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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

Docket No. ____________________

In the matter of JAPANESE AMERICAN DEPOSITORY

CONFERENCE

Place Washington, D.C. ________________

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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the matter of:

JAPANESE-AMERICAN DEPOSITORY

Conferences

Room 202, Securities and Exchange Commission Building
425 Second Street, N. W.
Washington, D. C.
June 28, 1951

The conference was held, pursuant to notice, at 10:00 o'clock a.m.

EXHIBITS:

MANUEL F. COHEN, Division of Corporation Finance;
PHILIP A. LEWIS, JR., Division of Trading and Exchange; and
DAVID E. FUDENBERG, Division of Corporation Finance, Securities and Exchange Commission.

APPEARANCES:

JAMES A. AUSTIN, Irving Trust Co., 1 Wall Street,
New York 15, New York, appearing on behalf of Irving Trust Co.

GEORGE A. SEIDWELL, of Davis, Polk, Wardwell, Sunderland & Kindle, 15 Broad Street, New York City, appearing on behalf of Morgan Guaranty Trust Company of New York.

LAURENCE L. CARTER, Irving Trust Company, 1 Wall Street, New York 15, New York, appearing on behalf of Irving Trust Co.
APPEARANCES (Continued):

JOSEPH A. DOYLE, of Sherman and Sterling, 20 Exchange
Place, New York City, appearing on behalf of the First
National City Bank of New York.

W. D. CARR and ALBERT DOYLE, New York City, appear-
ing on behalf of the Chemical Bank New York Trust Company.

FRANK BISH, National Association of Securities
Dealers, Inc., 25 Broad Street, New York City, appearing on
behalf of the Foreign Securities Committee of the NASD.

HENRY L. FOY, Abraham & Co., 120 Broadway, New
York City, appearing on behalf of the Foreign Securities Com-
mittee of the National Association of Securities Dealers, Inc.

DEWITT GRIEVEN, of Carl M. Loeb, Rhoades & Co., 42
Wall Street, New York City, appearing on behalf of the Foreign
Securities Committee of the National Association of Securities
Dealers.

B. E. HOBLEY, 140 Broadway, New York City, appearing
on behalf of the Morgan Guaranty Trust Company.

JAMES E. ROBERTSON, Vice President, The First
National City Bank of New York, 2 Broadway, New York City,
appearing on behalf of The First National City Bank of New York.

W. J. SCHEER, New York City, appearing on behalf

EDWIN P. STEVENS, of Winthrop, Stimson, Putnam &
Roberts, 40 Wall Street, New York City 5, appearing on behalf
of the Irving Trust Company.
APPEARANCES (Continued):

J. E. STEVENSON, of Sullivan & Cromwell, New York City, invited as counsel for underwriter in Eddy Financing.

GEORGE E. RHEESE, 25 Broad Street, New York City 4, appearing on behalf of the Foreign Securities Committee of the National Association of Securities Dealers.

EDWARD TRAVERS, Vice President, Manufacturers Trust Company, New York City, appearing on behalf of the Manufacturers Trust Company.
MR. COHEN: Good morning, gentlemen. I want to apologize for being late. I was in the Chairman's office. I didn't realize when I ran past the ten o'clock hour.

First let me say I hope we are all here. We are interested in this ADR problem for the Japanese securities.

Just so that we get started without further ado, there were four problems -- maybe there were three, but I have them listed as four -- that I thought would permit some discussion today. Of course the first question is the registration of ADR's for Japanese securities, particularly the ones as to which registration statements have already become effective.

Second -- and this may be part of the first -- the nature of the disclosure in addition to that specifically required by Form S-12 by reason of the particular problems that we have discussed or encountered in connection with Japanese securities. I have in mind not only currency restrictions, but particularly problems which may arise from the practice of Japanese companies in financing the operations of such companies.

More specifically, as I understand it, many Japanese companies engage in a procedure whereby they make rights offerings, or that are akin to rights offerings, on a frequent basis, and at a price which may result in dilution to
inventors of a substantial character unless these inventors either have an opportunity to avail themselves of the rights offering or to dispose of the rights in a manner that is possible in this country so as to realize the equivalent or nearly the equivalent.

The third point relates to a problem that exists or arises, or perhaps is imaginary, in the area of those ADS's which have been issued by different banks and relating to the same security — that is, the application of ADS's.

Finally, I have listed on my notes here a general question which harkens back to the time when Form S-12 was originally adopted, and that relates to the question of whether or not Form S-12 has been used since its adoption and whether it is proposed to be used in connection with Japanese securities to accomplish a purpose not intended by the Commission when it adopted Form S-12.

More specifically, I have in mind that at the time of the adoption of that form it was urged upon the Commission that Form S-12 was sought by the trading community, and the banks were willing to accommodate the trading community in this area to assist in dealing with or obviating certain mechanical problems that arise in trading securities of foreign origin; that neither the trading community nor the banks sought Form S-12 or some solution of the problem as it was then presented to provide a means for introducing into
the American market securities which had not theretofore enjoyed a trading market.

There has been some concern expressed in the Commission that Form S-12 has been or may be proposed to be a means of achieving a result not intended by Form S-12. That is my point No. 4.

Perhaps it would be best to start with point No. 4, because if there is a major problem in point No. 4 with regard to the Japanese ADR's, that might resolve all the other problems. I would like to get an expression of view from the bankers as well as an expression of view from those here who perhaps can be described more accurately as representing the trading community.

Just as a matter of convenience, I will start with Mr. Brownell, since Mr. Brownell has a long and intimate association with problems of ADR's.

MR. BROWNELL: Mr. Cohen, let me first say that Morgan Guaranty Trust Company of New York, whom I represent, and the other banks who I am sure will introduce themselves in due course -- and I am sure also the others here -- appreciate very much the opportunity to discuss these four questions with you.

I will say for the record, as you know, this conference is an outgrowth of a previous conference held some weeks ago in your office. At that time the four banks here present
had filed Form S-12's with respect to the stocks of some twenty
Japanese companies. There were certain overlaps among those
filings so that in four or five of the cases there were two
registration statements applicable to the stock of one com-
pany.

Some of those registration statements became
effective. I understand in other cases, delaying amendments
were filed and these did not become effective. And apparently
questions were raised, either within or without the SEC,
which led you to call a meeting which was attended and at which
the entire subjects -- not all of the subjects that you have
mentioned, but several of them -- were discussed.

You decided, with the concurrence of the banks
present, that there should be further examination of some
of those questions by all concerned, and you indicated at
that time that in due course you would call a further con-
ference and we would discuss the matter further.

I imagine that one of the purposes for this con-
ference is to carry out that general understanding at that time.

You asked that we turn first to the fourth question.

My mind goes back to the days in 1955 when the full Commis-
sion held a hearing on the general subject of 10B-5's. It
is not necessary for me to review what took place at that
time because there was a written record, and it is set forth
in the minutes of that meeting of January 20, 1955.
But at that time there were present not only, I believe, all the banks now present and others besides; but representatives of various trading firms and I believe others. One of the things that the full Commission gave attention to at that time, I am sure, was the entire question of the usefulness and the desirability of ADR's being made available on a broader scale than had been possible up until that time.

We argued that ADR's could be issued freely by banks under the 3(a)(2) exception in the 1933 Act on the theory that the ADR's themselves were securities issued by a bank. That, of course, would have greatly facilitated the use of the ADR's.

The Commission decided not to accept that principle, and in so doing being consistent with a position previously taken by it.

But after the hearings, the Commission issued Form S-12, which made it possible for banks to file registration statements with respect to ADR's covering foreign securities without having the bank itself designated as the issuer of the securities, and with much more limited disclosures than would be necessary in that event applicable to the bank; and without disclosures applicable to the underlying securities -- it being, of course, understood that the form was not to be made available for use in connection with the
Issuance of ADR's for new offerings of securities.

I recently re-read the minutes of that meeting of June 20, 1955. I am also mindful of the conferences that were held by numbers of those present afterwards, of which no stenographic record was kept. I know that, at those meetings, the Commission was very much interested in being sure that ADR's were not used as a cloak or means of introducing new issues of securities into the United States which would normally have to be registered.

In other words, to use the lingo in the trade, the ADR's were not to be issued against "hot stock."

I do not find in the minutes of the June 20 meeting, nor do I recall in our subsequent conferences, any extended expression of views by the Commission that ADR's were not to be used to make available to the American market simplified means of dealing in securities of foreign issuers which previously had not been broadly dealt in in the American market.

However, you asked for an indication of the procedure that has been followed by the several banks in connection with ADR's up until this time, and that I am glad to give to you -- subject to correction by Mr. Hooley of Morgan Guaranty Trust Company, who is here with me.

It has not been the practice of Morgan Guaranty Trust Company of New York in any case to file an S-12 covering
the issue of ADR's for the purpose of bringing into the American market stocks of companies not previously held in the American market and not previously traded in in the American market.

The usual situation involves a case where there has been to a considerable extent foreign holdings of a certain security in the United States. Before going forward with an S-12, Morgan Guaranty satisfies itself of that fact.

Morgan Guaranty also does make inquiries in the market as to the extent of the interest in those securities, and in some cases it may find that the difficulties of trading in the security are so great that the extent of the American participation would not be as great as it would be if ADR's were made available for the issuer.

That factor of additional interest is, of course, one taken into consideration when the bank decides whether or not to file an S-12. The bank takes great precautions to insure that they do not put out a new issue of ADR's either for the purpose of enabling brokers, dealers, foreign issuers, underwriters, or others to distribute in this market shares of stock that would normally have to be registered. We know that the form is not applicable in a case of that kind.

As a matter of fact, the law would involve serious difficulties in a case of that kind. It is not necessary for me here to outline the precautions that we take -- although
if you wish at a later time in the hearing I shall be glad to do so.

The ADR machinery which was devised by the Commission and those working with it in 1955 has, I believe, worked satisfactorily. I do not know exactly how many securities are now covered by ADR's, but I think the number is somewhere in the neighborhood of 150 -- maybe more. Some of those issues, of course, antedate the 1953 Act. They aren't all S-12's and I don't know exactly how many of them are S-12's.

Of those 150, Morgan Guaranty Trust Company of New York is the depositary for approximately 94. Of those 94, I believe something in the neighborhood of fourteen or fifteen represent issues where other banks also act as depositaries for foreign stocks. In other words, cases where there is a duplication that you referred to in your third point.

We will doubtless have more to say on that later on.

But I must at the outset say in passing that, having lived with the subject as counsel for the bank in this matter, I have never yet found any difficult to arise from the fact that such duplications exist.

That, Mr. Cohen, is a general statement about our policy and attitude. Maybe you would want to ask questions after you have gotten the opinions of others. I will be glad to try and answer them when that time comes.
MR. COHEN: I would like to stay with that one point for the moment. Just by way of response to what you have said, it is true that the form and the main burden of the discussion in 1955 with respect to the securities problem stemmed from a concern whether or not the ADR could, unwittingly or otherwise, be used as a procedure to introduce into the American market securities which should be registered -- securities stemming from someone acting as an underwriter for an issuer or someone who might have a control relationship with an issuer. This was, of course, the principal area of concern.

This other factor I have mentioned -- that is, whether or not the ADR would be a means whereby a number of securities as to which perhaps information was not generally available would be introduced into the American market -- was a matter of concern to the Commission insofar as any action it would take was an action which should be taken in the context of the general public interest and the protection of investors.

There was an area of some doubt and perhaps alternative procedures available to the Commission, I think the Commission in being persuaded to adopt the procedure which it did was affected strongly by the arguments which were presented to the Commission at that formal conference and at conferences before and after that, that the ADR device
was sought largely to provide more ready transferability in trading and securities which already enjoyed a market in the United States.

To that extent, it was in the interest of investors who already were financially interested in such companies and in the interest of other investors who might wish to acquire such an interest.

I merely want to make that perfectly clear for the record.

MR. BRUMFIELD: I understand that. My point is only that you cannot tear the web and completely dissociate the existing owners of securities from those who might become owners, because otherwise the Commission would have seen fit perhaps, in promulgating Form S-12 to limit its usefulness to stockholders of foreign companies in this country who already owned their shares.

The Commission did not attempt or even suggest putting that kind of a limitation on the use of S-12.

MR. LCDI: I wonder if I could add just a little. Although I didn't have much participation in the discussions in 1955, I have the impression that this was considered at that time as primarily a problem arising under the Securities Act, the question of obtaining the registration and avoiding the distribution of unregistered securities, while at the same time, as you say, providing a convenient mechanism for
trading.

But there are questions, particularly when you get into the area of introducing securities not previously traded here and securities from countries where there are certain special problems -- questions arising under the Securities and Exchange Act, both with regard to the conduct of orderly markets and the question of whether, even assuming that there is no registration problem under the Securities Act for the underlying securities, the disclosures are adequate to meet the responsibilities of brokers trading in the ADR's in the market here who have an obligation to make disclosure to investors, who might be lulled into the belief and expectation that this problem under the ADR and 5-12 is resolved.

MR. BROWNELL: Of course I don't know what went on inside the Commission. But as far as those of us who participated in the 1955 hearings and the discussion afterward are concerned, you are correct that we were studying the problem primarily from the point of view of the 1933 Act -- although I assume everyone always had in mind the question of the 1934 Act in trading.

But the record of the 1955 hearing shows that the entire discussion revolved around problems of the 1933 Act.

MR. COHEN: Let us answer that, and I don't want to engage in any great discussion about what happened in 1955. But you will recall that a certain bank had acted in related
upon a letter that had been issued some years earlier, which letter was concerned solely with the problem of registration under the 1933 Act.

The conference followed closely upon a reconsideration of that particular problem. The persons in attendance at the conference were directing themselves primarily to that issue, and the conference finally was designed to place the Commission in possession of information and arguments that the banks and other people wished to bring to bear on that particular point.

I merely indicate that I thought I had made it perfectly clear to everybody who had an interest in this matter that the Commission's concern was somewhat wider in scope, and that in adopting S-12 it had in mind these various considerations which Mr. Loomis has now spelled out in some detail.

I might add in that connection that some of the problems that we may discuss under the S-12 in our opinion relate also to the underlying securities. There are problems of the character that Mr. Loomis has discussed. These are not problems created especially by Form S-12 or the ADR arrangement; but to the extent that the ADR arrangement encourages greater American participation in securities of this character, it sort of widens the ambit of the problem, if there be a problem.
MR. BROWNE: Mr. Cohen, I don't want at this stage to attempt to talk too much because I know there are other gentlemen who would very much like to be heard on this matter. But let me say only by way of supplementing what you have said that I remember very well that you and Commissioner Woodside who perhaps were more actively engaged in the details of the 1955 operation than other members of the staff with whom we were in contact made it very clear at the time Form S-12 was adopted that you were breaking new ground, and the subject was one that you were going to follow closely.

Consistent with that desire on your part, Morgan Guaranty Trust Company of New York and my firm have made it a practice, as I think you will recall, of coming down at periodic intervals of a year or a year and a half or two years and informally discussing with either Commissioner Woodside or yourself and members of your staff the way in which the S-12 machinery was operating.

We gave you figures showing the amount of ADR's that were outstanding in the various issues, and we had full and frank discussion: -- always mindful of the fact that this was a piece of machinery which should be operated, at least as far as we were concerned, strictly in accordance with the policies that you wanted to lay down.

