its mission, the Commission may, by means of a specific resolution for each company, authorize its agents to obtain disclosure at the head offices of the companies referred to under paragraph 1 of Article 3 [public companies] and in the banks, stockbrokers' offices and premises of firms or persons whose profession is providing stockbrokers with transactions, without contracts of employment, such materials as they shall consider useful for the performance of their assignment, and in particular, any contracts, books, accounting documents and minute books. Such agents may also obtain any information useful for the purposes of their assignments from any third parties having performed transactions on behalf of the company.
(Law No. 70-1208 of December 23, 1970). The *Commission des Opérations de Bourse* may, after a specific resolution, summon and question, or

tigators. Now, the COB has seven investigators. It invokes these investigative powers regularly. In 1985, for example, the COB launched thirty-three investigations; in 1986, sixty-nine investigations were launched.¹⁰ There are a number of areas in which the COB has specific authority to investigate. For example, the COB may investigate alleged insider trading or stock manipulation; the COB may also investigate alleged inaccuracy or falsification in published financial statements and alleged abuses in the management and activities of mutual funds and other investment companies.

The COB has the authority to require that any piece of information it deems useful be turned over to it from the publicly traded company or companies under investigation, including contracts, financial statements, minute books and bookkeeping records. Banks, stockbrokers, and *gérants de portefeuilles* and *remisières* (portfolio managers and other persons, respectively, who place orders with registered stockbrokers) may also be required to turn over any such information that they possess.

Persons refusing to turn over such information may be subject to disciplinary action or criminal penalty.¹¹ Persons who otherwise might be able to claim immunity from the requirement to disclose certain information on the basis of the French law of professional secrecy may generally not interpose a privilege on that basis in proceedings con-

cause its agents to summon and question, any person who may provide it with information relating to matters laid before it.

Any person summoned may be assisted by counsel of his choice. The terms and conditions of such summons and of exercise of this right shall be determined by a decree. (Cf. Decree No. 71-615 of July 23, 1971, art. 4).

No obligation of professional secrecy may be asserted against the commission's agents except by officers of the court [*auxiliaires de justice*].

The members and agents of the commission shall be bound by the rules of professional secrecy with respect to any facts, acts and information of which they may have been informed by reason of their offices, under the conditions and subject to the penalties provided for under Article 378 of the Penal Code.

(Law No. 83-1 of January 3, 1983). The duty provided under the foregoing paragraph shall not prevent disclosure by the *Commission des Opérations de Bourse* of the information which it has collected to the authorities of other member states of the European Communities performing similar duties and bound by the same duties of professional confidentiality.

The *Commission des Opérations de Bourse* may also disclose the information which it has collected to the authorities of other states performing similar duties, subject to reciprocity, and provided that the appropriate foreign authority is subject to rules of professional secrecy the same as those in France.

¹⁰ 1985 ANNUAL REPORT, *supra* note 3 at 79; *Libération*, *supra* note 4.

¹¹ *Ordonnance*, *supra* note 9, art. 10.

ducted by the COB.¹² On the other hand, the COB and its staff may refuse, except on court order, to provide information to others on the grounds that such information is privileged. The COB may also, subject to obtaining an order to that effect, require that any person having information bearing on a COB investigation come to a hearing to give testimony.

In connection with insider trading inquiries, the COB may seek testimony or other information from persons who effected large transactions in the stock being invested or who have professional or family affiliations with the company in question. Insider trading has been illegal in France since 1970. The insider trading statute, reinforced in 1983, provides for fines and/or imprisonment. It defines insiders to include anyone who may have privileged information, such as managers, accountants, employees, financial advisors and their spouses.¹³ Such persons are also responsible for the insider trading of their "tippees."¹⁴ Inside information is defined as "privileged information on the prospects or situation of an issuer of securities or on the prospects for future trading of a security."¹⁵ An insider trading investigation in 1984 resulted in the COB turning over the names of six securities dealers for disciplinary action by the *Chambre Syndicale des Agents de Changes (Chambre Syndicale)*. Action was to be taken against both the individuals and their employer.¹⁶

The definition of parties subject to a COB investigation is not limited by the statute and thus would encompass employees and directors of a listed company and persons associated with subsidiaries of a publicly traded company, as well as independent auditors and attorneys.

