An Empirical Study of Securities Disclosure Practice

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Using a dataset of sovereign bond offering documents and underlying bond contracts for ten sovereign issuers from 1985 to 2005, we examine the securities disclosure practices of issuers and attorneys. The sovereign bond market is comprised of sophisticated issuers with highly paid law firms. If anyone complies fully with federal securities disclosure requirements, we expect sovereign issuers and their attorneys to do so. On the other hand, network effects that determine what information issuers choose to disclose as well as the high cost of determining what information is required for disclosure may lead issuers to fail to meet their disclosure duties. We provide evidence that sovereign issuers may not fully meet their disclosure duties in one context. Where shocks occur to how courts interpret language in existing boilerplate bond contracts, leading to material and idiosyncratic changes in the underlying allocation of substantive rights for the different issuers, we find no disclosure of such changes to investors. Conversely, we find that where there is less of a legal requirement for disclosure, such as when the entire market shifts publicly to using explicit collective action clauses in the bond contracts, there is a high level of disclosure. Over time, long after such terms have become the market standard and thus part of the total mix of information, this heightened level of disclosure continues. In sum, we find heightened disclosure in the place where the legal obligations (and investor needs) for disclosure are less significant and no disclosure in the place where legal obligations (and investor needs) for disclosure are more significant.

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I. INTRODUCTION

How are decisions on what information to disclose and what not to disclose in securities offering documents made? One can imagine lawyers advising their clients on how to comply with the law, especially while facing ambiguous legal mandates. In our imagined scenario, lawyers wrestle with the legal detail in arriving at a reasoned conclusion on whether a particular piece of new information must be disclosed in offering documents. But does our imagined scenario match reality? Is this really how securities lawyers tackle disclosure questions in the course of their transactional practices? This Article looks at how sovereign issuers and their lawyers change their disclosure practices in securities offering documents in response to material changes in the substantive allocation of rights in the underlying sovereign debt contract terms.

One view is that material changes are swiftly and clearly spelled out in new offering documents. Sophisticated attorneys and their clients pay close attention to any change that may affect what the law requires them to disclose and alter their disclosure accordingly. We call this the “Legal Compliance” view. Conversely, disclosure practices may suffer from network effects, leading to “stickiness” in what is disclosed even in the face of material changes in the underlying meaning of the disclosure language. Rather than engage in the costly and uncertain effort of determining whether disclosure is

required under the federal securities laws, attorneys may look to the market standard disclosure practices as an indicator of the required disclosures. Once a particular disclosure practice becomes standard, deviation from this standard may send a negative signal to the marketplace and, thereby, reduce investor interest in the offering. Issuers and their attorneys may also hesitate to change existing disclosure practices out of a desire to influence how the market and courts interpret the contract. We refer to this as the “Network Stickiness” view. This Article tests between the Legal Compliance and Network Stickiness views of securities disclosure practices.

Focusing on the sovereign debt market cabins our inquiry in a manner that allows us to say something about a specific set of lawyers engaged in a particular type of transactional practice. The sovereign debt market consists of some of the most sophisticated and expensive lawyers in the world, engaged in routine but large transactions (at a minimum, in the hundreds of millions of dollars). It is precisely in the sovereign bond market where we expect issuers and their attorneys to have the expertise and inclination to focus on securities disclosure issues. Contrary to expectation, we provide preliminary evidence in this Article that disclosure practices are sticky even in the face of material changes to the meaning of boilerplate terms.

For our analysis, we examine sovereign bond offerings from 1985 to 2005. We restrict our sample to include a selection of major issuers in terms of deal volume (Mexico, Brazil, and Colombia) and a set of issuers drawn from geographically diverse regions (Italy, China, Philippines, Lebanon, Israel, Jamaica, and South Africa). The sample consists primarily of shelf registration offerings with a limited number of private placements.

Our tests focus on the disclosures sovereign issuers made in prospectus supplements (in the registered offering context) and offering circulars (in the private placement context). We examine the disclosure response of issuers (and their attorneys) for three major shifts in the underlying substance of the sovereign bond contracts governing the bonds issued in the shelf registration offerings. Two of the shifts involve unexpected changes in interpretations of existing contractual language: the “Exit Consent” innovation and the *Pari Passu* shock. The third shift involved an explicit change in the actual contract language: the move toward collective action clauses (CACs) from unanimity action clauses (UACs) for changes to payment-related terms. This third shift, in contrast to the first two shifts, had been

extensively vetted prior to the shift by market participants, the official sector, and academic researchers.¹