Nothing formal was ever given to us by you or Commissioner Woodside or any of the others at that time,
but the opinion was expressed that the procedures as we outlined them to you were in accordance with your general intent. We hope always in connection with any ADR matter to keep you fully posted on some of the policy questions that are here today. We appreciate calling for your consideration and we very much want to talk them over with you and come to a joint conclusion as to what the best thing to do is.

MR. LOOMIS: I wonder if I could just add a quick note to what I said before. I noticed an advertisement of the local office of Merrill Lynch, which appeared in the last couple of days, to the general effect that any foreign securities issues anywhere in the free world they would probably be prepared to handle; and then they referred to ADR's as a means for many of these transactions -- generally making it look rather simple.

I am not criticizing this advertisement, but it does indicate a growing, perhaps, trading problem.

MR. COHEN: Mr. Brownell, I just want to say one further thing. I didn't intend by that I said to be critical of Morgan Guaranty or what Morgan Guaranty has done. I really used what you have said as a springboard for developing the problem here -- if there is a problem; or at least explaining what the dimensions of the problem are or maybe.

Maybe it is the turn of some of your colleagues.

As far as I am concerned, since Jim started this thing, maybe
he ought to take over. Mr. Austin. From this point on, would the speaker identify himself for the record. I am not attempting in any way to control this discussion or to suggest that should be said.

I would like the four points -- if there be four points -- discussed in that order only so we may have a coherent record. But apart from that, bring in anything you think relevant at all.

MR. AUSTIN: My name is J. A. Austin, Vice President of Irving Trust Company. I want for the most part to identify myself with Mr. Brownell's remarks as to the area which we envisage as having been covered by the AD2 and Form S-12 as developed by the Commission.

We have, I am satisfied, taken such means as were available to us to satisfy ourselves in every instance where an ADR was issued by Irving Trust Company that it related solely to a trading situation or an underlying security where the (4)(1) exemption was available.

We have not consciously, I think, or unconsciously, utilized the ADR to introduce trading into this country.

I am a little bit mystified myself as to the point at which perhaps we have to limit ourselves. I take it that the (4)(1) exemption, if it is available, we will say, to 1000 transactions of a given security a month, is also available to any one, ten, or one hundred of them. So it raises the
question in my mind at least as to whether (4)(1) is available not only for existing trading but for such trading as might exist, present or absent an ADR.

I have a little difficulty in that area.

MR. COHEN: Do you want me to respond to that?

MR. AUSTIN: If you would, yes.

MR. COHEN: I perhaps didn't make it clear. There were two problems, I think, that the Commission considered in determining whether or not it should adopt Form S-12.

The first problem was the problem under the Securities Act, the registration problem. I think as Mr. Brownell has indicated, and as you suggested, despite your mystery, if there is an exemption, there is an exemption whether it is ADR or whether it is anything else, whether it is ten shares or a thousand shares.

So that just by way of example, if Japanese securities were to be brought into the United States -- forgetting ADR's for a moment -- under circumstances which did not require registration, there is no registration problem which would prevent that from happening.

I think, however -- and I want to clearly emphasize this -- that anyone who is responsible for causing the trading -- I am talking now about professionals and banks, to the extent that they assist in this result in securing trading in the American market or widening the scope of it -- may have certain
duties which spring from other sections of the Securities
Act as well as the Exchange Act with regard to disclosures
to investors and for the provision of information and
things of that sort.

I merely want at the outset to indicate that,
in adopting Form S-12, the Commission took into account these
problems. In resolving those problems in favor of the
desire of the banks and the trading community for a revised
form such as Form S-12, the Commission was persuaded--
wisely or otherwise; that is open to question--that it was
understood that Form S-12 was to be used largely to deal
with the problem of securities that are already traded in
the American market, although it was recognized that the ADR
arrangement might widen the area of trading and maybe introduce additional securities.

But it was not intended to bring to the American
market in any major way additional securities as to which
this basic problem of the man engaging in trading would have.

In other words, this was a problem of the Commission's
responsibility as an agency of the government concerned generally with the injunctions and the statutes to assure that its
actions are in conformity not only with the statutory require-
ments, but the standards of the Act as well.

Those standards are reflected in a web of provisions
which were designed to secure the results that I have mentioned.
That is what I meant.

MR. AUSTIN: I certainly agree with you, Mr. Cohen. I might say, so far as we are concerned, that self-interest would have dictated that we would not want to make ADR's available in cases where there was not established trading. Whether or not the fact of the introduction of an ADR where trading was established resulted in more of it we something that we all foresaw it might. It has in many instances resulted in less of it for reasons not having to do with ADR's.

MR. COHEN: I want to emphasize what I said a few minutes ago. It was recognized that the ADR would in some way stimulate investor interest in securities. Perhaps the answer is that we didn't envisage -- I may be wrong about the facts -- quite the stimulation that it has received.

I think what we are doing here today is learning more about the problem to permit us and the Commission to assess the problem, if there is one, to determine whether or not this ADR or S-12 arrangement needs reconsideration and review, whether other procedures are necessary, or whether everything is going along in such a happy fashion that the Commission and the industry can feel proud that the proper form is the S-12. That is it.

MR. AUSTIN: I think we understand that. Insofar as disclosure problems are concerned -- and I have in mind now
particularly the Japanese issues which are the subject
initially, I take it, of these hearings; at least they
bring the problems to a head -- I believe it is a fact so far
as we are concerned at least that we have not yet been satis-
fied that we have satisfied the Commission or members of
the staff as to whether disclosure on the registration state-
ment relating to Japanese securities which we have filed
have been fully met.

That was a subject that I think as a matter of
practical consideration we let ride until the S-1 became effec-
tive. I think we all felt that that, being a full registra-
tion under the Act, could be the bellwether here.

That of course, as we recognize, stands on its own
feet insofar as the two million shares of Japanese stock
are concerned, then one registers with an underwriter.

I think, however, there was still open the dis-
closure problems relating to all of the ones on S-12, whether
effective, or effective subject to a delaying amendment.
That is a matter which is, I take it, one of the reasons
why we are here.

MR. COHEN: Yes, indeed. Have you concluded whatever
you thought you ought to say with regard to the first prob-
lem?

MR. AUSTIN: This aspect of it, yes; I have.

MR. COHEN: I have been led to understand -- I am
not sure that I have all the facts -- particularly with respect to the ADR's for Japanese securities the demand for ADR's in this area was not a demand voiced by the trading community, but that this was something the banks undertook on their own initiative.

If that is wrong, I would like to get the facts to the extent that you or any of your colleagues can deal with the situation and perhaps explain how the Japanese ADR's case about, because the filings were pretty close in point of time.

MR. AUSTIN: Let me answer that by saying, Mr. Cohen, I am not aware of a specific demand from the trading community to use your language -- for an ADR in the case of -- and I limit myself to our own action -- those registration statements which we filed for five different Japanese securities.

We have filed -- and I want the record to show this -- for Fuji Island Steel, Hitachi, Limited, Mitsubishi Chemical, Nippon Electric and Mitsubishi Shipbuilding.

During fiscal 1960 there were outstanding in foreign holdings; in the case of Fuji in the amount of 660 million shares, 320,000 shares held abroad, most of which we are advised was in the United States the number of stockholders being 539.

In the case of Hitachi, out of a total number of shares outstanding of 600 million, there were during fiscal
1960 4,494,000 shares, with 1620 stockholders among foreign holders, most of them in the United States.

Mitsui Shipbuilding, out of 90 million shares outstanding, 293,000 shares among the foreign holdings, with 70 stockholders.

Mitsubishi Chemical, out of 119 million shares, 495,000 shares here, with 139 stockholders.

And Nippon Electric, out of 160 million shares, 35,200,000 shares here, with 92 stockholders.

On the basis of that, we filed the ADR. We satisfied ourselves as to that type of distribution, that availability for trading in this country before proceeding. I will not go so far as to say that, in preparing to discuss this and preparing to file S-12 registration statements covering these things, that we consciously answered a conscious demand by the trading community. But we assumed there was such a demand.

MR. COHEN: May I ask this in regard to the Japanese situation. In respect to other ADR arrangements which Form S-12 registration is filed on behalf of by Irving Trust Company, did those situations come about as a result of a demand by the trading community for an ADR, or again has that been something that the officials of Irving Trust Company have undertaken to do for reasons similar to those you have just expressed?
MR. AUSTIN: I would say in most of the cases of the European ones, there has been a demand expressed to us by the trading community.

MR. COHEN: To this extent, the Japanese situation is different than the other ADE's.

MR. AUSTIN: I think so; I think so.

MR. COHEN: Have you anything more you want to say at this point?

MR. AUSTIN: Not at the moment, but I will on other aspects.

MR. COHEN: May we pass to the next item?

MR. CARR: My name is William D. Carr. I am Vice President of the Chemical Bank and Trust Company. We recognize the policy of the Commission that ADE's shall not be used to introduce de novo trading in foreign securities in the American market.

We satisfy ourselves in each instance that there is trading before we file the S-12's.

Actually, hearing out what Mr. Austin said, the almost invariable pattern is that we get calls from dealers telling us that there is trading in a certain security, and they think trading would be facilitated by the ADE procedure.

I also agree with Mr. Austin that the Japanese situation is a little different. I believe there the pressure originally came from Japan rather than from the trading
community. I believe a visit was made a year or so ago to Japan by one of the banks, and that did stimulate a tremendous interest -- as a matter of fact, a petition among the various Japanese companies -- to acquire face through the ADR procedure.

I think to that extent the Japanese situation is different. I will reiterate that in all other cases the initiative comes from the trading community.

For the record, I would like to say so far as our Japanese filings go, we have filed for Tokyo Shiono Electric Company, of which there were 1216 holders as of January 25, 1961, which is the latest figure I have here. Those shares are worth at the then market price around $3,690,000.

Yawata Iron and Steel Company, 1160 holders; market price, $1,290,000. Mitsubishi Heavy Industries Reorganized, 355 holders; market price, $333,000. Mitsubishi Shoji Anisha, 118 holders; $288,000 market price; Harumen Oil, 77 holders; market price, $82,000.

I believe that is all to that particular point.

MR. COHEN: Do we have any other banks here?

MR. ROBERTSON: I am James E. Robertson, First National City Bank of New York. Let me be quite frank in saying that we are comparative newcomers to the ADR field.

We are an international bank. We are the oldest and largest American bank in Japan. We felt that, with the
tremendous interest in Japanese ADR's, to preserve our competitive position we should go into the ADR arrangement.

We did, however, verify before filing on the five issues which we have filed with the Commission that there was a substantial foreign interest in the shares of those five ADR candidates.

We are not duplicated on any of our issues. We will not duplicate any ADR issues.

MR. COHEN: Do you have any figures comparable to those of Mr. Austin?

MR. ROBERTSON: On Yawata Iron and Steel, 947,000 shares. On Hannai Electric Power, 403,000. On Mitsui and Company, 627,000. On Tokyo Fire and Marine, 442,000. And on Nippon Tool, 2,570,000.

MR. LOMUS: Do you have any figures as to the number quoted?

MR. ROBERTSON: No, I don't at this time. I can provide those later if you wish.

MR. LOMUS: We would like to have those.

MR. COHEN: Just so we have it in one place in the record: Mr. Brownell, do you have comparable figures?

MR. BROWNELL: Mr. Moxley may have them. If he hasn't got them with him---

MR. MOXLEY: No. You have the figures because, of our five accounts, four of them were duplicated. You
already have the figures on four of them attached to the
statement on Ansonia. Of course that is our own account.
There is no question of duplication because there we have
the public offering of the two million shares.

I would like to say this, Mr. Cohen, on Japanese
ADR's. This was not something new with Morgan Guaranty
Trust Company of New York because as far back as the latter
part of 1955 and the early part of 1956 we visualized there
there was going to be, at least in our opinion, a terrific
economic expansion in Japan.

It seemed to us that the building of economic ties
between Japan and the United States had become closer --
which I think since has become borne out. In 1956 we took
up with our good correspondent back over there the question
of the mechanism of creating ADR's for Japanese securities.

There was a terrific language problem in getting
the correspondence back and forth that left a lot to be de-

So while we saw continued American interest in
Japanese securities, we did re-approach the problem just a
year ago. I am sorry to say in a way there was publicity
given to this question in Japan that was out of all proportion to the purpose for which it was intended. But these things got out of control over there, and I'm sure no harm was done.

I just wanted to give you that background so you would know that this was not something we have not been thinking about and have not been studying and just picking out of the air quite recently.

MR. COHEN: I would like to go back to Mr. Austin. I think these figures represent foreign holdings of Japanese securities?

MR. AUSTIN: That's correct.

MR. CARR: American holdings.

MR. COHEN: I think he said foreign. That is what I am trying to clarify. You said they were largely American?

MR. AUSTIN: Largely American.

MR. COHEN: How did you determine that, Mr. Austin?

MR. AUSTIN: By the advice of various houses on the street who were active traders in these shares.

MR. COHEN: You actually did talk to the various houses?

MR. AUSTIN: Yes, we did. That is our only source of that information.

MR. COHEN: Mr. Carr, did you want to add something?
MR. CARR: Yes. We were told by the Japanese securities houses that at least 95 percent of these figures I gave represent American holders. In essence they are American holders.

MR. AUSTIN: We were told the same thing.

MR. ROBERTSON: That was also the source of our information. Those are foreign holdings, not broken down.

MR. COHEN: You said you tested the market. Is that what you meant by testing, or did you have something else in mind?

MR. ROBERTSON: We talked with the securities houses, primarily the Japanese securities houses.

MR. COHEN: For what purpose?

MR. ROBERTSON: To determine how many of those shares and what proportion were held in this country.

MR. COHEN: Did your testing encompass any other inquiry?

MR. ROBERTSON: Along what lines?

MR. COHEN: I am not sure; I am asking you whether there were any other lines.

MR. ROBERTSON: No. I think that is the only test we made.

MR. AUSTIN: You understand, Mr. Cohen, that these Japanese shares are not available physically in this country. They remain in Japan.
MR. COHEN: Are there any other banks represented here?

MR. TRAVERS: I am Edward Travers, Vice President of the Manufacturers Trust Company. I appear as an observer. We are not in the ADR situation as yet, but we may be.

MR. COHEN: If you have any views, Mr. Travers, that you would like to express, we would like to have them now on this particular point.

MR. TRAVERS: I don't think I am qualified to express any views. I would rather sit and listen, I think.

MR. COHEN: All right, sir. Mr. Brownell, you suggested earlier you would be glad to tell us what the procedures of the bank are with respect to the problem of determining or assuring yourself that there is no registration problem when you engage in ADR arrangements.

I don't know whether you prefer to discuss that now or prefer to provide us with a memorandum in which you would indicate what the procedures of the Morgan Guaranty Bank are, which we would then make available to the Commission.

- If that is the procedure you would prefer, I will accept that. I make this statement to all you other gentlemen, that if you want to tell us here as a matter of record how you do this and that steps you take, we would be glad to take it.

But if, on the other hand, you prefer to submit that
by way of separate memoranda, that is agreeable to me.

MR. BROWNELL: If I may, I will do both -- but make
my oral statement very brief in view of your giving us the
privilege to supplement it in any memorandum more specifically.

MR. COHEN: I recognize there is a certain difference
of view around this table. It is not necessary for our pur-
poses today, I don't think --

MR. BROWNELL: In order to cover the point you have
mentioned, Morgan Guaranty never goes forward with an ADR
issue until they have set up machinery, either through one
of their branches in Europe -- those branches are located in
London, Paris and Brussels -- or through correspondent banks
whereby the branches or the correspondent banks keep in
close touch with the issuer so that they will become imme-
diately familiar with any new offering of securities.