Unlike the SEC, however, the COB may investigate or recommend prosecution of only corporate (and not individual) wrongdoing. This difference has been a hallmark of the COB's activity to date. The COB cannot prosecute violations itself, and must refer matters to the criminal courts for prosecution. Due to the difficulty the COB has in

¹² Stockbrokers are generally thought to be subject to requirements of professional secrecy, and since 1984 it has been clear that bankers are covered by the law of professional secrecy in France. Law of January 24, 1984 (Journal Officiel [J.O.], January 25, 1984). Regarding the impact of the law of professional secrecy on international cooperation, see *infra* text accompanying notes 26 and 27, and *Ordonnance, supra* note 9.

¹³ The original statute was strengthened with the Law No. 83-1 of January 3, 1983 (J.O. January 4, 1983), which was incorporated into the *Ordonnance, supra* note 9, as art. 10-1 [hereinafter Art. 10-1]. For a brief discussion, see R. ROBLLOT, *TRAITÉ ÉLÉMENTAIRE DE DROIT COMMERCIAL* 96-98 (1986).

¹⁴ Art. 10-1, *supra* note 13.

¹⁵ *Id.*

¹⁶ 1984 RAPPORT AU PRÉSIDENT DE LA RÉPUBLIQUE by the *Commission des Opérations de Bourse*, at 81.

investigating violations by individuals, it is not able to refer a large number of such cases. In 1986, only three cases were referred to the courts for prosecution. This small number is partly due to budgetary and staffing constraints.¹⁷ The cases which the COB does turn over are normally very solid, and the COB, after reference, continues to cooperate in the prosecution of the case. In criminal cases, the court is required to seek the COB's opinion when conducting a prosecution of alleged insider trading or market fraud. The president of the COB can also, since its governing statute was amended in December 1985,¹⁸ seek judicial orders and injunctions to compel those violating the law to correct or cease their illegal conduct.

This year, the French Government has appointed a special commission to draft a code of ethics for securities brokers and fiduciaries in light of the growing importance of the *bourse* in France.¹⁹ Violations of this code, if adopted as regulations by the COB, could then serve as a basis for civil injunctive actions in securities fraud referred by the COB to the *Tribunaux de grande instance* pursuant to its authority under the December 1985 amendments.

As indicated above, the COB can only act indirectly against individuals by reporting to the public prosecutor any violations of criminal law of which it becomes aware. For example, the COB could report instances of inaccuracy or falsification of a publicly traded company's *Note d'Information* (prospectus) or other documents distributed to the investing public. The manager and auditors of a company may be held criminally liable for such falsehoods.

The foregoing highlights another important difference between the ways in which the SEC and COB operate. The COB cannot, as indicated above, punish violations short of criminal prosecution. The COB has no authority to bring administrative or other civil proceedings (where the proof requirements would be easier to meet) or to invoke the broad range of remedies available to the SEC. French criminal courts are reluctant to convict persons unless there is evidence of a nature comparable to the American threshold of proof "beyond a reasonable doubt." Moreover, the French system of criminal justice leaves no

¹⁷ Interviews, Mrs. Robert, *supra* note 3.

¹⁸ The other aspect of the December 1985 amendments broadened the COB's authority to promulgate regulations governing (i) all securities markets (and not limited to the stock market) and (ii) professional standards for broker-dealers, investment advisors and others in the securities industry. See Law of December 14, 1985, Article 31 (J.O. December 15, 1985). See generally 2 A. JOLY, *DICTIONNAIRE DU DROIT DES SOCIÉTÉS ANONYMES, Commission des Opérations de Bourse* (a permanent loose-leaf service on corporations).