The difference between the first two shifts, involving *changes in the interpretation of existing contract terms*, and the third shift, involving a *change in the explicit contract term*, allows us to examine when issuers and their lawyers are more likely to disclose changes in the underlying substantive allocation of rights in the contract. While all three shifts change the substantive allocation of rights, we hypothesize that issuers and their lawyers are more likely to disclose changes that occur, not through a change in the interpretation of the existing boilerplate language, but rather, through explicit change in the language itself. Because explicit language changes are more obvious, and thus nondisclosure more easily noticed by investors and potential plaintiffs' attorneys, the issuer and its attorneys face greater costs from failure to disclose the contractual changes as part of the offering documentation.² Conversely, disclosing a change due to a shift in contractual interpretation may have the negative effect, particularly when the interpretive shift is somewhat uncertain, of solidifying a particular, and from the issuer's perspective, unfavorable interpretation. Alternatively, attorneys pressed for time in a rapidly moving shelf takedown offering may expend only limited resources in searching for possible required disclosures, leading the attorneys to focus disproportionately on obvious, easily observable changes in the substantive contractual rights (for example, an explicit change in the contract language) and too little attention on changes due to external causes, such as an interpretive shock (the "rule of thumb" approach to disclosure).

Part II describes the three major shifts in the underlying substantive allocations of rights that occurred in the sovereign debt market for issuances governed under New York law in the early 2000s. Part III discusses the legal duty under U.S. securities regulations placed on issuers to disclose information on these shifts in the prospectus supplement as part of a shelf registration sale of securities. Part IV sets out our hypotheses and Part V describes the data, country

1. See, e.g., Anna Gelpern, *How Collective Action Is Changing Sovereign Debt*, INT'L FIN. L. REV., May 2003, at 19, 19-20 (explaining the shift toward CACs).

2. See Donald C. Langevoort, *Half-Truths: Protecting Mistaken Inferences by Investors and Others*, 52 STAN. L. REV. 87, 88-92 (1999). As one analogy, consider how many of us (and, to an extent, the law) think about explicit lies versus omissions. Even where both explicit lies and omissions are equally misleading, the former tend to receive greater approbation than the latter. *Id.*

by country. Part VI matches the hypotheses against the data and Part VII concludes.

II. LEGAL ENVIRONMENT FOR DISCLOSURE

Underlying the prospectus and prospectus supplement disclosures in a shelf registration for sovereign debt issuances, as well as disclosures in a private placement, is the actual bond contract (referred to as a “Bond Contract” to emphasize the distinction between the contract document and the securities offering disclosure documents such as the prospectus and prospectus supplement). The Bond Contracts consist largely of standard form, boilerplate clauses. Our focus is on how issuers disclose and represent important provisions of the Bond Contract in the prospectus supplement and private placement offering documents. We examine in particular whether changes in the meaning of important Bond Contract terms are, in subsequent shelf takedowns and private placements, disclosed prominently in the offering documents.

While boilerplate, the Bond Contract clauses are not identically worded. The precise wording that different issuers use to articulate a certain principle often varies slightly across different sovereign issuers. For example, on the matter of ranking in priority, the contracts for Indonesia might say that the “debt shall rank equally” while the contracts for Malaysia might say that the “debt will rank equally.” These seemingly minor and innocuous variations in language can take on legal significance under certain conditions.

We focus on what arguably were the three biggest changes in the legal environment for sovereign bond deals in the past decade: the Exit Consent interpretive shock, the *Pari Passu* interpretive shock, and the shift in contract terms from unanimity to collective action clauses for changes to payment-related terms. All three changes took place in the early 2000s.³ We describe each shift briefly below.

A. *Exit Consents*

New York law-governed sovereign bonds, prior to 2003, with but a handful of exceptions, all required unanimous bondholder approval

3. For overviews of recent events in the sovereign debt world, including discussion of the three events mentioned, see generally NOURIEL ROUBINI & BRAD SETSER, *BAILOUTS OR BAIL-INS?: RESPONDING TO FINANCIAL CRISES IN EMERGING ECONOMIES* 289-334 (2004); David A. Skeel, Jr., *Sovereign Bankruptcy by Other Means*, INT’L FIN. L. REV. (forthcoming 2006); FEDERICO STURZENEGGAR & JEROMIN ZETTELMEYER, *SOVEREIGN DEBT AND DEFAULTS: 1995-2005* (forthcoming 2006).