Morgan Guaranty is also in close touch in all cases
with the issuer. They do not go forward with an issue until
they have established contact with the issuer. They receive
notices, of course, in their capacity as record holders, of
the underlying shares -- which in a great many cases would
put them on notice of any new issues of securities.

They make careful inquiry to assure themselves
that there is no control situation existing. In the case of
these large companies, as I am sure you know, it is not very
difficult to determine whether or not there is any
controlling block -- as this Commission itself uses the word "controlling."

Where new issues originally offered in this country that would have to be registered are involved, the bank does not accept deposits of the new stock until the statutory period has elapsed; and also even goes so far as to make inquiries to be sure that there are not unsold blocks in the hands of dealers or other blocks which over here would come under the general heading of "hot stock."

We have also considered getting either the depositing stockholder himself or the broker or dealer acting on his behalf to file a certificate which will certify in language following the language of the Act that the stock being deposited is not stock that would have to be registered or sold publicly here.

We are giving particular consideration to requiring such forms of certificate in connection with Japanese issues, and all others, as Mr. Hoxley points out. We will be more than glad, if the Commission is interested, to submit the form that we propose using -- copies of which I have here with me, for such certification as a further preventive of the issuance of ADZ's against "hot stock."

The problem is somewhat facilitated in the case of many of the foreign countries by the fact that new offerings of securities are represented by allotment letters and other
pieces of paper which can be readily identified, and that
the certificates for the new stock itself don't become
generally available until after the distribution is com-
pleted, when the stock is no longer "hot."

MR. COHEN: We would like to have copies of the
documents.

MR. BROWNELL: I will be glad to give them to you
at the close of the hearing.

MR. COHEN: Thank you.

MR. AUSTIN: I would like to say, Mr. Cohen, with
respect to that, we went further at the time we filed our
original ADR's and had as an exhibit to the registration
statement an enlargement form which paraphrased the language
of the Act, which constituted a certification by the broker
or dealer depositing the underlying shares.

We made sure by our London agent that the stock
was not within the category that would be required to be
registered under the 1933 Act. Some years subsequently we
discovered that we were alone in that requirement; that
it was considered onerous by our English friend; and we amended
it out.

I regret that we amended it out, and we are going
to reinstate it, perhaps in somewhat simpler language. In
fact, I think we have submitted to the Commission the kind of
language, somewhat boiled down, which we will henceforth
require as a further assurance to us that we have made the various attempts at assurances that Mr. Brownell has described as a further assurance in written form on this point.

MR. COHEN: Did you say that the boiled-down new version has been filed with the Commission?

MR. AUSTIN: Not filed; it was submitted, together at the time we submitted suggested language for a further legend on the Japanese agent.

MR. COHEN: Mr. Carr, do you want to add something to this discussion?

MR. CARR: I would say generally that our London office and our London depositary and our New York and other depositary banks in the country are alert to the problem and they will not accept stock which they know to be "hot stock."

As far as the rights offerings go which are fairly numerous in some of the foreign countries, it isn't too much of a problem. It is a slightly more difficult problem to tell whether a particular lot of stock comes from control or not; but they are alert to the problem and I think they have solved it, so far as I know, in every case.

There was some discussion a while ago among the four banks as to a form of broker certification. I want to reiterate what Mr. Austin said, that it has been submitted informally to you and we will be very glad to cooperate with you in seeing that those are filed before ADR's are issued.
MR. AUSTIN: I would like to add simply, Mr. Cohen, that the original allotment form which we have filed still obtains as far as we are concerned.

MR. ROBERTSON: We will follow the same procedure, Mr. Cohen, and get a representation from the broker before he takes delivery of the ADR -- the representation to be in the form previously submitted to the Commission.

MR. CARR: There is some question of whether the representation should be made by the American dealer and submitted to the American bank at the time ADR's are issued; or whether it should be as Irving originally had it, by the foreign depositing broker depositing the shares abroad.

I don't believe we have yet resolved that problem among ourselves.

MR. COHEN: If you are asking me for a tentative expression of view, I would think the American broker should do that.

MR. CARR: We have come to that tentative conclusion at least three of us have.

MR. COHEN: Coming back to Mr. Brownell with reference to the allotment letters: Do I understand properly that you had reference to those in regard to the possible question whether any of the shares come from a person who may be "an underwriter" as distinguished from a control person?

MR. BROWNELL: I had reference more to the period of
time that had elapsed between the date of the original offering and the date of the tender of the securities for deposit against the issuance of an ADR, because the certificates of new stock under the practice of foreign countries don't get out into circulation into the market for a period of time.

In the meantime the allotment letters represent the rights. It was the period of time I had in mind.

MR. COHEN: Then perhaps you ought to pursue this a little further. You have talked about assurance that the shares don't come from control sources or persons having a control relationship, which I think is more nearly the statutory test.

What steps do you take to assure yourselves that the shares or securities are not coming from a person who may be a statutory underwriter?

MR. BROWNELL: We take steps to become informed when there is any public offering of shares. We are alerted when we have word of a public offering. You broaden the question to include someone who might be in a position of underwriter on a small scale where he purchased securities directly from the issuer with a view to distribution; but there was not a generally recognized public offering of which our representative would have notice.

MR. COHEN: Yes, sir.
MR. BOWEN: There might be a possibility of that kind. That is one of the reasons why we are proposing to adopt the form of certificate. I doubt very much if the number of shares involved in such a situation would be very large, but it is to give further protection against that kind of thing that the bank is going to make use of the form of certificate to which I have referred.

MR. COHEN: Mr. Austin, is your enlargement form designed to cover that situation as well?

MR. AUSTIN: Yes, definitely. But there is a further assurance as far as we are concerned, Mr. Cohen, and that is this. We have a London agent — one of our correspondent banks, the National Provincial Bank. There is on file with the Commission as part of each registration statement the agreement between ourselves and our London agent.

They in that agreement undertake to see to it that the category you mentioned is not made available for issuance.

MR. COHEN: You understand, Mr. Austin, that I am familiar with that. We have discussed it many times. I want to get it in this record.

MR. AUSTIN: I understand.

MR. COHEN: Do any of the banks want to speak further to this problem before we pass on to the trading community?

Mr. Fry, I take it you are a representative of the
trading community. Will you identify ourselves and speak to this problem or any aspect of it that you think would be relevant to our discussion and helpful to the Commission, to the banks, and -- more importantly -- to the investing public.

MR. FLOY: I am E. L. Froy, Chairman of the Foreign Securities Committee of the NASD, and a partner in Abraham & Co., members of the New York Stock Exchange.

Before I answer your question, may I say that we are most grateful that S-12's are in existence. We are also very pleased that we have the facilities of ADPs.

Before I answer any further questions, may I for the benefit of those who are not members of the NASD take a few seconds of your time to explain the purpose of our Association. The banks are not members of the NASD. This, I am sure, will assist you to understand why we must first and foremost fight for the protection of the public, the final end of the chain of all our projections.

The purpose of the NASD is to promote, through cooperative effort, the investment, banking and securities business; to standardize the principles and practice; to promote the high standards of commercial honor; and to encourage and promote amongst members observance of Federal and State security laws.

Secondly, to provide a medium through which its
membership may be enabled to confer, consort, and cooperate with Government and other agencies in the solution of problems affecting investors, the public, and the investment securities business.

That is as far as I will go about the NASD.

I believe I will not have to state -- as was recently done by a member of the SEC in answering questions of Lord Jenkins in London -- that the remarks that are made here today are mine and not necessarily those of the Commission; nor that they do necessarily reflect the views of the Association or my colleagues on the committee.

We feel that the discussion which has taken place so far is probably in an area which is very surprising. We feel that the issuance of ADR's by the banks is a service of which we avail ourselves and pay for it very dearly. The banks are doing a very useful service, but they are under the impression that the broker-dealer community would be completely lost if ADR's would not be issued by banks.

I believe there are other facilities. I believe that the broker-dealers could get together and create their own issuing machinery, and would run this on a non-profit earning basis. There is absolutely no reason why we shouldn't arrive at that point; and the 3-12's which are available could be filed by such an organization and the public would have the ultimate benefit of such an arrangement.
We have been told that the banks feel that competition is good for business. The first ADR was issued around 1925, and competition has been going on ever since. I do not believe that the ADR rates through competition have ever been reduced.

We on behalf of the public are paying for this facility.

You have discussed in particular Japanese ADR's today. I maintain that the brokerage community did not ask originally to have the facilities of ADR's until such time as we would file that we could maintain an orderly market and would in no way deceive the public. By deceiving the public, I mean we should have facilities to explain in simple language the risks they are running in acquiring such foreign securities.

We have so far succeeded in doing this in most other foreign securities prior to the issuance of ADR's because -- as Mr. Cohen puts it -- 'there are two different animals who are dealing in foreign securities: those who originally buy foreign securities before ADR's are issued, which is the result of our discussions explaining certain reasons why they would like to be investing in foreign securities; and those investors who buy ADR's because they are under the impression that this instrument has been created with the permission of the SEC and with the help of the NASD
and with the great assistance of the banks.

This is probably creating a very false impression to the investor. It does make our position extremely difficult because the type of investor who buys an ADR is generally the small investor and not the very large investor.

The large investor does not feel that he has to avail himself of the facilities of the ADR's. He feels he can save this money and have even the benefit of other facilities which he could not have under the ADR arrangements.

I don't think I want to say any more about this situation now because the question of duplication, I am sure, is going to come up later.

I would only like to point out that we are actually the beneficiaries of those ADR's. But I think the banks are under a great misapprehension if they think they can force our hand the way they have been doing it in the case of Japanese securities.

MR. COHEN: Did you want to respond to that statement, Mr. Brownell?

MR. BROWNELL: I don't want to respond to most of it because I think most of it is completely outside of the four questions which you said we were here to discuss.

But Mr. Froy did indicate that he thought the use of ADR's for Japanese securities involved an element of deceit because it was not possible to expose certain
characteristics of Japanese stocks in connection with the ADR's.

I point out first that our proposal involves a great deal more disclosure than is required under any listing proposal or practice with respect to the sale of Japanese stocks that are not represented by ADR's; and I wanted to ask Mr. Froy if the comments that he made under that rather difficult word "deceit" which apply to ADR's would not equally apply to the sales in this country of shares in Japanese companies.

MR. FROY: I did try to make this question very clear. Maybe you haven't heard. I explained it. If we try to sell or deal in underlying securities, that means originally Japanese securities, we are dealing with a different type of investor who invariably gets a full explanation from us verbally when he wants to take an interest in foreign securities.

MR. BROWELL: Suppose some other firm does not confine itself to dealing with the large investor. Would the answer to my question with respect to then not be the same with respect to the sale of Japanese stock and with respect to an ADR, except perhaps in connection with the ADR there might be a greater disclosure than that to which you referred?

MR. FROY: Not on the ADR's which I have in front
of me. But in principle that is what it should be. But in our opinion it is insufficient. Besides, the average investor does not see the ADR probably ever.

MR. BROWNELL: But you do agree that the question you raised under this -- I think inappropriate -- word "deceit" would apply equally --

MR. FROY: You say we deceive?

MR. BROWNELL: -- to ADR's?

MR. FROY: No, because I have told you that in the case of the man who wants to invest in a foreign security, we would go to any length of time to explain to him the risks and the dangers and the restrictions. That is what we have in the ADR -- where the idea has been created that this is the New York market, which is an easy trading market, and you cannot go to the same --

MR. BROWNELL: Why couldn't you make exactly the same disclosure here with respect to the sale of an ADR that you would with respect to the sale of a stock represented by that ADR?

MR. FROY: Because there is a very much larger demand generally for an ADR than there is for the normal share before an ADR is issued.

MR. COHEN: May I say two things about this discussion. First, Mr. Froy attributed to me some statement about two different kinds of animals. I am sure all of you understand
I was not referring to any investor -- whether he is sophisticated or unsophisticated -- as an animal. The second thing I want to say is that, while I did list the four points that I thought should be discussed here -- and I should have made this clear at the outset -- I didn't intend to limit our discussion to the four points.

I think everything that is relevant to the ADR situation should to the extent possible be developed in this record. For your information, I have in mind that this record will be provided to each of the Commissioners so that each one of them can consider the problems to the extent that we identify and discuss problems here today.

I think our reference to two different situations related to a discussion I had with Mr. Froy in which I had in mind that there may be a distinction so far as investor interest is concerned and public interest is concerned between the professional arbitrager, who theoretically at least is sophisticated in all of the nuances of the problems; and the ordinary investor, who may be considered part of a mass market or what may be hoped to be a mass market, and the sort of thing Phil Loomis referred to when he adverted to the advertisement of Merrill Lynch.

I don't mean by this, nor did he mean by this, to suggest that Merrill Lynch is improperly advertising. But it is an indication of the case -- and there is no reason why
it shouldn't be carried on this way -- to attract a wider interest and therefore more of a mass market in an area which as I understand Mr. Froy, has traditionally been confined to a smaller and a more sophisticated market.

I think that is the point that we were discussing. I didn't mean to quarrel with anything you said, Mr. Brownell I merely am trying to explain the allusion.

Are there any other representatives here of the trading community who wish to be heard on this point?

MR. FROY: I will agree to state the numbers of the Foreign Securities Committee with reference to their feeling about Japanese ADR's from our minutes, which are confidential, by the way, and are not published otherwise, or are not supposed to be published.

MR. BEEN: My name is Howard Been. I am the Secretary of the Foreign Securities Committee of the National Association of Securities Dealers.

MR. COHEN: Before you proceed, the reference you made to confidentiality: This is not a public hearing in one sense, but there are no restrictions on what we say here today. Of course the Commission will have it, and what we say here today may become a matter of public record in another forum.

MR. FROY: I have permission from our Executive Director to have these minutes read, if you would like.

MR. COHEN: Thank you.
MR. McHEN: There were discussions with regard to the issuance of ADR's, and particularly the Japanese regulations. The entire Committee voted as one in favor of this resolution: Write a letter to the SEC explaining the feeling of the Committee that it is necessary for changes to be made in the existing Japanese regulations to protect the public.

The regulations at present are not acceptable to broker-dealers who have to make primary markets in these securities.

At another meeting, June 2, members agreed unanimously to send a telegram to the SEC suggesting the Sony registration be approved as a pilot issue; the approval of the issue of all of the ADR's to be held up until the foreign exchange regulations could be eased, until the Committee could evaluate the Sony operation.

I may be going ahead too much. There are two other meetings with regard to duplication.

MR. FLOY: We will wait until we come to that.

MR. COHEN: Thank you. Is there any representative here of a Japanese securities house? Is there anybody here authorized to speak on behalf of the Japanese securities houses or a Japanese issuer or any representative of the Japanese Government here, or any part of that Government?

MR. JAMES DOYLE: I think perhaps the record should show that the absence of these interests which you have just
mentioned is not due to their lack of interest in this subject, but perhaps because it wasn't understood that their interests should be expressed here at this time. I don't know that any invitations were extended to them.

I think the same might be said for the section of the trading community that is represented by that ad. They obviously have their points of difference with the presentation which has been made.

MR. COHEN: May I take advantage of the fact that you did volunteer your statement. If you are familiar with the points of difference and care to express them, we would appreciate having you do so.