¹⁹ *Les Echos de la Bourse*, February 18, 1987, at 1, 18.

room for plea bargaining in exchange for cooperation with the investigation. The COB may bring suspected wrongdoing by brokers to the attention of the *Chambre Syndicale* for disciplinary action, but the *Chambre Syndicale*, as a trade association, is often protective of its members and thus reluctant to prosecute vigorously alleged violations brought to its attention by the COB.

While the COB obtains convictions in the large majority of criminal cases it refers, a recent insider trading case provides a striking example of the risk posed by exclusive recourse to criminal jurisdiction.²⁰ The case involved two individuals who had access to information concerning the execution by a state owned company, Thomson C.S.F., of a four-billion dollar military electronics contract with Saudi Arabia. The two individual defendants made massive purchases of Thomson stock. One of the two defendants, a high level Defense Ministry official, attended meetings on January 12 and 13, 1984, at which the execution of the contract was discussed. Apparently this question was discussed at the start of the meetings before the individual, who arrived late, was in attendance. Nonetheless, on January 12, 1984 at 2:00 p.m., immediately after the close of the meeting, the individual placed an order for between 5,000 and 6,000 shares of Thomson C.S.F. and on January 13 purchased a total of 6,570 shares of Thomson for a total price of FFr 1,822,500. At the same time, the individual cancelled a standing order he had to sell Thomson stock on a certain date. In this particular situation the court held that despite the "troubling coincidence" between the status of the contract and the transactions on the market, there remained a doubt as to the reason for the purchases and the court thus acquitted the individual in question. This decision was recently confirmed by the Cour d'Appel de Paris (Paris Court of Appeals).

The surprising result in the Thomson case, besides highlighting the rigorous burden of proof that a criminal court will require of the prosecution, may also rest on a misinterpretation of the French insider trading law. According to the weight of the decided cases and scholarly commentary, the law does not require direct proof of a certain casual link between the trading and the information. As long as a person considered to be an insider by the statute has nonpublic information regarding an issuer and thereby trades in securities of that issuer, it is presumed that he does so on the basis of such information, and he is thus generally found to have violated the statute.²¹

²⁰ Judgment of May 13, 1986, Trib. gr. inst. (court of original jurisdiction), Fr., Gazette du Palais [G.P.], at 459.

²¹ For a discussion of the French insider trading statute and the decided cases, see Duccouloux-Favard, *Le Délit d'Initié, Dix ans de jurisprudence et d'activité de la*

2. LIMITATIONS ON FRENCH COOPERATION WITH FOREIGN AGENCIES

The COB faces two formidable obstacles in its efforts to cooperate with its counterparts from other countries. The most important is clearly the blocking statute, which is discussed in the presentation paper (Greene Paper) prepared by my Washington colleagues,²² and the presentation paper by Harvey Pitt and his colleagues (Pitt Paper).²³ The second obstacle is the one imposed by the limited scope of the COB's jurisdiction and powers in France as summarized above; the COB supervises only companies that are publicly traded on a *bourse* or over-the-counter market. It is thus highly unlikely that a subsidiary, such as the hypothetical case in the Greene Paper, would be within the COB's jurisdiction.

The effects of the blocking statute have been alleviated to some extent by the promulgation of an exception in 1983 that permits the COB to cooperate with foreign regulatory bodies as long as the foreign agency is subject to similar confidentiality requirements as is the COB and as long as such foreign agency agrees to reciprocate when the COB requests assistance.²⁴ The enactment of the 1983 exception was the result of lobbying by the COB.²⁵ For the COB, the exception was an essential prerequisite to any cooperation with foreign securities regulators, and its success is illustrative of its strong commitment to international cooperation. While the 1983 exception may permit certain assistance with respect to information that the COB already has in its possession, it does not explicitly authorize the COB to undertake an investigation to obtain information requested by a foreign regulator. Moreover, in order to be in a position to benefit from the exception, the COB would be required to have entered into an agreement with a corresponding foreign agency such as the SEC, to guarantee reciprocity and secrecy. Finally, under French law there is no other agency or authority from which the COB may seek assistance to determine whether French residents have violated any provisions of foreign laws; thus, in the insider trading hypothetical posed in the Pitt Paper, the COB would not be able to act as the SEC's proxy in France.