for modification to principal and interest terms (referred to as unanimous action clauses or UACs). In situations where a sovereign with New York law-governed bonds fell into financial distress, bondholders lacked a mechanism with which to restructure the bonds.⁴ Holdouts could simply resist a restructuring due to the unanimity approval requirement, even if in the best interests of the bondholders as a group, in order to obtain a higher separate payout from the sovereign.⁵

In late 2000, a “shock” to the ability of bondholders to restructure bond payment-related terms with less than unanimous approval occurred through creative legal interpretation of the modification provisions in sovereign Bond Contracts.⁶ Ecuador offered its bondholders a voluntary exchange for a restructured bond.⁷ As part of the exchange, bondholders accepting the restructured bonds concurrently voted on an Exit Consent affecting nonpayment-related terms for the remaining bondholders who chose not to accept the restructured bonds. Even for New York law-governed bonds with UAC provisions, modification to nonpayment-related terms typically required a less-than-unanimity vote. Changes to key nonpayment terms such as the listing provisions and the governing law had the potential of dramatically reducing the value of the bonds to those who chose not to exchange the bonds for the restructured bonds. Once more than a majority of bondholders agreed to a restructuring, a sovereign may use that fact to threaten the nonconsenting holders that chose not to exchange their bonds voluntarily with changes in nonpayment terms. The Exit Consent technique in effect allowed sovereigns to restructure contracts that were previously viewed as restructuring proof.⁸

The Exit Consent shock had a potentially varying effect for different sovereigns. A number of variations exist in the nonpayment term modification clauses used in the Exit Consent procedure for

4. See Stephen Choi & Mitu Gulati, *Why Lawyers Need To Take a Closer Look at Exit Consents*, INT’L FIN. L. REV., Sept. 2003, at 15, 15.

5. See *id.* To the extent holdouts therefore received a higher payment than nonholdouts, this gave everyone an incentive to hold out, undermining any collective incentive to restructure sovereign debt even if in the best interests of the group of bondholders.

6. Elliott Assocs., L.P., General Docket No. 2000/QR/92, ¶ 2 (Ct. App. of Brussels, 8th Chamber, Sept. 26, 2000).

7. Felix Salmon, *Calm After the Storm*, EUROMONEY, May 1, 2003, at 100, 100-03.

8. For discussions of the use of Exit Consents in the sovereign context and more generally, see *id.*; Timothy B. DeSieno & Robert T. Carey, *Changing Terms of Bond Indentures*, N.Y. L.J., Nov. 21, 2005, at S2.

restructuring.⁹ The majority of sovereigns use 66.66% of the outstanding bonds as the required voting threshold to change nonunanimity provisions, such as for nonpayment terms.¹⁰ Some sovereigns, including Ecuador and Uruguay, use a simple majority threshold, making it easier for these sovereigns to execute an Exit Consent restructuring of the bond payment terms.¹¹ The majority of sovereigns also specifically enumerate those payment-related matters that require unanimous approval for change, including for example the times, dates, and currency of payments of principal or interest.¹² All other matters not specifically enumerated require either majority or supermajority of bondholders to approve a modification.¹³ Some sovereigns, including Thailand, Indonesia, and Sweden, did not specifically enumerate clauses that require unanimity approval.¹⁴ Instead, these sovereigns typically stated: “If any modification would change the terms of payment of the principal amount of (and premium, if any) or interest or affect the rights of holders of less than all the securities, the consent of all the holders of the securities is required.”¹⁵ Because the scope of the unanimity provision turns simply on whether a change would affect the “terms of payment,” the scope is arguably greater than in those sovereign bond covenants that specifically enumerate what is subject to the unanimity voting provision.¹⁶ Moreover, among countries that specifically enumerate what modifications are subject to unanimous approval, there is variation.¹⁷ A minority of countries enumerate changes that may “impair the right to institute suit for enforcement of any payment” as requiring unanimous approval; most countries, however, do not enumerate the impairment of the right to sue.¹⁸ The right to sue is particularly important for the operation of Exit Consents.¹⁹ Many of the ways in which the Exit Consent procedure may harm holdout creditors is through various forms of impairments of the right to sue,

9. See Choi & Gulati, *supra* note 4, at 16-17.

10. See *id.* at 17.

11. See *id.* at 16-17.

12. See *id.* at 17.

13. See *id.*

14. See *id.*

15. *Id.*

16. See *id.* The larger scope of the unanimity provision, in turn, makes it more difficult for sovereign issuers to use the Exit Consent procedure to modify the terms on nonpayment-related terms as a means of forcing holdouts to agree to a restructuring plan.