MR. JOSEPH DOYLE: I am not, Mr. Cohen. I am a representative of the First National City Bank here; but I think it is proper that the record not leave an indication that the Japanese securities houses would not like to express a presentation on whatever their point of view is. I don't know that it is.

But they are simply not here, and I don't know that they were asked to be here. Merrill Lynch, of course, couldn't have known that its name would be discussed.

MR. LOCKIS: Since Merrill Lynch's name was discussed, I think it only reasonable to say that that advertisement contains no mention of Japanese securities. I presume it was not addressed to that particular problem.
MR. PROY: May I just say that one of the partners of Merrill Lunch and Company is a member of our Committee. He was of the same opinion as the one stated by me and covered by the minutes read by Mr. Egan.

MR. COHEN: Mr. Proy, may we take advantage of the fact that you are probably most familiar with the attitude of the trading community. If there are minority views which you think might be helpful to the Commission in this area, despite your disagreement with them, if you do disagree with them, we would appreciate it if you would indicate what the minority views are.

MR. PROY: Mr. Cohen, I believe Mr. Hourley is more qualified to answer this question, as he has been in touch with the trading community actively over the last two weeks to cover their views and have the necessary information at his disposal.

He even contacted firms who are members of our Committee. I think his information is more accurate than mine.

MR. COHEN: Before I ask Mr. Hourley whether he wishes to address himself to this point, I want to deal with another point that has been made. I issued no written invitations to anyone. I did indicate -- and I think this received some wide circulation -- that I would appreciate those of you who are interested in this problem making known the fact that
we were going to have this conference, and that we would like to have in attendance at the conference anyone who might bring to the Commission information or arguments which were relevant or might be helpful to a consideration of the problem and resolution of the problem.

We did not intend to exclude anyone. I think that I indicated to Mr. Froy that anyone who wished to come and express a view was welcome. If this did not receive as wide circulation as I thought it had, then I am sorry. But we didn't intend to exclude anyone and had no such intention.

MR. LOUIS: It might be mentioned in that connection that there was an article in The New York Times last Sunday which reported that a meeting with reference to Japanese ADR's was going to be held -- although the article didn't extend a public invitation to attend.

MR. COHEN: Mr. Stevenson, did you want to say something? Would you identify yourself?

MR. STEVENSON: I am a partner in Sullivan and Cromwell. We represented the managing underwriters in the Sony financing. One of the managing underwriters was, of course, a Japanese securities firm.

One point that I would like to make from the standpoint of managing underwriters of Japanese securities is that ADR's are of course very useful in connection with a public offering of Japanese securities. I think there is practically
no opposition on that point, that when there is a fully registered public offering it is a great convenience to the American purchasers who are receiving the new securities in having ADR's rather than in having the underlying shares offered.

I think it also may be said that the prospective investor has a better idea of what he is getting if there have been ADR's traded in the United States previously so that I think there is a certain plus that has to be weighed against some of these considerations that have been mentioned the other way in having existing an ADR market before a new offering of a foreign security is made.

I am not authorized as far as this particular hearing is concerned to speak on behalf of any of the Japanese firms, but it is certainly my impression that -- subject to any corrections that may later be made -- the ones that I talked to are definitely in favor of having ADR's as well as underlying securities. But I make that as an observation rather than as a statement on their behalf.

MR. COHEN: I would only add one further thing to this point that has been raised about attendance at this meeting. I now wish to extend to any Japanese firm or any other firm the opportunity to submit to us any memoranda that they think relevant or helpful in connection with any of the matters we have discussed today or any other matter
relating to the entire Japanese ADR situation.

MR. BROWNELL: Mr. Cohen, may I say a word?

MR. COHEN: Surely.

MR. BROWNELL: With respect to one of the things Mr. Froy has just said -- and of course this Commission, and I am sure everyone else here, has the greatest respect for an expression of opinion by any committee of the National Association of Securities Dealers -- I would like to take the time to go further into that resolution so we may clearly understand the reasons for it.

As I understood it from what Mr. Froy said of the effect of the resolution itself, the Foreign Securities Committee of the NAASD believes that the existing Japanese foreign exchange restrictions are not in all respects satisfactory from the point of view of American holders of Japanese stocks.

That was, as I understood it, the only reason that was given that prompted the request to the Commission that these American depositary receipts for Japanese securities not be approved or -- to state it more accurately -- that the registration statements regarding those ADR's not be allowed to become effective.

I would like to ask Mr. Froy if that is the reason. Also, if that be the reason, I would like to ask whether exactly the same argument would not apply to the purchase by American residents and citizens of shares of stock in
Japanese companies.

MR. COHEN: You have anticipated my next question. I would appreciate an answer to that, too, Mr. Froy.

MR. FROY: I do not think that I have a right to a newer this question because the authorization for those non-issued ADR's was held up by the SEC and only on advice of the NASD. But the final decision is with the SEC.

MR. COHEN: Maybe I misunderstood the question. I thought Mr. Brownell was asking another question other than that.

MR. BROWNELL: That's right.

MR. COHEN: Perhaps you will restate it yourself.

MR. BROWNELL: Mr. Cohen is quite right. You have not answered my question. I stated that it appeared to me from what you said that the reason for one delay, and the objection to the issuance of ADR's on behalf of your Committee, was the existence of certain Japanese foreign exchange regulations.

Since that is the fact, I ask you whether exactly the same objections and reasons wouldn't apply to the sale of Japanese shares that were not represented by ADR's.

MR. FROY: Mr. Brownell, I would very much like to answer your question, but that comes into an area which we will probably cover later -- and that is the question of duplication of ADR's where it is extremely important that this
question be answered in that connection.

Anyhow, the restrictions at the moment on foreign investments in Japan are so complicated that many of the professionals do not even fully understand them. If you read the disclosure on top of the Sony ADR, which was approved by the SEC, I would say that I have read the thing well over a dozen times and gave it to quite a few of my colleagues and none of them knew what it was really all about.

So how the investor could possibly feel that his interests are protected by this disclosure, I wouldn't say.

As we are trying to deal with the public, and as we are trying to protect the public, that is the only answer I can give you.

MR. BROWELL: Mr. Roy, I am not conducting this hearing and I am not in a position to request an answer to my question. But I submit that you haven't even attempted to answer it. Maybe you didn't understand it.

MR. ROY: I am not a lawyer.

MR. BROWELL: Do not exactly the same principles apply with respect to the sales of Japanese shares as apply to ADR's with respect to the kind of thing you have been talking about?

MR. ROY: Mr. Cohen answered this question previously. I can only repeat to you that in our opinion the investor -- and we will not use the word animal -- who buys a foreign
security is a different kind of person from the person who buys an ADR and a differently informed person.

This is not based on any contention of mine; it is based on certain years of experience in this business.

MR. BROUNELL: I won't attempt to cross-examine on that point. I think his answer speaks for itself.

MR. COHEN: Mr. Hoxley, it was suggested you might be familiar with the points of view of others trading which have not been expressed thus far.

MR. HOXLEY: First, I would like to state that Mr. Froy's statement is incorrect. While it is true that I did discuss the question with the broker community in New York, it was not on the point that Mr. Froy mentioned.

I canvassed the community on the question of duplication, which up to now I don't think has been brought to the table directly. So I don't wish to say anything on that right now.

MR. COHEN: I understand, then, that you are not in a position to speak to any points of view of traders in these securities with respect to the other problems that Mr. Froy mentioned, apart from the question of duplication?

MR. HOXLEY: I would make a general statement, that Mr. Froy and possibly the resolutions passed by the Foreign Securities Committee do not represent the opinion of the community on dealing in foreign securities versus dealing in
foreign securities in the form of ADR's.

MR. COHEN: Would you expand on that, please?

MR. KOXLEY: I think we are getting into philosophy on this question. When you go back to 1959, I think that probably there was a lot to be said that at that time a lot of the conversations might have hinged on then American-held foreign securities. But certainly all of us have witnessed where this American buying of foreign securities has increased tremendously.

I think it is a matter of opinion, but I believe you would have had that movement even in the absence of ADR's. It is true that ADR's have facilitated this movement inasmuch as it eliminated a lot of the hardships involved in dealing in foreign securities in the back rooms of brokerage houses.

Mr. Frøy knows -- and I am sure he will agree -- that ADR's have eliminated a tremendous amount of back room overhead and back room work. So I get back always that ADR's do not initiate American buying or American interest. ADR's follow it.

That is how simple this whole thing is.

MR. AUSTIN: I would like to say I endorse those remarks of Mr. Koxley and point out further that the mere existence of ADR's doesn't assure continued trading.

I want, for example, to see what happens to the ADR's in this country to see how quickly they are repatriated to
Holland.

MR. COHEN: We won't get into that problem. I think that is a problem of another character.

MR. FRY: May I just say one word more, because I don't want to appear in any way unfair. We had on our Committee originally a position from one or two members who felt that they could not go along with our views on Japanese securities because they happened to be underwriters in the Sony issue.

We fully agreed that this would prejudice their position as underwriters on one side and our position of issuance on the other side. So I think that answers your question within our small community.

MR. COHEN: Mr. Fry, would it be appropriate for you to identify the members of your Committee and the trading houses with which they are associated?

MR. FRY: By all means. A position came from Mr. John A. Nevis of Modell, Roland and Stone; and also Jack Block of Bear, Stearns & Co., for reasons which were not given. Those were the two positions.

But in all fairness I would also like to state those who were in favor of our resolution. Hugo Van Itallie, partner in Ballgarten & Co.; Derek Gezoek, who is present here, of Caull. Loeb, Rhoades & Co.; Max Halpert of Arnold, A. S. Bleichroeder & Co.; Hans Ben, New York Hanseatic Corporation; Jerome C. Cuppia, Jr., partner in Merrill Lynch and

To be very fair, we invited further to our meeting the following: Albert Dejong of Albert Dejong, Ralph Hillington of Carl Marks & Co. Walter Steiner of White, Gold and Co. Ernest B. Schwarzenbach of Smith, Barney, who naturally abstained because he is a chief underwriter of Sony. He was just present to cover our other discussions, and he was extremely helpful in everything which happened.

So those were the people present.

Mr. Cohen: Mr. Stevenson, do you feel impelled to answer any of the remarks made?

Mr. Stevenson: I can't answer completely because I didn't attend the Committee meeting. But it does seem to me that the present state of the record -- which held that these gentlemen were opposed in Mr. Troy's opinion only because they were underwriters -- is a little unfair to them.

I think they may have had other reasons for opposing.

Mr. Stevenson: My name is Edwin P. Stevens. Dear, Stearns & Co. is not a member of the underwriting of the Sony issue.

Mr. Cohen: I am Beres Grasscock of Carl II. Loeb, Braxas & Co. I would like to remind Mr. Troy that, at the particular meeting we are discussing, there was only one member of the Committee in opposition, which was Jack Novins of Medall, Roland and Stone. I think Mr. Troy listed
four. He is thinking of a subsequent meeting where the
problem concerning Sony trading was discussed. Am I
right?

MR. FROY: Yes.

MR. CENCOCK: The only opposition was expressed
by a member of Black, Roland and Stone.

MR. ICONES: I wonder if I could ask Mr. Froy one
other question. It may be anticipating what may be discussed
later.

Did the Committee in its consideration of this
matter consider not only the impact of those Japanese foreign
exchange restrictions, but also the problem that Mr. Cohen
referred to earlier, of these rights offerings of the
Japanese issues?

MR. FROY: Very much so. As we feel, and as ex-
perience has taught us, the only attraction to investing
in Japanese securities is you have the benefit of these
rights. Otherwise the foreign owner of securities would
have dilution of his capital, which naturally was an advantage
in a case where there were no ADS's and the individual was
doing it for his own account in Japan and he could exercise
his rights without our intermediary.

Therefore we felt that the Sony issue is a differ-
ent type, having fully registered for future rights issues.
In the case of those ADS's, you are really extending it to
your credit in Japan at the four percent rate against ninety
percent which we have to pay otherwise. This, I think, was
another consideration.

MR. BROWNELL: Mr. Cohen, we are getting into --
and I think very properly getting into -- the first question
on your list. I think we have pretty well exhausted for the
moment, at least, the fourth question.

MR. COHEN: The next thing I want to take up is the
first question anyway. I want to save the duplication prob-
lem for the last, since that might be the most interesting.

I am prepared now to deal with the first problem,
and that relates to the problems which an investor may encounter
when he purchases either a Japanese security or an ADR cer-
tificate for a Japanese security in regard to currency re-
strictions; restrictions on repatriation of funds, whether it
be capital or income; and springing also from the current
practice of Japanese industries to make rights offerings on
a frequent basis and on a basis which demands some action
on the part of the holder to prevent what Mr. Frey has re-
ferred to as substantial dilution.

Just to maintain the same order, do you wish to speak
to that, Mr. Brownell?

MR. BROWNELL: I would be glad to speak to that.
I start out by stating that I recognize a policy question
exists here. That is one that, in line with our previous
policy, we want to discuss with the Commission.

At least, as far as Morgan Guaranty Trust Company is concerned, we don't want to take any action which is not completely consistent with the Commission's ideas of sound policy in this particular area.

I noticed when you referred to these problems you said that the same problems existed both with respect to ADR's and with respect to Japanese stocks generally held in this country. That is generally true. I won't attempt to take time -- because it is now already twelve o'clock -- to review in detail foreign exchange regulations of Japan.

They are set forth, I think, in fairly clear form in the Sony registration statement. But it is, of course, true that Japan, like some other countries, has got foreign exchange regulations. It is also true that Japanese companies have had a practice over a period of many years of making substantial rights offerings at intervals of as frequently as one year or two years, and that these rights offerings are usually made at a price considerably lower than the current market price and in large amounts, the ratios being as high in many cases as one for one.

Let me speak first to the question of the rights offerings. In the case where a ADR is issued and made effective under Form S-12, I see no serious problem, no real policy question, where the company issuing the underlying shares
agrees -- as it did in the case of Sony -- that they would register under the 1933 Act any future offerings to shareholders, because in those cases it would be a simple matter for the depositary to forward the literature or the documents pertaining to the rights offer to the holders of ADR's and give them an opportunity to subscribe.

In that case the holder of the ADR would be put in the same position as the holder in this country of a Japanese share. If the Commission should come to the conclusion that it is bad policy for Americans to be allowed to own stocks in Japanese companies, I would think that probably that same policy would have to apply to ADR's.

In the case that I have put, however, where the stock that is being offered is registered under the 1933 Act, the holder would be able to protect his rights if he wanted to do so by purchasing them; or he could, if he wanted, sell them.

In the cases of those other ADR's, the cases other than Sony which are covered by the existing registration statements, the company issuing the underlying shares has not agreed to register any new offerings to the stockholders under the 1933 Act.

That would mean the depositaries could not have any means of making those rights available to the holders of the ADR's. That would in turn mean that the rights would
have to be sold by the depositary and the proceeds converted into dollars and those dollars would then be distributed to the holders of the ADR's.

That is not, of course, an unusual situation with respect to ADR's generally. As you know, it not infrequently happens that foreign companies for whose shares ADR's are outstanding make offerings of new shares to their stockholders without registering them under the 1933 Act.

When those cases come up, the depositary for ADR's sells the rights abroad and converts the proceeds into American dollars and distributes the American dollars to the ADR holder.