Commission des Opérations de Bourse, G.P., September 29, 1984 and J. CL., *Pénal Annexes - Bourse de Valeurs*, fasc. 1(B).

²² See Greene, *Problems of Enforcement in the Multinational Securities Market*, this issue, pp. 349-51.

²³ See Pitt, *Problems of Enforcement in the Multinational Securities Market*, this issue, pp. 411-13.

²⁴ *Ordonnance*, *supra* note 9.

²⁵ See, e.g., Lee, Robert, Hirsch & Pollack, *Secrecy Laws and Other Obstacles to International Cooperation*, 4 J. COMP. CORP. L. & SEC. REG. 63, 69-70 (1982).

Investigators from a foreign regulatory agency will also be confronted with the French law of professional secrecy, which makes it a criminal offense for certain professionals, including stockbrokers, independent accountants and bankers, to divulge information concerning their clients.²⁶ (Members of the COB are themselves subject to the law of professional secrecy.) This criminal statute will prevent foreign securities law investigators from obtaining much useful evidence from the persons most likely to have the information required. Although the precise contours of what constitutes a "secret" for purposes of the statute is sometimes not susceptible to an easy answer, in general, any fact concerning a client that is not otherwise in the public domain is considered to be a secret under French law, and accordingly, professionals will be likely to err on the side of being cautious in what they disclose to investigators. Under French law, the client's consent to disclosure will not automatically absolve the professional of criminal liability; the cases are divided on this point. If the COB were conducting the investigation, bankers and other professionals covered by Article 378 of the *Code Pénal* would not be able to claim a privilege from testifying on the grounds that they would have to disclose their clients' secrets.²⁷

Unless the COB were conducting an investigation into the same matters as those of the foreign agency, almost all information the COB would already have in its possession, even with respect to a publicly traded company, would be publicly available and recourse to the COB might not prove useful. The COB, however, has been able to be helpful on numerous occasions by providing information to foreign counterparts that, although theoretically "publicly available," is nevertheless difficult to gather. For example, the COB has on occasion been asked to determine the name and address corresponding to a particular telephone number that appeared on documents the SEC was able to subpoena in the United States. The COB has also been asked to provide public information on French residents that it has compiled from disparate sources for its own files. The Pitt Paper refers to the usefulness of this type of information to the SEC.²⁸

Another type of cooperation was illustrated by an SEC investigation in 1985.²⁹ The SEC was investigating the United States subsidiary of a French company. Although the COB declined to give effect to the

²⁶ CODE PÉNAL [C. PEN.] art. 378. See *supra* note 12.

²⁷ See *supra* notes 9 and 12.

²⁸ See Pitt, *supra* note 23, pp. 428-29.

²⁹ 1985 ANNUAL REPORT, *supra* note 3, at 129. The COB receives approximately three or four requests a year for cooperation from the SEC, and an average of one a year from a foreign agency other than the SEC. Interviews, Mrs. Robert, *supra* note 3.

SEC's waiver-by-conduct position (a position the COB still resists), it did arrange for meetings between the SEC and representatives of the French company in question under the aegis of the French Ministry of Foreign Relations. The COB, in the context of international cooperation, has the authority to arrange for witnesses to give voluntary testimony to foreign securities regulators at the Ministry. This arrangement has been possible on a number of occasions, though it should be noted that the process which requires adherence to international conventions (e.g., Letters Rogatory through the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters)³⁰ and coordination of various French agencies concerned, can be slow and laborious.