17. *Id.*

18. See *id.* (noting Chile among the minority).

19. See *id.*

such as changing the governing law and rescinding the waiver of sovereign immunity.²⁰

As documented in a prior study, most sovereigns did not respond to the Exit Consent shock by altering the modification clauses in the Bond Contracts for their subsequent issuances to make it either easier or harder for the “Exit Exchange” technique to be used.²¹ While the Bond Contract language remained the same, the Ecuador Exit Consent shock resulted in the language providing a much greater risk of nonunanimous restructuring for bondholders.²² Importantly, the impact of the shock on countries potentially varied depending on idiosyncratic differences in the Bond Contracts. In this Article, we ask whether the countries flagged these new risks (particularly those specific to a particular country) for investors in the prospectus supplement disclosure made as part of a shelf registration takedown. Did, for example, the Philippines tell its investors not only about the new Exit Consent technique, but also that its bonds were more vulnerable to the use of that technique than the majority of other sovereign bonds out there?

B. *Pari Passu*

Within a few months of Ecuador unveiling its plan to use Exit Consents to restructure payment-related terms in its bond issuances, another shock hit the sovereign debt market. The shock dealt with the interpretation of a previously obscure term: the *Pari Passu* clause.²³ In a case against the Republic of Peru, a vulture fund named Elliott Associates argued that the *Pari Passu* clause barred Peru from making payments on its restructured Brady Bonds without making ratable payments on all its other debt (Elliott Associates held an interest in an older loan agreement that had a *Pari Passu* clause).²⁴ A typical *Pari Passu* clause says something along the lines of: “These Notes rank, and will rank, equally (or *Pari Passu*) in right of payment with all

20. For a more extended discussion of the implications of the foregoing differences, see *id.* at 16.

21. See Stephen J. Choi & G. Mitu Gulati, *Innovation in Boilerplate Contracts: An Empirical Examination of Sovereign Bonds*, 53 EMORY L.J. 929, 993 (2004).

22. See *supra* notes 4, 20-21 and accompanying text.

23. For details on the drama over the *Pari Passu* litigation, see Felix Salmon, *Pari Passu Clause Is a Threat to the Markets*, EUROMONEY, May 1, 2004, at 148, 148 (noting that as a result of the threat created by the *Pari Passu* litigation, “[t]he future of the international payments system is at stake, along with the smooth functioning of the Euromarkets and even the continued survival of the Bretton Woods institutions”).

24. Elliott Associates, L.P., General Docket No. 2000/QR/92, ¶ 2 (Ct. App. of Brussels, 8th Chamber, Sept. 26, 2000).

other present and future unsecured and unsubordinated External Indebtedness of the Issuer.”

The clause has clear meaning in the domestic corporate context. It specifies that the unsecured debt will have the same priority as all other unsecured debt in the assets of the corporation in liquidation or reorganization.²⁵ Sovereigns, however, do not go into insolvency.²⁶ They can simply stop making good on their payments to sovereign debt holders. So what does the *Pari Passu* clause mean outside of insolvency? One possible interpretation for the *Pari Passu* clause in the sovereign context, and the one that Elliott Associates pushed in the case of Peru, is that a sovereign may not make payments selectively to only a subset of the unsecured debtholders.²⁷ A court in Brussels accepted this interpretation of the *Pari Passu* clause in the Elliott Associates case.²⁸ A problem existed, however, with the Brussels court’s interpretation of the *Pari Passu* clause: it was inconsistent with prior practices in the sovereign debt market and came as a surprise to the marketplace.²⁹ Among other things, the interpretation, if correct, restricted the ability of sovereigns to make preferential payments to their more important creditors (for example, the International Monetary Fund (IMF) or vital suppliers) during times of financial distress.³⁰ Without such an ability to make preferential payments, a sovereign in financial distress may lack the ability to obtain new financing to bridge its financial crisis, to the detriment of the sovereign and potentially to all bondholders.³¹

Importantly, the Brussels court’s interpretation of the *Pari Passu* clause had a potentially differential effect on varying sovereigns. There was considerable variation in the precise wording of the *Pari Passu* clauses for various sovereigns. For example, sovereigns that had clauses that said that “the bonds will rank equally in right of payment with all other External Indebtedness” were likely to be more

25. Salmon, *supra* note 23, at 150.

26. *Id.* at 148.