The difference between that situation and the Japanese situation is really one of degree more than anything else. The rights offerings in Japan are more frequent. The spread between the public offering price and the price at which the rights are offered is greater. In the past, at least, the ratio of the new stock offered to the outstanding stock is a much higher ratio.

Therefore, you have the same problem but you have it in much greater degree. You have exactly the same problem -- and I keep repeating -- where an individual American stockholder holds stock in a Japanese company, there the rights that are being offered to him are not registered.

There certainly are difficulties in connection with
his getting those rights and exercising them, although in
some cases the rights may find their way to him and he may
go ahead and exercise them by use of the rules.

We propose to handle this rights problem, first,
by making appropriate disclosures of its existence, not only
in the body of the ADR itself but in larger type at the top
of the ADR.

It may be that the Commission would think that
some further disclosure would be required, although I sub-
mit that a further disclosure, if not required, might be
appropriately imposed on all sales of Japanese stocks as
well as sales of ADR's representing Japanese stocks and the
issues of ADR's representing Japanese stocks.

On the question of repatriating American dollar
proceeds from the sale of such rights, the situation is
complicated. Since our last meeting down here on this sub-
ject, we have concluded that under existing Japanese foreign
exchange regulations it is quite feasible.

Where the Japanese stock representing the ADR
has been held by the depository for more than two years, the
rights pertaining to those shares can be sold in the Japanese
market and the yen proceeds can be repatriated at the current
official exchange rate or the regular exchange rate.

Whether or not the shares have been held for two
years by the depository, the rights received by the depository
on account of shares held by him against ADR's can be
sold to a non-resident of Japan. They can be sold here to
another American for dollars.

There are other ways in which dollars can be ob-
tained which I shall not take time to go into. But in
brief, the rights pertaining to shares that were held for less
than two years can be sold in Japan and the proceeds can be
reinvested in certain other types of securities in Japan
which can become dollar validated and those securities in
turn can be sold in the United States for dollars.

The fact that the sale of these rights would be made
in different ways, and presumably not all at the same moment of
time, would mean that it would be necessary for the depository,
in order to distribute equal amounts to each ADR holder, would
have to average -- in other words, he might not get exactly
the same amount for each right.

That is a difference between the position of the
man who holds an ADR and the man who might hold the Japanese
stock himself -- one of the differences. I want to put it
right out on the table.

The fact that there would be averaging in such a
case would, of course, be disclosed, not only in the body of
the ADR but at the top of the ADR itself by appropriate
references. There is, Mr. Cohen, a certain degree of averaging
in connection with all ADR's -- again it is a matter of degree.
In the case of an ordinary ADR for an English stock, where dividends are received in pounds, before they are distributed to the ADR holder they are converted into dollars. Sometimes the block of pounds is sold to one purchaser at one time at a certain rate; and sometimes they might be sold over a period of one, two, or three days at slightly different rates.

There is never any attempt to divide the money received among different stockholders in proportion to the dividends that accrued. It would be impossible to do that.

So in those cases when dividend checks are sent out to ADR holders, they are sent out on an average basis. The difference is again one of degree because the averaging might involve more averaging in the case of rights sales than in the case of dividend sales.

However, we submit that the machinery that we have devised is in accordance with the Act, with a proper disclosure. It is certainly appropriate to issue an ADR under those circumstances.

Now I come back to the policy question. It is true that these large rights are unusual in our experience. It is true that if a man doesn't exercise rights from time to time over a period of years, his original investment will be very much diluted. That certainly is true with respect to any holder of Japanese stocks, and it is certainly true with
respect to any holder of ADR's -- that the underlying shares are not covered by an agreement on the part of the issuer that the rights offerings will be registered under the 1933 Act.

I think the Commission should treat them both the same. If the Commission considers that special rules or regulations or prohibitions will be made in one case, I think they should equally apply to the other.

But that is a question of policy really for us to discuss and decide.

On the general question of exchange regulations, I have already touched on it. It is true that these exchange regulations impose burdens in the case of both Japanese securities and ADR's that are not present with respect to other ADR's and, for example, British securities.

I believe that one of the things the NASD Committee has wanted to do has been to get the Japanese to modify and improve from our point of view those regulations. I am not at all sure that that desire may not have underlain their objection to the effectiveness of the existing ADR's, because I think it may be felt -- I know it is felt by some members of the community -- that the Japanese might be induced to make changes in their regulations if we didn't go ahead with these ADR's. I can only state that as a rumor; I don't vouch for its accuracy.
Again, we think that in the case of the ADR's we can cover the matter under the Act by making proper disclosure of the fact that these exchange regulations exist and that they require certain things and produce certain results.

We know of no other way to handle them. I point out that we go further -- propose, to go further -- with respect to such disclosures than under your existing rules and regulations people go in connection with the sale in the market of shares of stock of Japanese companies which are not represented by ADR's.

That is a pretty general answer or introduction to this question of the bearing that Japanese companies' policies of issuing rights and Japanese exchange regulations have on the ADR's.

MR. COHEN: I think it would be appropriate, following your discussion, to have Mr. Proy deal with it so we have in one place in the record a discussion of this problem. It is now about 12:15. I am sure we would not be able to conclude this before 1:00 o'clock.

I think we probably will have to take an adjournment here and come back in the afternoon. I would like to complete all of our discussion today. There is one question I had, but I will wait for Proy to deal with his statement first.

MR. LOCKE: I just wanted to get in an indication
with respect to perhaps the dimensions of this rights question, which frankly has been a source of concern to me. It appears from looking at the Sony registration statement, for example, that between 1953 and 1959, a period of approximately six years, they had five rights offerings, mostly at one for one -- some at one and one-half for one -- which increased the outstanding stock from 400,000 shares to 16 million shares.

All of the rights offerings were made at par, which was 50 yen -- although at the end of the period, in any event, the market price appears to have been 550 yen. So at least at the end of the period the rights price was about 9 percent of the market price.

So this does seem to be a rather unusual, from our viewpoint, magnitude of rights transactions -- at least in the case of this company. Anybody who didn't exercise his rights during that period would have been practically diluted out of the picture.

I just wanted to inquire of anyone who is familiar with the matter -- and I am sure a number are -- whether this is a rather typical record, or is this something unusual as far as Japanese --

MR. SUGIMOTO: It is rather a typical record.

MR. COHEN: I want to ask my question, then, because it related directly to this. You made reference to the British system and the General Continental system of making
rights offerings. In Britain, as I understand it, there are
issued renounceable letters and the market develops in the
letters, something akin to the market which develops in this
country with respect to rights.

I have been led to understand that there is not
quite the same situation in Japan. So the problem of actually
exercising the rights is more acute. This, I am led to
understand, is due to the fact that it is not quite as easy
to dispose of rights, nor is it possible to realize, as you
can in the United States, in Japan at least the value of the
rights.

If I am wrong about that, I would like to have the
record corrected in any way. I thought we might do that
before we adjourn and then after we meet again perhaps Mr.
Frey could tell us his understanding of the problems.

MR. BROWNELL: Let us again first point out the
problem that you raise would exist equally with respect to
Japanese shares or ADR's representing Japanese shares.

MR. CONN: Assuming that to be true for the moment,
I would like to have --

MR. BROWNELL: It is my understanding, although
there is a difference of the kind that you indicate, that
there is a distinction in the market for rights to purchase
shares in Japanese companies and rights in this company repre-
sented by a sort of warrants or rights in Great Britain.
I am informed, however, that there is in those cases an adequate market for the rights; and certainly the depositary would be able to do at least as well as any individual holder of Japanese shares.

If there is objection on the score that we made, then you ought to do something about letting Americans buy Japanese shares.

MR. COHEN: Just to expand my question, it is my understanding that the over-the-counter market in Japan is not quite the same type of market that we have here; that most securities are traded on the exchange; that the exchanges have not yet adopted the practice of permitting trading in the rights.

In consequence, there is not quite as good if there is any market for rights in which fair values can be realized.

If you can speak to this, I would appreciate it; or if you cannot, we will wait until Mr. Troy speaks to it this afternoon.

MR. DESMELL: I can only answer it as I have answered it at this time.

MR. COHEN: Perhaps Mr. Stevenson, who has just gone through sorting of a baptism in this area, can contribute some light to the subject.

MR. STEVENSON: I think there is some background
that it useful in this connection from a legal standpoint.

You cannot transfer rights if you are a Japanese resident.

However, the Japanese foreign investment law allows the
companies to consent to the transfer and sale of rights
in the case of foreign stockholders.

Accordingly, as far as Japanese holders are con-
cerned, they have not been in position to dispose of their
rights. In the case of companies that have an appreciable
number of foreign stockholders, they have usually given this
consent.

However, it is of course true that, for the reasons
you yourself mentioned, in most instances there is a prefer-
cence for exercise rather than sale even in the case of
foreign stockholders.

While there is no active market in rights in Japan
in the sense that they are not quoted on the stock exchange
so that you can't actually get a stock exchange quotation,
I have been advised that in disposing of rights -- at least
the one situation that I know something about in the case of
Sony -- because some of the rights there were disposed of,
people did get a price that was reasonably related to the
market differential.

The extent to which they have been able to achieve
this on a more general basis is something that I think could
only be determined by knowing that the history of all the
firm which have handled the sale of rights might be.

I don't have that information. But there is, as I understand it, a fairly active visa-issued market in Japan which would afford you some criterion for determination whether your price was fair or not.

MR. COHN: This is a matter that goes to the core of the disclosure problem, or one of the disclosure problems. It is a matter as to which we would like to be exposed fully to the extent that we can, either today or at some other time.

I am sure some of you fellows got up early this morning to get here and you may be hungry. This may be a good time to adjourn. We have a number of other things to talk about. I don't know how long it will take. Can we come back at two o'clock? Is that agreeable to everyone?

Some of you have appointments with me for this afternoon. We will just move the hours down a little further on the clock.

(Whereupon, at 12:25 p.m., the conference recessed, to reconvene at 2:00 p.m. of the same day.)
AFTERNOON SESSION  

(2:00 p.m.)

MR. COHEN: Before I ask Mr. Froy to deal with this problem, I think that in order to have a complete record, Mr. Brownell, I will ask you whether there is anything more you want to add to what you said this morning and whether Mr. Stevenson has anything further to add.

MR. BROWNELL: I would like to, after Mr. Froy has spoken, if I may.

MR. COHEN: All right. Mr. Froy, I will ask you to deal with this problem, just the way you think best. You need not confine yourself to the frame-work in which Mr. Brownell put it although I would like you to supplement, modify or distinguish any of the remarks he made with respect to the several matters he discussed: The currency restrictions; repatriation of funds; and the rights offering procedures in Japan, as well as the markets for rights and similar matters, and I have particular reference to the reference Mr. Stevenson made in the case of Sony; as he understands, there was not much difficulty in taking care of the rights which were offered as a result of the U.S. offering. I mean, offered in Japan.

MR. FROY: Before I answer this, I may say I feel very much better now because Mr. Brownell was kind enough to tell me that we are both here on business, so
I feel less accused than I was before.

May I start with the end of your remarks and that is the question of rights offering and the facility of disposing of rights in Japan, and Sony in particular.

I will start with Sony. I believe that Mr. Stevenson is correct, that there is not an open market in rights in any security in Japan -- open market, I mean. There is neither a stock exchange quotation which could be checked nor a free over-the-counter market.

In the case of Sony, I have been led to believe that the specialist in Sony who is also generally the buyer of A.D.R.'s, is in Immure securities -- one of the major underwriters of this latest issue.

I have no means of checking if the price which the banks achieve for the rights of the A.D.R. holders is the best one obtainable if it goes to a specialist who himself has an interest in the security. That is a very serious point and the next point which is really worrisome to the N.A.S.D. is that through dealing in rights, and trying to discover the best market, the banks are getting again, more and more into the securities business.

I believe they have not the same facilities of checking a market via bank correspondence that we have with the know-how, which the City of New York has acquired over many years of international trading. It would be
very difficult to disclose to our customers that the proceeds of these rights may very much vary in price on account of the rate. First of all, you will not receive immediately, on the sale of your rights, the official yen rate that is clear under the existing foreign exchange restrictions. You are either blocked with your yen as long as you are blocked with your underlying securities, or you could try to sell these proceeds in the New York over-the-counter market to some kind of philanthropic association who would like to be locked up in yen from any period from 23 months to one month -- whatever the A.D.R.'s have to run.

Well, maybe many of us have money to waste but I still think you will find it very difficult to call this a freely convertible currency.

Mr. Grewcock who has also recently returned from Tokyo has made a very close study of the foreign exchange restrictions of Japan and I think he will be able to explain our disagreement with Mr. Stevenson's statement and with Mr. Bromell's statement better than I can; so I will call on him.

MR. COHEN: Have you identified yourself for the record?

MR. GREWCOCK: Derek Grewcock.

We feel that the exchange regulations governing the trading of securities are extremely complex. In fact,
there are five kinds of yen. This is all covered in the
prospectus of course.

I would like to spell it out here.

There are five kinds of yen and we must consider
four of them, whenever we are trading in securities or
rights.

MR. CORN: Some of the people here are having
difficulty hearing you. Would you speak up, please?

MR. GREYCOCK: First of all, is the Non-
resident yen. This can be used -- if I may read from
notes here -- this can be used to purchase securities
by non-residents; however, the proceeds from the sale
of equities are not convertible at the free rate -- which I will
come to in a minute -- but after a two year deferrant period,
although dividends and interest may be remitted at the free
rate. Non-resident yen is freely transferable between non-
residents against payment in foreign currency; however, it
can only be converted at the free rate by purchasing corporate
bonds with a maturity of not less than two years and holding
them to maturity. It follows therefore, that the holder of
securities purchased with non-resident yen is at a dis-
advantage against the purchaser in free yen, because he does
not have the two year waiting period, at the end of which
time he can get his proceeds out at the freely convertible
rate, which is three-sixty or various percentage on the
side of three-sixty.

Secondly, yen with deferred convertibility. This is an official description but a term arrived at to describe yen arising from the proceeds of sale of securities originally purchased with free yen and not held for the full deferment period of two years. Proceeds of sales of securities not held for a full two year deferment period must be reinvested within four months.

This has some disadvantage in that yen with deferred convertible loses its convertibility if it is not used in practice within four months.

The rule says one month; in practice you can use up to four months.

After the expiration of four months, the item becomes totally blocked, or you have to transfer it to a non-resident account, which is the first kind of yen we discussed.

Thirdly, this free yen, which can be purchased against dollars and several other currencies, which is permitted to fluctuate.

When I was in Japan, it was 1/2 of one percent; on either side of 360 per $1 -- I think there is a little change there, 3/4's of one percent on the other side of 360.

Then the other kind of yen with which we must
ourselves is yen arising from the sale of rights.

Proceeds of the sale of rights are subject to the same regulations as the proceeds of sale of the shares from which such rights were derived, with the treaty, except that such proceeds may be held in a foreign investors deposit account in cash pending repatriation at the expiration of the two-year deferment period on the underlying shares.

It therefore differs from free yen, which is freely convertible, or yen with deferred convertibility which has a four-month time lag.

Therefore, we feel that these regulations are extremely complex and militate against the issuance of A.D.R.'s at this time.

MR. COHEN: Thank you.

Mr. Frey, do you want to add to that?