The COB has, after consultation with the Ministry of Justice, suggested a new tack to the SEC for an investigation that was ongoing as of February 1987, that, if applied to the two hypothetical cases, might result in significantly greater assistance to the SEC investigation. The COB has suggested that the SEC invoke a 1927 French law governing extradition. Among its provisions is a section that authorizes, in criminal proceedings brought abroad, the gathering of evidence and taking of testimony in France. Such requests would have to be forwarded via diplomatic channels to the French Ministry of Justice. Procedural provisions of the law permit prompt action in an "emergency." It is as yet uncertain whether this new avenue will prove fruitful for the SEC. A translation of Articles 32 and 33 of the 1927 French law states:

32. If in criminal proceedings brought abroad, the foreign government considers disclosure of evidence or documents in the possession of the French authorities to be necessary, the request shall be made through diplomatic channels. It shall be granted unless there are specific objections, and subject to the obligation to return the evidence and documents as soon as possible.

33. If a foreign government considers the personal appearance of a witness residing in France to be necessary in criminal proceedings, the French government, having received the subpoena through diplomatic channels, shall invite him to comply with the request.

However, the subpoena shall be received and forwarded to the witness subject to the condition that the witness may not be prosecuted or imprisoned with respect to facts or con-

³⁰ Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Mar. 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444, 847 U.N.T.S. 231.

victions prior to his appearance.³¹

Although the COB has done so with considerably less frequency than the SEC, the COB has on occasion asked the SEC for assistance. In a recent instance, the COB asked the SEC to cooperate in an investigation of a fraud organized in France but originating in the United States. This fraud involved the passing off of non-negotiable securities

³¹ Law of March 10, 1927, Article 696, CODE DE PROCÉDURE PÉNALE [C. PR. PEN.] art. 696 (1986-1987). Other relevant paragraphs are translated as follows:

9. Any request for extradition shall be sent to the French government through diplomatic channels, accompanied by either a judgment of conviction, including a contumax or default judgment, or an instrument of criminal procedure expressly ordering or having the automatic effect of indicting the accused before a criminal court, or a warrant of arrest or any other instruction issued by the judicial authorities, provided that the latter instruments contain a specific indication of the facts with respect to which they are issued, and the date thereof.

The aforesaid clauses must be produced in original or notarized copies. The requesting government shall produce at the same time copies of the statutes applicable to the prosecuted action. It may attach a statement of the facts of the matter.

10. The request for extradition, after verification of the documents, shall be forwarded with the records, by the Ministry of Foreign Affairs to the Ministry of Justice, which shall ascertain the lawful character of the request and proceed thereupon as required by law.

19. In the event of emergency and upon a direct request from the judicial authority of the requesting country, the public prosecutor may, by notice given by mail or any other faster means of transmission leaving a written record, or equivalent, of the existence of one of the documents specified by Article 9, order the temporary arrest of the foreigner.

Valid notice of the request shall also be transmitted at the same time through diplomatic channels, by mail, telegraph or any other means of transmission leaving a written record, to the Ministry of Foreign Affairs. The public prosecutor shall give notice of such arrest to the Ministry of Justice and senior public prosecutor.

30. In the event of non-political criminal proceedings in a foreign country, letters rogatory issued by the foreign authority shall be received through diplomatic channels and forwarded to the Ministry of Justice as provided for under Article 10 herein. Waivers shall be carried out if appropriate and in accordance with French law.

In emergencies, letters rogatory may be communicated directly between the judicial authorities of the two countries. In such case, failing notice given through diplomatic channels to the French Ministry of Foreign Affairs by the relevant foreign government, direct communication between the two countries' judicial authorities shall not be effective.