MR. FREY: Well, these regulations as read out to you, are the result of probably studying this for many, many weeks, and bringing it down to a point where a few professionals can understand what we are talking about, but I should think the broad public is being -- forgive me -- misled if A.D.R.'s in existence, where the public might have the feeling that all problems have been ironed out for them by the banks who are, to their mind, the issuer of these A.D.R.'s, even if we know they are not the issuers of A.D.R.'s and it is really difficult
to persuade the public that they have to study the prospectus
of the size of the Sony prospectus, more or less until
they know what they are getting. So why should we be
forced into making a market in something where we feel we
cannot protect or disclose efficiently to the public, the
risk they are running and what should the interest of the
banks be, to foster this business on to us, which we do not
want. When we want their facilities, we ask for them; we
have done so before. They were very helpful in issuing it.
They never regretted it because their income has profited
from it.

MR. COHEN: Without appearing to take one position
or another, Mr. Froy, I think you indicated this morning
that you were in a position to make the necessary dis-
closures to the individuals who perhaps have been accustomed
to trading in foreign issues.

I take it you mean this type of disclosure
which has now been explained in somewhat summary form, and
the type of disclosure that you would make to your customers.
Is that right?

MR. FROY: Yes.

MR. COHEN: Is it not possible to develop
in written form such disclosures and could such disclosures
accompany any offering document in connection with the
A.D.R. arrangement to the same extent that you would make
the disclosures informally or formally to your private customers?

MR. FROY: Mr. Cohen, one of our competitor firms has traded a few weeks ago with a firm on the Coast, in Japanese A.D.R.s and they have read a similar statement to them prior to dealing, and have subsequently sent their contract to this customer with a stamp attached, covering these regulations, and asking them to return the contract copy with their signature as to the agreement that they have read these regulations.

The customer has returned both contracts -- the original and the copy -- and he said he misunderstood those regulations and therefore, he would like to cry off the bargain because he has been misinformed, and I have no way of supplying every one of my trades with a microphone, taking down what has been said on both sides, and I think the average dealer will be in a similar position.

MR. COHEN: I am not sure I fully appreciate that. I take it you are now saying, Mr. Froy, that you might make certain trades in Japanese securities, ignoring A.D.R.s for the moment?

MR. FROY: That is right.

MR. COHEN: I took it from what you said earlier in connection with such trading activities, you would make disclosure to your customer?
MR. FROY: Well, there is one difference.

My only business now is to execute orders.
The customer calls me up and says, "Do you have an opinion?"
I say, "I like them but you know the risk" and this man
will understand these risks perfectly well because he is
giving me an order; shares are being placed in his open account
in Japan. That ends that end of it.

Here we have to go further. We have discussed before,
our rights. He is losing benefit of those rights, even if he
gets a certain amount of cash for it.

MR. COHEN: I am not going to quarrel with what
you say, Mr. Froy. How do you know and how does the man in
Loeb Rhodes know this customer who calls up, understands
this intricacy which I am frank to say, a great many of
us do not.

MR. FROY: This is generally business which
has not been canvassed by us but it is coming to us on
account of a person who understands something about inter-
national business. We are in a different position to
explain to them what has happened, if we make a trading
market, which is our duty as broker-dealers.

MR. COHEN: Do I understand you to say that your
activity is limited to filling orders? You don't solicit
any business in this area at all?

MR. FROY: At the present time, in Japanese
securities, this is 90 percent true.

MR. COHEN: And this is wholly voluntary business? It is not generated by anyone in the trading fraternity?

MR. PROY: Very little, except the Japanese brokers who advertise on a really large scale.

MR. COHEN: Do you mean the Japanese brokers in the United States?

MR. PROY: Right.

MR. COHEN: So they are soliciting business in this area?

MR. PROY: Yes.

How much they disclose, in spite of the fact they are members of the NASD, I don't know.

MR. COHEN: I was going to raise that question; whether you, in your official capacity, have interested yourself in this problem.

MR. PROY: I will say they have done so little business here that the Ministry of Finance is getting extremely worried as to whether they should not close the office, because there are so many expenses and they have not produced any business.

MR. COHEN: I take it then from what you say that the NASD as such, has not reached the point where it is prepared to issue any rulings, or rules, with respect to the nature, the quantity and the quality of disclosures
that should be made in connection with trading in Japanese securities?

MR. FROY: Well, we have not because so far, this Committee has voted that they do not wish to have Japanese A.D.R.s in existence because they feel that they could not comply with the requirements which I expect.

MR. COHEN: You make a distinction between the A.D.R.s for Japanese security and the Japanese securities themselves.

MR. FROY: Very strongly.

MR. LOOMIS: If I understand you, just to summarize a little, you were saying that the existing trading in Japanese securities is mostly done -- aside from perhaps the Japanese firms -- in response to unsolicited offers by people who are fairly knowledgeable and if not in details of Japanese restrictions, in international finance.

MR. FROY: Right.

MR. LOOMIS: So that you can explain to them what these problems are and they will understand the language you are talking, in any event, but that if you got Japanese A.D.R.s then you would be expected to make a trading market which is their usually fairly rapid telephone type operation, in and among dealers and the customers, and you don't think it feasible to make these disclosures in the context of that market, and that in view of the identity
and experience that people who might be in it would have?

MR. FROY: That is right.

MR. COHEN: There is one thing that you failed to add to what Mr. Froy said. I wanted to be sure I understood that.

I understood Mr. Froy to say that when someone calls him he inquires whether the caller understands the risks. I did not understand that on the telephone, he undertakes to explain the risks. I would like to know which is the correct understanding of what you say?

MR. FROY: We explain the risks attached to it and we also draw his attention that we would not be able, as brokers, to hold the securities for him, that we would open an account and have these securities delivered to the National City Bank in Tokyo. From that moment on, he is in his own.

MR. COHEN: Let me carry this one step further.

Assuming that the banks and others in the A.D.R. arrangement would devise a procedure whereby the investor would be apprised of these rights, in some form that you would consider suitable and intelligible.

Would you have the same concern that you now expressed?

MR. FROY: Well, I should think that it is easier to explain the situation to an investigator than to the
ordinary trader on the telephone to whom you are expected to make similar discloser, and an out-of-town broker, if he calls me up, I cannot say, "If I buy these from you, I must know how old these A.D.R.'s are, because it depends on my price -- if they are six months or eight months. If I sell them to you, you must understand these regulations."

MR. COHEN: I was just trying to underline the point you made in response to Mr. Loomis' question. Essentially what you are saying is that from the point of view of face-to-face dealings with a customer that you know and to whom you can make the necessary explanations, that you have less concern than if a market is to be created here, which is essentially a telephone market of the usual variety?

MR. PROV: Right.

And I would like to refer to another remark from Mr. Bromell, in which he said they intend to show clearly on the A.D.R. how rights are being dealt with and that they are probably disposed of at an average price, as we also do in the case of other securities.

I wonder why a similar disclosure is not also shown on the British A.D.R.'s where I am sure a similar sale is taking place, on average price, and why should we suddenly have the facility on Japanese A.D.R.'s?

MR. BROMELL: The answer is very simple.

It happened very infrequently and the market is such,
that the average results in such small differences, as not
to make it a matter of reports.

MR. FROY: I would say, if you just take the present
time, you said that in Britain those right issues are traded
on an allotment basis, which may easily be traded for three
weeks. S.y for instance, you would sell the first lot today;
the next lot in a week’s time and South Africa decides
to tear themselves away from the British Empire, and you only
get half the rate for the balance.

Won’t you one an explanation to your patrons?

MR. BROMWELL: The practice is not three weeks.
It is a period of a few days.

MR. FROY: You see why the banks are getting
into a business which is out of their department. If we
have to dispose of rights to customers in any shape or form
in the foreign country, if we live there over a 30-day
period, we will give instruction to a broker to sell a thirtieth
part every day to be fully covered and protect the customer’s
interest.

MR. COHEN: There are a few things I would like
to say.

One, Mr. Froy has anticipated a question I was
going to raise in respect to A.D.R.’s of non-Japanese
variety. I think the South African situation would highlight
a problem.
Before I forget again, I did not intend, at least so far as I was concerned to raise any aspects of problems that might arise under the Banking Act of 1933 with respect to the activities of the banks here in the distribution of security. This is a matter that would have to be dealt with in another forum and I don't intend to get into that but getting back to the other point, an I correct that when the South African State broke away from Great Britain, there were certain currency restrictions placed into effect, and I am not aware that any of the banks issuing A.D.R.'s undertook to advise those to whom A.D.R.'s might be issued thereafter, in the few situations that do exist, with respect to this matter -- or am I wrong about it?

MR. AUSTIN: You are right, I think.

MR. CARR: You are right.

MR. CHEN: Let me broaden the question. I don't know to what extent there are other A.D.R.'s in existence, where there is a restriction or a problem of restrictions, with greater or lesser extent, similar to the ones that exist as a result of the South African situation or the Japanese situation.

I wonder if someone can enlighten me on that?

I am just trying to understand the scope of the problem.
MR. CARR: You are talking about other currency restrictions. Great Britain? Australia?

MR. COHEN: I meant something beyond the normal situation that we are all familiar with; the Sterling situation. That sort of thing. I meant something that goes beyond that which is in existence in South Africa and of the kind exemplified by the Japanese situation.

Now, does anybody in the N.A.S.D. group wish to add anything further before Mr. Browneill gets his opportunity to respond?

MR. FROY: Well, I think we have covered it.

I have given you enough reasons why we feel that we could not maintain an orderly market here, and comply with the requirement of the N.A.S.D. and the protection of the public in advance of trading.

MR. COHEN: Mr. Browneill?

MR. BROWNEILL: Mr. Cohen, I feel, I admit, these Japanese foreign exchange regulations involve complications in the Japanese A.D.R. picture.

It is one of the reasons we are here.

I don't deny that there is a policy question involved. I submit that the policy question is one that can be properly resolved under the Act if a proper disclosure is made. I repeat that.
New York is prepared to make any disclosure that the Commission or the staff urges or recommends on this particular subject, as we always have been in the past, and we have suggestions to make ourselves. I do not really gather a clear answer from Mr. Froy to the question that you asked him.

He says, as I understand it, that he would find it impossible to explain the foreign exchange regulations and the complications relating to rights, to a man who came to him and said, "I would like to buy an A.D.R."

He says, if I understood him correctly, that if that same man comes in and says, "I want to buy 100 shares of Japanese stock" that he would have little difficulty in explaining the same kind of thing to him. He made differing answers. One of the answers was that he would say to the man who wanted to buy Japanese stock, "Well, you are a sophisticated investor. You know what the risks are. All right. Send me a check. I will buy 100 shares for you."

I submit that is not a full disclosure; whether or not the man is a sophisticated buyer. I submit that the problem in connection with the sale of shares of Japanese stock is exactly the same as it is in connection with the issuance of the A.D.R.'s or the sale of A.D.R.'s.

Now, if Mr. Froy --
MR. COHEN: Excuse me, Mr. Brownell. May I interrupt you.

I don't attempt to speak for Mr. Froy. He can do that better himself but I think as we clarify the position Mr. Froy expressed, it was that whether A.D.R. or securities, presumably, if you were dealing face to face, he could make explanations. The difficulty of explanations would in some degree depend on the sophistication of the customer; but he could contend with that.

I think what he was saying was that once you introduced A.D.R. and facilitate trading, you are going to create the type of trading that exists in over-the-counter markets in the United States where trades are made over the telephone and he says this sort of trading does not lend itself to the type of disclosure which requires precise and careful explanation that he can make face to face. That, I understand to be his point.

MR. BROWNELL: Yes, I hesitate to question Mr. Brownell and also the Commission in that particular area, except to say this. I would like a lot of proof before I accepted the fact that everyone who acquired an A.D.R. is in the position of an unsophisticated man dealing very rapidly over-the-counter, whereas the man who choose to purchase a hundred shares of Japanese stock without buying an A.D.R. was in an entirely different category,
therefore, could be handled more readily and more easily.

MR. COHEN: I just want to say that I was attempting to rephrase Mr. Froy's statement.

I did not purport to make any statement on behalf of the Commission, of the staff, or on my own behalf.

MR. BOWEN: I am sure of that.

MR. LOOMIS: Also to further carry on again with the point I think Mr. Froy was making, and for my information, I understood him to indicate that at the present time at least, with regard to the Japanese securities themselves, there is not the usual type of over-the-counter market that exists in the United States in trading in, say, bank stocks; but that with the development of A.D.R., there would be expected to be that kind of a market, and that is where a part of the problem would arise?

MR. BOWEN: That is what Mr. Froy said, Mr. Loomis, to a certain extent. I think he indicated that but I think that would be a very bad bomb on which this Commission might rest the distinction because you heard the figure this morning, for the number of holders of Japanese shares of these different countries in the United States; I think it is a matter of common knowledge, the interest in them is increasing steadily all the time.

We know at the moment, there is only one A.D.R. set up —
to wit, the Sony one -- that takes care of it and I submit that it would be very ill advised for the Commission to say, in case of A.D.R., we think such and such a discipline is essential but we will impose no restrictions at all in connection with the sale of Japanese stocks. I think if you are going to impose any regulations, and you may well see fit to do so, they should apply not only to the issuance and sale of A.D.R.'s but they should apply to stocks of all Japanese companies, and if you drew up such a regulation, I am sure Morgan Guarantee and I am sure these other banks also, they can speak for themselves, will be more than glad to comply with it.

MR. COHEN: I am coming back to this point now. I want to take up Mr. Froy's point.

If I understood your position correctly, as I expressed it, Mr. Froy, let me ask you first whether I did express it correctly?

MR. FROY: You did. Absolutely.

MR. COHEN: If that is correct, if you would agree with me if there is a telephone market in the Japanese securities of the kind we have described, then you would express the same concern with respect to that type of trading as you would with respect to A.D.R.?

MR. FROY: Indeed, I would. It could not develop.
MR. LOOMIS: Now, the next question is that I think I will ask you to inform me -- the N.A.S.D. -- whether or not there are such markets.

MR. FLOY: In Japan?

MR. LOOMIS: In Japanese securities in the United States. In other words, is there trading beyond the confines of the New York market, and how is that market conducted in New York City, because I take it from your comment, you would have difficulty if there is a type of inside market developing in Japanese securities.

MR. FLOY: There is a market all over the United States in Japanese securities, on an order basis in most cases. I only know of one firm in New York City who makes a market in a few Japanese securities, on a very, very narrow scale. I would classify these people rather as brokers' brokers and they have spent many years before anybody has thought of A.D.R.'s in explaining the Japanese currency regulations to these correspondents of theirs, because the Japanese regulations were more stringent but they have really not changed much except as it has been shown.

So I think you have a very large interest in Japanese securities in Hawaii, on the coast, the West Coast, and to a small extent in New York, but in actual trading, apart from Sony, you would not call it an existing over-the-counter market.
MR. COHEN: Let's take Hawaii. I have been led to understand that there is very substantial and active market in Japanese securities in Hawaii.

Are you familiar with that?

MR. FROY: Yes. I have just been there for that purpose.

MR. LOOMIS: That is a fairly broad market -- Hawaii?

MR. FROY: It is purely based on orders which are passed through three Japanese broker houses which have branch offices, I think, or their own offices, in Hawaii. The banks don't trade and the brokers pass the orders to the Japanese brokers. I have not found a trading market of any kind.

MR. COHEN: What about the West Coast? California?

MR. FROY: Very small.

MR. LOOMIS: With further reference to Hawaii, I would like to go into that. I have heard from time to time that there are small brokers, often of Japanese extraction, who offer Japanese securities to their customers who again may be people of Japanese extraction and that this is fairly active. It is on the selling end.

MR. FROY: Well, I am afraid this is a lower type of animal than I have covered.

MR. BROWNEILL: I submit, Mr. Cohen, if I may, that
even taking everything Mr. Froy says as accurate, and I am not questioning his intent to be completely accurate, any moment, your sophisticated market in Japanese stocks could change. We know the interest is mounting; if what he said is correct, I don't know that you ought to rely on the fact that it is only unsolicited orders that come in when Japanese stocks are bought, but where there are A.D.R.'s they are always bound to be solicited and perhaps he would suggest high pressure or something like that.

I think you better draw some kind of a rule, if you are as anxious about disclosures as he is, in the case of A.D.R.'s which would be available if the temper that he describes, happens to change over night. You are getting there very quickly. Then we will follow the same rule on A.D.R.'s.

MR. FROY: We should have a school for dealers in Japanese securities, where they could be trained in Japanese foreign exchange regulations, to relieve the banks of their responsibility in our desire for protection to the public.

MR. COHEN: Do any of you gentlemen at this end of the table dare to join the fray?

MR. CARR: We have given a great deal of thought to the views expressed by the representatives, and resolutions passed there, at their various meetings.
It is our feeling that the Japanese exchange regulations are so complicated that it is almost impossible to explain them in a short way to the type of investor who would be attracted, presumably, to Japanese securities by the A.D.R. procedure.

Take the Sony prospectus. I assume that that -- I am sure that it is the product of very able minds, not only of the banks and the underwriters and the Securities and Exchange Commission, but I will be darned if I can understand it and a lot of people who are a lot more sophisticated than I, find it almost impossible to understand.

How are you going to, in a short way, explain that to the average A.D.R. investor?

Our feeling would be -- as a part of the machinery, -- in connection with the A.D.R.'s that it would be much better to wait until the Japanese have modified their restrictions so as to give us what you might call a real security yen, before trading, as is allowed in the Japanese A.D.R.'s.

MR. BROOKELL: May I speak to that, Mr. Cohen?

MR. COHEN: If I may just say one word before -- that I don't intend this to be any criticism for the explanation given of the Sony prospectus. I must disallow, completely, any claim to authorship by the Securities and Exchange Commission.
MR. CARR: You must have looked at it.

MR. BROWNELL: We are getting into another policy question. To what extent should disclosures be made in connection with the purchase and sale in this country of stocks of foreign companies which are not subject to the '33 Act. That is the whole question -- the foreign exchange government regulations, and so on.

You can say, very easily, that the buyers would be advised that there are foreign currency regulations which may materially and perhaps adversely affect his interest but they change of course, from month to month, sometimes from week to week.

I would hesitate to see the Commission adopt a principle that was necessary to set forth in great detail all of these foreign exchange regulations because I think you would make almost impossible in some cases, the normal transactions involved in securities.

I am mindful of the fact that it has been said to be the policy of certain divisions of our government -- I think at one time subscribed to by the Securities and Exchange Commission -- that we should not unduly restrict investments by Americans in foreign companies because it was one of the ways in which, without using government funds, we would be affording the assistance of the American dollars in foreign areas.
I think that purchasers should be given fair notice that certain situations exist but when you talk about long and complicated pages of prospectus memoranda, I don't think they are necessary. I don't think they are necessary in connection with the sales of securities that are not subject to the '33 Act.

MR. COHEN: Well, you raised some large philosophical problems, Mr. Bromell, as well as legal problems. If o'clock, everybody wants to make the plane at 4:00 we will put those aside for the moment.

MR. BROMELL: Please do.

MR. COHEN: But I will only say this. That there is no desire on the part of the Securities and Exchange Commission to impede the capital market, the securities markets, but we do have a responsibility and this is the only time we are criticized when we fail to recognize that responsibility to assure the investor that he gets the information he needs when he is entitled to it.

We also have a notion here at the Securities and Exchange Commission, that the professional people in the business -- brokers and dealers -- have a somewhat higher responsibility than a man dealing at arm's length with his fellow man.

It is in this context that we have the notion, perhaps not fully developed, that there is a duty, parti-
cularly in context such as this. Now, we may quarrel about
the extent, the nature of the disclosure, but I don't think
you will find anybody on this side of the table who could
agree that disclosures are not necessary in this type
of situation.

MR. GROWS: You will find everyone on this
side of the table concurring with you.

MR. COHEN: And there is concern here, particularly
in the light of all these gentlemen said, whether or not we
made a mistake in the Sony case, and whether or not it is
possible to provide adequate disclosures in this situation,
in the present context.

Now, in the Sony situation, one of the main
problems was obviated. This has not taken place in any
other situation that I am aware of.

MR. BROWN: You refer to the rights question?

MR. COHEN: That is right.

Phil, do you want to get into this philosophical
discussion at all?

MR. LOGIS: Not particularly, except to say that
there is of course, a problem, but I have the impression
that it is a somewhat different problem than the one we
are here primarily concerned with, as far as the combina-
tion effect of the Japanese currency restrictions and the
Japanese practices with respect to rights which inter-
look to a considerable degree, particularly I think, with respect to where you don't have the Sony solution and therefore, an investor who acquires rights, I suppose, will have to sell them and once he sells them he comes up against the same currency restrictions.

MR. COHEN: Isn't it true -- I guess Mr. Froy said this -- I want to be sure that I understand it, anyway.

The suggestion was made that in the Sony case, the principal underwriter -- one of the principal underwriters -- Jumune Securities Company, I think it was -- of course had an interest in assuring some sort of market for the rights in the context of the offering made in the United States; an interest which might not exist in any other situation which is not the Sony character. That is, where there has not been a registration statement filed, and effective under the Securities Act.

Is that a fair statement, Mr. Brownell?

MR. BROWNELL: I would rather let Mr. Stevenson answer that one. I think it is a fair statement. I am not sure.

MR. STEVENSON: Certainly, there was an interest in that case. I am not sure I can answer the negative. I would assume that the Japanese securities firms are interested in having an orderly market in any Japanese security in which they are trading. I think the question that has
been raised is a question of ability to do that, but I certainly think —

MR. COHEN: Maybe we can deal with it by asking Mr. Roy what has been the experience of investors, to the extent he knows, who hold Japanese securities with respect to these rights offerings?

Mr. Roy: I would not know. On the day the people bought their securities, they were handed over to them and they were kept at the National City Bank; whatever instructions they have given since that time to the National City Bank is out of our control but I believe they have had no regrets that they bought these shares when they bought them.

MR. COHEN: I wonder if the National City Bank can tell us what happened?

MR. ROBERTSON: If I may talk, the shares were placed in the bank's custody for the customer, as distinguished from this A.D.R. arrangement.

MR. COHEN: I don't want to create any embarrassing incident. I will withdraw the question.

MR. STEVENSON: I wonder if I can say one word. We discussed Sony a good deal. I think the task of a pioneer, particularly in the case of the first offerings to Japanese securities, is a difficult one, but I do think that there are some areas of difference that are
apparently before us here, which are not really differences. I think that on this disclosure question there have been, really, two questions raised. One is the question of the type of disclosure that is going to be required in the case of the continuing Japanese A.D.R.'s.

The other is the question of disclosures that were made in the Sony prospectus and I think that all of us that had anything to do with Japan, would certainly hope that the exchange restrictions can be further simplified.

I think that would be something that is in everyone's interest. Certainly, if that can be achieved, it would make for a much more understandable situation.

As to the exchange regulations at the present time, I don't believe that any of these statements are intended to say that what was included in Sony was not accurate.

I think we should point out that it was reviewed by the Ministry of Finance and by counsel in Japan, and that to attempt to simplify this much more would obviously, create problems.

I don't think that my disagreement with Mr. Frey -- I am not sure that we have so much disagreement on this point -- but I know that his Committee, the minutes that he read to you approve going ahead, as far as the Sony transaction was concerned, and there was no dispute, at
least as to the shares, that were being covered by the S-1 registration statement, so I don't think there is any issue before us on that. We are not in disagreement on that, are we, Mr. Froy?

MR. FROY: On this particular issue, the customer who acquires new Sony shares should be supplied with a prospectus; a full prospectus.

MR. STEVENSON: Yes.

MR. FROY: If, in the case of the S-12, -- where also, Sony should -- this may have been omitted in some cases by the brokers if they think they have substituted this disclosure in handing this A.D.R., I am afraid they have been very much missing their duty, as far as disclosure.

MR. STEVENSON: You were not questioning adequacy of the disclosure in the full prospectus?

MR. FROY: As you know, we had a few discussions on it. You were kind enough to make those changes. We felt we professionals might ultimately understand it. I don't know if anybody else would.

MR. STEVENSON: I don't have anything more to add.

MR. Loomis: I wonder if I could follow up on one point that Mr. Stevenson made, to see if I understood him correctly.

Mr. Stevenson, I understand, indicated that
Immure securities would have an interest in maintaining a market in the Sony rights for the benefit of the American stockholders, and suggested if I got it correctly, that other Japanese securities dealers might have a similar interest in maintaining a similar market, for rights, which might be acquired by investors holding A.D.R.'s of other Japanese issuers.

I wonder what the nature of that interest was, and how it would manifest itself?

MR. STEVENSON: Well, I think I said that I was not competent to speak but that I assumed that if they are interested in promoting a favorable market in the United States for Japanese securities that certainly the rights problem must be handled so therefore, it would seem to me that it would be in everyone's interest to have the rights handled in a fair, decent way.

I was just addressing myself to the motivation. I had just another point on it.

In the case of Sony of course, the rights were also registered. The rights offering was registered so a considerable number of stockholders exercised their rights rather than selling them.

MR. LOOMIS: I wonder if Mr. Froy has anything?

MR. FROY: May I say, the expression "favorable" is naturally a very relative expression. If it is favorable...
for the owner of the rights or for the purchaser of those
rights, you see, and this is very difficult to determine,
and you have no means of using an open or free market.

MR. STEVENSON: Well, I don't think anyone would
deny that there is a problem because by nature, as far as
Japanese securities are concerned, exercise of rights is the
normal pattern.

MR. LOCKES: The trouble I have with the whole
situation is the assumption on which you made your
statement.

MR. COHEN: That "if" of yours is a very large
"if". That "if", as I understand it, is that if a Japanese
firm would be interested in maintaining an orderly market
for the rights, I was led to believe that there is earlier
discussions, and discussion this morning, normally there
is not much of a market for rights and that would mean the
Japanese dealer who might have no interest whatsoever in the
A.D.R.'s arrangement here, or its successor, active
successor might have some interest themselves, in creating
a market where none exists. That is the "if", and that
is a fairly large "if", as I see it.

MR. STEVENSON: All I am saying is that if this
does not happen and that if investors do suffer very
severely as a result of this, it will reflect unfavorably
on the Japanese security business in general; so I would
assume that there, the H.A.S.D., which I understand does exist, would have the same sort of interest that Mr. Proy does here in seeing that people get a fair deal.

That is all I am addressing myself to.

MR. LOGHIS: There is one other aspect to this, I wanted to go into just a little.

As I understood what was stated earlier, there is no provision for the transfer of rights by Japanese residents, and thus, the rights which are acquired by them are all exercised?

MR. STEVENSON: Or lapse.

MR. LOGHIS: But I don't see why anybody in his right mind would let that happen.

MR. STEVENSON: Right. It does happen.

MR. LOGHIS: Accordingly, the only transferable rights are those held by foreign stockholders?

MR. STEVENSON: Right.

MR. LOGHIS: As I understand what was said earlier, about 95 percent of the foreign stockholders have been estimated to be Americans -- maybe it is 90 percent. Under the Securities Act, unless the Sony procedure was followed, it would be difficult for them to exercise rights, and it sounds like a sort of a one way market to me, with only sellers around, and that is the trouble.

MR. COHEN: That is part of the
MR. STEVENSON: I think there is one point, as I understand it. There is an active one-issue market in Japan. You can of course, estimate what a fair price for your rights would be by seeing what the subscription price is and the present market price is. Obviously, if the differential is too great you have a cause for complaint.

MR. COHEN: At the very least, I would assume from what you said, Mr. Stevenson, that assuming there was enough interest generated among Japanese dealers, to acquire the securities at such a discount of the market value of the shares, that the competition might create a market for these rights in Japan, that is what would flow from the situation if it developed as you suggested but there would be an upper limit on that which would be the amount of discount or the smallest amount of discount which would attract Japanese dealers into this picture on top of which, would have to be added the cost of transportation and insurance and so on.

MR. STEVENSON: Yes.

MR. BROGHELL: That is right.

MR. COHEN: Does anybody else want to speak on this problem?

I can only say, by way of an aside, I once spent a day sitting at the side of an arbitrageur in London. It was a magnificent experience.
MR. FROY: Trading is easier there.

MR. COHEN: Easier than in Japan or the United States?

MR. FROY: In Japan it is very easy because in a way, you can make your own markets in some cases.

MR. COHEN: All jesting aside, does anybody else want to add to this discussion or this point?

I take it that we have in some measure, encompassed a number of disclosure problems in discussing the general situation in Japan. Perhaps we ought to address ourselves to the problem of duplication.

By that, I mean the issuance of A.D.R.'s by more than one bank for the same security.

It may be the fairest way of dealing with this is to first provide an opportunity to the opponents to state the case.

Who wants to undertake that?

MR. CARR: May I say something first?

This is a matter of great interest to banks. It is a matter which proliferates ideas; makes us verbose. Should we start now and go on for 25 minutes or would it not be more logical to do it all at once, at one hearing?

MR. COHEN: It is all right with me, whichever way you gentlemen choose. I know your time is limited.
MR. BROWNELL: I think the opponents have come a long way. I would like to hear what the opponents -- who have the burden of proof -- have to say on that before we break up.

MR. COHEN: May be we can do that. Maybe Mr. Austin can make a statement, and we will adjourn when he completes his statement. You can also add to it. Then we can have another meeting, when we will really square off.

MR. AUSTIN: Mr. Cohen, this duplication which we are all familiar with, here we have the situation which I think Mr. Brownell quite aptly terms "two men on a horse". That is a condition which makes the horse difficult to control and very uncomfortable for the rider, but it is also, I think, a hazard to traffic -- in this case, the public interest -- in the form of an orderly market.

The situation arises solely from a duplication by Guarantee Trust Company of not less than 18 A.D.R. issues first offered by other banks, not including four Japanese issues now on file with the Commission.

The argument that such course is a beneficial one to the public overlooks I think, a few aspects which must be considered.

Clearly, all A.D.R.'s should not be duplicated, only ones selected for their prominence and profitability.
Second, where does it end? I mean, if it is argued that duplication is good, what is it duplication of? What duplicate, which certainly is open to any bank at the present time if anybody wants to go in them, what happens when an issue is duplicated?

There are real pitfalls having to do with the recordation as well as the rate in dollars to be paid.

There are others of a nature which I can support in the record, where for example, a distribution must be made under an estate; the decedent has in his estate, A.D.R.'s of different kinds, with the same underlying security and the distribution cannot be made because they cannot make a proper allocation among the heirs and in all of these cases, the confusion would be worse confounded in these cases where the duplicate did not conform to the request of the duplicator, to make uniform records; dates of dividends. Aside from any question of ethics, which I will not go into; some of us thing it is involved here -- we have the further projection of this thing to a point where, for example, as a result of a spread in the over-the-counter market, some one of these companies might want a listing.