31. In the event of prosecution abroad, if a foreign government considers to be necessary service of a procedural instrument or judgment on an individual residing on such territory, the document shall be forwarded in the manner provided for under Articles 9 and 10 accompanied, if appropriate, by a French translation. Service shall be made personally at the request of the public prosecutor's office by a qualified agent. The original copy evidencing service shall be returned to the requesting government by the same means.

as negotiable securities to small investors. The SEC assisted with the COB investigation in the United States.

Within the European Economic Community (EEC), such cooperation has been fostered by the EEC Code of Conduct³² (Code) that has resulted in the exchange of information among securities regulators as long as confidentiality rules are respected. The Code was published in 1977, but it does not have the force of law as would an EEC directive. The Code sets forth as general principles that complete and accurate information be provided to investors in member states of the EEC, that all investors be treated equally, and that the securities laws of each member state be respected. In order to put the Code into practice, the member states have established a joint committee to coordinate their actions in applying the Code. Since 1977, the EEC Council of Ministers has promulgated a number of directives regarding securities regulation, notably concerning listing and delisting criteria and public reporting requirements for listed companies. The EEC Commission has also proposed other directives governing the contents and review of prospectuses. As of March 1987, the EEC Commission was expected to submit to the Council of Ministers a proposed regulation prohibiting insider trading.

3. PROSPECTS FOR THE FUTURE

The COB has stated that the establishment of full cooperation with the SEC will only be realized with the signature of a bilateral agreement which specifies the manner in which such cooperation would be carried out. Such an accord is currently being negotiated, and the COB hopes that it and the SEC can reach agreement this year. The COB expects that it will closely track the United States-United Kingdom agreement partly because the COB intends to negotiate an accord with the British Government as well.

The procedures to be put in place by such an agreement would include furnishing (1) documents supporting the request for information, (2) a precise statement of the requested information, (3) a statement of the provisions of the requesting state's laws or regulations that are alleged or believed to have been violated, and (4) a description of the use that will be made of the requested information.

Cooperation under such agreement, in the COB's view, would be subject to the condition that agents making the investigations would be bound by the rules of confidentiality to which the COB's own agents are bound. In addition, the authority providing such information would

³² 20 J.O. COMM. EUR. (No. L 212) 1 (1977).

have the power to veto any use of the information which would be a use different from that set forth in the original request from the other authorities. The SEC, of course, might not be able to guarantee absolute confidentiality.³³ The legal restrictions on absolute confidentiality in the United States, from the COB's perspective, however, would not block cooperation as long as the SEC promised to keep information confidential within the legal limits, and agreed to send all documents obtained from the COB back to France. After a bilateral agreement was in place, the COB might ask the SEC to obtain an exemption from its disclosure obligations under United States law, but such an exemption would not be a condition precedent to reaching agreement. The bilateral agreement would also require that the COB have the exclusive power to conduct any investigation in France as requested by the SEC. The SEC would not be able to act directly in France.

4. CONCLUSION

In sum, for France, the 1983 exception legislation provides authority to the COB to provide certain information. A bilateral agreement such as that which the COB has proposed to the SEC will finally give full effect to the 1983 legislation and will serve the additional purpose of setting forth the precise terms and conditions of such exchanges of information.

The COB has also been playing an increasingly active role in the management of the International Organization of Securities Commissions (IOSCO) and similar agencies. The COB has endorsed resolutions calling upon all securities authorities to provide reciprocal assistance relating to market oversight and fraudulent transactions and to name a contact person to handle requests for such assistance.

In the two hypothetical cases offered for this conference, the COB would not be able to render the full assistance that the SEC would require. The COB could, however, help informally to arrange for voluntary testimony, and act as a go-between for the SEC with other departments of the French government. The French law on extradition may provide a new avenue for cooperation with the SEC. France is negotiating with the United States a bilateral agreement on securities cooperation that will reinforce the COB's information gathering possibilities.

³³ See Greene, *supra* note 22, p. 333 at n.26; p. 370.