It has happened in the case of Transport Trading; in the case of Marakatina, and I am sure that the stock exchange would never consider listing two A.D.R. issues
for the same underlying shares. Its reasons not to do so would be that it would be impossible to have an orderly market with two duplicate issues under the same name.

I would be glad to hear from others who think along the same lines as that.

MR. COHEN: You did not take a great deal of time.

Mr. Carr, do you care to answer that?

MR. CARR: Well, I agree with what Mr. Austin says. It is only because of the efforts of those who have suffered a duplication that we are able to keep this market orderly at all. If there is a different record date for any purpose, if there is a different payment date for dividends, you can imagine the confusion of a man who is holding a Morgan Guarantee A.D.R. and an Irving A.D.R. He gets two checks on two different dates for the same security. If we don't happen to use the same factor for translating pounds or Dutch marks into dollars, he gets a different payment of dividend per share. All this is very confusing.

Supposing a man has one Morgan Guarantee and one Chemical Bank offering in the same stock? There is a stock dividend. He may get, instead of a full share which he would have gotten had he had all in one particular place, he may get two fractions. Instead of getting his share, he gets cash, which he does not want. He wants to keep his investment in this stock. I am sure that the
dealer fraternity has a great deal to say on the confusion that arises in their back offices because of the duplication of the A.D.R.'s.

Now, I will be glad to hear from other banks or from NASD.

MR. DOYLE: The First National City Bank, as a matter of principle, is against duplication. We find ourselves in the position of not being duplicated, nor duplicating.

MR. CARR: I might now call on the Manufacturers Trust.

MR. TRAVERS: We have not taken any position. We know they exist. We, I suppose, are assuming certain things, having taken place in the past they may take place with us if and when we get into this.

MR. AUSTIN: Do you mean you will be duplicated, or duplicating?

MR. TRAVERS: Duplicating.

MR. COHEN: I suppose you all don't believe in the old adage about what it the highest form of flattery.

MR. FROY: Well, I have made a few notes. Allow me to read these to you.

Coming to a point which many people call, erroneously, controversial, I believe that if one person is in favor and twelve persons are in a position of accord, this cannot really be called controversial.
My Committee and I particularly hold a very strong view on this point; strong views, not from the trader's point of view, who is not interested in what he trades as long as there is a margin of profit; from the view of the public ad hoc, and also the dealer-brokers and NASD point of view. The fact that several banks are issuing A.D.R.'s for the same corporation, has given a lot of trouble to the public who are the ultimate losers.

Also, to the offices in double work, and there is no reason why this should not become ultimately a triple or a quadruple duplication, if you like, but also, the partners of these firms who had to make up losses because of dividend payment, right proceedings, losses on account of transactions, and complications resulting from different book closing dates is a very serious point which the trader generally does not see in the course of his activity.

In the case of European A.D.R.'s this has been a great nuisance. I can even quote examples. I don't want to do it now, because I have some letters here which will take a terrific controversial discussion.

This problem might become insurmountable in the case of the Japanese A.D.R.'s where right issues are the rule rather than the exception; where
no official study of exchange market exists for such rights, and where the differences between the different A.D.R. banks may be considerable.

It is difficult to think that the banks who are acting -- and I must repeat myself, as cloakroom attendants, for which a very handsome service fee is paid, by the trading community -- should foster facilities over and above those which we do require.

I am aware that letters can be produced here, obtained from traders, stating that duplication is desirable based on a slogan, competition is good for business, with which I agree except that the beneficiary of the competition should be the public at large. It should, possibly, profit from a reduction of A.D.R. fees but no such benefit has so far come to the public, in spite of the fact that some banks have issued their first A.D.R.'s in 1925 -- my secretary typed 1925. Maybe the period to show the advantage of this competition has not been long enough. To put a final proof to this argument, I can only repeat that my Committee, with one exception, voted against such duplication and that the Chairman of the Cashiers Division of the Association of Stock Exchange Firms, confirms at random inquiries, that its members feel the same way as my Committee does. They are the ultimate sufferers. They have the duplication to keep in their
books. They have to fight it out in their Dividend Department, and they have to charge our accounts, ultimately, for the losses.

If all this is not sufficient proof for my argument, may I add that neither the New York Stock Exchange nor the American Stock Exchange has ever given permission that two different banks can act as issuing houses for any of the A.D.R.'s quoted on those two exchanges. Their experience in maintaining an orderly market should become sort of a glowing example for the NASD to imitate, and the Securities and Exchange Commission could take due note that the maintenance of an orderly market is the best protection for the public and makes it possible to increase the influence of our market on an international level, world wide.

I am not trying to make a speech but I want you to know that this feeling is based on the desire to see the public well protected, if the broker-dealer is furnished with an instrument which he can easily handle and banks receive an income which they should enjoy for the service they are rendering.

That is all I have to say about duplication, because most of the details have already been mentioned by Mr. Austin and Mr. Carr.
MR. COHEN: May I just ask one question. I will ask Mr. Brownell to say a few words, if he will, so that your colleagues may take away some thoughts to consider.

Has the NASD considered whether it has any authority to deal with this problem, insofar as its members may trade in A.D.R.'s?

MR. FROY: We have discussed it with our Executive Director and I believe with Mr. Greenco. We have not found mention of regulating it on our level.

MR. COHEN: Now, I will not speak to it further, but by doing that, I don't want to be understood that I necessarily agree with that conclusion.

MR. BROWNELL: You want this to be brief, and not complete.

MR. COHEN: These gentlemen want to make a 4:00 o'clock plane.

MR. BROWNELL: I won't use any more time than they used. Maybe when we meet again, we can discuss it further.

Mr. Cohen, I am really surprised to find four banks and the NASD taking a position of this kind before the staff of this Commission because I thought that we all accepted the principle of competition between banks. I don't think that there is any more confusion involved in different banks issuing A.D.R.'s than there is
in different banks charging different interest rates or
custody rates or things of that kind.

I must point again to the fact that Morgan
Guarantee has been in this business perhaps as long --
and I think longer than any of these other banks and has
built up a reputation over the years and does have a
great many A.D.R. issues outstanding.

I am not in a position to put on outside witnesses
to prove it but I think their service has been so good as
to give them a strong competitive position and they are
willing to take on all competitors.

I am sure that the other banks must be equally
willing to take on all competitors and that their reasons
stem from the point that they have made about confusion
existing in the market itself.

However, I doubt that confusion.

I knew that we would be outnumbered at this
hearing today and our people therefore, took pains to
consult other brokers and dealers in the street and
asked them about the extent of the confusion that
arose.

'I will submit to the Commission -- and of course,
copies to my friends here -- a letter addressed to the
Securities and Exchange Commission, marked to your
attention, dated June 13, 1951 and reads as follows:
"Dear Sir:

The purpose of this letter is to inform the Securities and Exchange Commission that we, the undersigned, do not agree that the statement of opinion of the Chairman of the Foreign Securities Committee or the National Association of Securities Dealers, Inc., that duplication of A.D.R. facilities for the same foreign country by more than one depositor results in a disorderly market. We realize that duplication has existed since 1955 involving some sixteen companies, and we fully appreciate that duplication is not the ideal solution of the problem. We nevertheless urge that the Securities and Exchange Commission permit the continuance of the policy of the Morgan Guaranty and Trust Company of New York in duplicating any A.D.R. facilities, whenever demand warrants such duplication."

That is signed by some 25 or 26 firms, all, I am sure, well known to the Commission. I won't attempt to read the list.

MR. FROY: Are these signed by partners of that firm?
MR. BROWNELL: Mr. Moxley informed me that the signatures are either by officers in the case of corporations, or partners in the case of partnerships, or in some cases, by arbitrageur in the case of an arbitrage firm.

He also says to me that he would appreciate it if the names of these firms were not disclosed at this time, and I have introduced -- I have given you the letter. I will give you the letter of course, with names on it, and I don't have to give that letter since I have read it. Maybe we can discuss that question again.

MR. CARR: It hardly seems right to give weight to evidence which is withheld from other parties if there is a dispute.

MR. BROWNELL: I would like to withhold it and discuss it with you. If the Commission wants it, it is all right with me. Mr. Moxley spoke to me at this moment about it. I don't think we will have difficulty in coming to a proper agreement on it. I have no question as to the validity of these signatures, and at the proper time, we will give you any evidence you want with respect to the execution.

MR. COHEN: I think Mr. Froh wanted to say something on that.

MR. FROH: Mr. Cohen, I did not want to bring up anything unpleasant at this meeting, because I felt this
was a meeting where we are trying to explore the possibilities to protect the public, but this letter was known to me, of which the street has spoken to me for the last ten days. It has one very strange signature. I want you to know about it.

One firm which has a representative on our Committee who voted strongly against duplication, was contacted, but the man who was actually the member of our Committee knew nothing about this letter until I told him about it.

I don't think that is a fair way of soliciting a fair opinion on a matter which has been decided by a representative body of firms who are represented on that Committee, which I have the honor to serve as Chairman of.

MR. BROWNELL: Mr. Froy's point only proves we frequently find differences of opinion between partners, and the fact that one partner did not agree with the other does not bother me in the slightest. I don't know who the firm is or who the man is.

There is the letter. Let it speak for itself, and of course, any member of this group who wants to question the reliability of the execution, I will make it possible to do it.

MR. COHEN: May I say this?

MR. CARR: If we should be allowed to know the names of the secret witnesses, maybe we can get letters from the same firm, expressing a different opinion.
MR. BROWNELL: Maybe they could.

I don't want to emphasize the letter any
further. It speaks for itself, and I will give it to you.

Let me -- because my self-allotted time is running
out, unless you want to talk about the letter further --
speak to my next point.

None of these gentlemen who opposed duplication
suggested any way in which it can be legally avoided.
There are different possible ways, I suppose, that all
of the banks could get together and make an agreement,
dividing up the business among themselves. We take the
first three letters of the alphabet:

You can take the first, the second, and the
third letters of the alphabet all the way down, all the
way around the world. Among this group of lawyers,
I don't need to do more than suggest that anything that
involves interstate commerce, whether it be securities in
the foreign country that are sold in interstate commerce,
I am sure none of the lawyers would allow their companies
to get involved in that matter.

The second possible way that occurs to me
would be to have the Securities and Exchange Commission
relied on in the field. I can visualize a hearing. It
will take some weeks but we all would prove our little case;
we would all ask for this and for that; then the Commission
which has decided more difficult problems, might if it wishes, come down and divide up the field. I feel reasonably sure you will not take that on in addition to your other duties.

The third way that occurs to me is that the rule of first come, first serve, would apply. In other words, we would have a race of diligence. If any bank got its hands on a particular issue first, it would have that issue.

If the filing of the S-12 does not involve necessary cooperation of the company, any energetic bank from Mississippi could go out and file S-12's for two or three hundred companies. They would be first in. No one else would be able to take them away from them.

There may be other ways of doing it. I think they are all variations of those three, all of which I think are impossible and I submit that the well established rule of fair competition in a field of this kind, is in the interests of the public.

I will, when we meet again on it, talk to you further about the much exaggerated complications that result from the duplication but that is too long a subject to go into now, except to say as these gentlemen have said, no serious complication has so far resulted.
MR. COHEN: Before we conclude, I neglected this morning to identify for the record all of the people who are in this room and although this may be repetitious, we will start at the end of the table and go around the room. Will you identify yourself?

MR. AUSTIN: Everybody here has presented an appearance.

MR. COHEN: How about the second table?

MR. DOYLE: Everybody here identified themselves.

MR. COHEN: How about you gentlemen in the back?

MR. BATOR: My name is Bator. B-A-T-O-R. I am an associate of Mr. Brownell.

I have not spoken.

MR. STEINER: Henry Steiner of Sullivan and Cromwell.

MR. COHEN: Are you here with Mr. Stevenson?

MR. STEINER: That is correct.

MR. MEDLOCK: Donald Medlock, with Hinthropp, Stinson, Putnam and Roberts.

MR. WOLFE: James R. Wolfe, of Simpson, Thacher and Bartlett.

MR. COHEN: For whom are you appearing?

MR. WOLFE: Manufacturers Trust.

MR. DOYLE: Before you conclude, I would like to point out the difference of our position from the others
in the event this proceeding should be determined favorable in issuing the A.D.R.'s.

MR. COHEN: This is not a proceeding. This is just a conference among us.

MR. DOYLE: That is a proper correction.

Our filings are not effective; we filed a delaying amendment, so the five issues on which the City Bank would like to become effective are a step behind the others. That can be borne in mind, so we can proceed, without an agreement of course.

MR. COHEN: I think in all fairness, if the Commission determines there will be no further questioning, and the others may go ahead, we will bear in mind you should not be left behind.

MR. DOYLE: Thank you.

MR. FROY: May I hand you for your record the letter from the Association of Stock Exchange from the Cashiers Division, against the duplication of A.D.R.'s.

MR. COHEN: Thank you.

MR. BROWNELL: May I make a final statement for the record. I spoke with Mr. Moxley. He says the letter addressed to the Securities and Exchange Commission, we will turn over to you, and Morgan Guaranty Trust Company of New York have no objection to your giving it to any of the banks or others here appearing, if you so desire.
I want to clear that up before we close.

MR. COHEN: Well, I take it Morgan Guaranty has no objection to your reading the letter. It is a matter of disclosure of the name?

MR. BROWNELL: We have no objection to your doing it so long as you do it.

MR. COHEN: Well, you don't have enough copies to go around today?

MR. BROWNELL: I am sorry. I have not.

MR. COHEN: You leave that with me. I will make suitable arrangements if that seems to be the appropriate thing to do.

MR. CARR: Thank you very much.

MR. COHEN: Thank you for coming, gentlemen, and we will invite you down again.

(Whereupon, at 3:25 o'clock, p.m., the conference was adjourned, sine die.)
This is to certify that the attached proceedings before the Securities and Exchange Commission in the matter of:

JAPANESE-AMERICAN DEPOSITORY
(Name of proceeding)

June 28, 1961—Washington, D.C.
(Place and date of hearing)

were had as therein appears, and that this is the original transcript thereof for the files of the Commission.

MILLER COLUMBIAN REPORTING SERVICE
Official Reporters

Attest:

[Signature]

[Name]

[Name]
   - Agree, G.T.Y. will not reduce.
   - Consider increasing R/S on exchange controls with recent R/S increases.
   - Export bonds.

2. Exchange controls for 89-91.
   - Prepared to declare 90.
   - Effective date of 7/1/90.


   - Not easy to finance 79, 72, 75, 74-79.
   - Printing costs.

5. Promotes US trading market.
   - ADR is not available for US.
   - Purpose to facilitate introduction of US securities.
   - Note at 11/9, 10, 17.
   - Not for delivery.
   - ADRs for delivery fixed in US.
   - Also concerned about introductions.
   - New issues.
   - Not generally available.
   - Should be available by 1984 or 85.

6. 23 net problems 13/8, 19, 93.
   - Need by banks.
   - Know holding in 83.
   - 23-4, 20, 77, 79, 80.
   - Can't substitute different.

7. Rev. - not delivery on bonds.
   - Public debt securities.
   - 41, 44, 79.

8. NASD resolution - def. regulation of acceptance.
   - ADRs an advantage to underwriting.
   - Significant bank security problems.
   - No effective market.
   - 83.
   - Cash flows (after fees) not reliable, market.
   - Cash market - mainly market.
   - Small trading market.
   - Including capital market 94-99.