27. *Id.*

28. Peru eventually settled the case, paying Elliott Associates an amount far in excess of what it had paid for the distressed debt. *See id.*

29. For discussions, see Lee C. Buchheit & Jeremiah S. Pam, *The Pari Passu Clause in Sovereign Debt Instruments*, 53 EMORY L.J. 869, 877-79 (2004); Anne O. Krueger & Sean Hagan, *Sovereign Workouts: An IMF Perspective*, 6 CHI. J. INT’L L. 203, 211-12 (2005).

30. *See* FIN. MARKETS LAW COMM., *PARI PASSU CLAUSES: ANALYSIS OF THE ROLE, USE AND MEANING OF PARI PASSU CLAUSES IN SOVEREIGN DEBT OBLIGATIONS AS A MATTER OF ENGLISH LAW* 14 (2005), available at http://www.fmhc.org/papers/fmhc79mar_2005.pdf [hereinafter FMLC REPORT].

31. *See id.* at 13-16.

vulnerable than bonds that simply said "the bonds will rank equally with all other External Indebtedness."³²

One of our separate studies documents the fact that the majority of sovereigns chose not to alter the language of their *Pari Passu* clauses in response to the case involving Elliott associates (or the series of decisions that followed it that served only to increase the uncertainty over the meaning of the clause).³³ Our question here is: Given the failure of the sovereigns to alter the language in their Bond Contracts in response to the new risk, did the sovereigns disclose this new risk in their prospectus or prospectus supplement disclosures to investors? As well, we ask whether countries that faced a differential risk disclosed this risk differentially. Given that these contracts had previously all been viewed as boilerplate and functionally identical, did countries who were more vulnerable to *Elliott*-type attacks disclose that fact, and did countries who were less vulnerable disclose that fact?

Both the Ecuador Exit Consents and the *Elliott Pari Passu* litigation received considerable attention from the press and commentators.³⁴ Except for an expert report from the Bank of England, none of these accounts focused on the idiosyncratic variations in the meanings of the clauses across countries.³⁵ Put differently, these idiosyncratic differences were relatively nonpublic. By contrast, the switch to CACs and the idiosyncratic differences across sovereigns in this switch were highly public, as we discuss below.

C. Collective Action Clauses

In February 2003, starting with Mexico, the sovereign bond market finally made an explicit shift in the existing boilerplate contract terms away from UACs to CACs for changes to payment-related terms.³⁶ Unlike the Exit Consent and *Pari Passu* shocks to the market, which dealt only with the interpretation of preexisting boilerplate language, the shift to CACs entailed an actual change to the underlying Bond Contract language.³⁷

32. See *id.* at 5-7.

33. See Stephen J. Choi & G. Mitu Gulati, *Contract as Statute*, 104 MICH. L. REV. (forthcoming 2006) (describing the study).

34. See *supra* notes 23, 28-29 and accompanying text.

35. See FMLC REPORT, *supra* note 30, at 19-21.

36. See Gelpern, *supra* note 1, at 19-20; Felix Salmon, *Blazing a Trail Down Mexico Way*, EUROMONEY, Apr. 1, 2003, at 124.

37. See Gelpern, *supra* note 1, at 19-21.

The CAC clauses had been the subject of extensive public debate for almost a decade and the official sector had been pushing hard for the markets to adopt them.³⁸ Mexico was the first of the major sovereign debtors to move to CACs.³⁹ Mexico was followed by Brazil, Uruguay, Turkey, South Korea, and Venezuela, among numerous other countries that issued New York law-governed bonds.⁴⁰ Today, it is safe to say, the norm for New York law-governed bonds is for such bonds to be issued with CACs as opposed to unanimity clauses.⁴¹ That said, there remain at least a couple of sovereigns (China and Jamaica, as of this writing) who are still using the old unanimity clauses in New York law-governed bonds.

We ask whether sovereigns disclosed in their prospectus offering documents their move to CACs following Mexico's highly public initial use of CACs. Conversely, once the majority of issuers under New York law switched to CACs, did the nonmovers, like China and Jamaica, begin disclosing that their new UAC bond contracts were no longer standard?

D. Comparability of the Three Events

Because we are comparing the behavior of sovereign issuers and their lawyers in response to three different events, a question that arises is how comparable the events are in terms of importance (put differently, are we comparing apples to oranges?). If one of the events (for example, the shift to CACs) was much more important than the other two events, this difference alone could explain the variance in disclosure practices. There are two responses here. The formalistic response, as we explain in detail below, is that once it is determined that the information in question is "material"—that is, would be important to a reasonable investor—it does not matter, in terms of the

38. *See id.*

39. Researchers have reported that other less prominent sovereigns using New York law-governed bonds, including Lebanon, Egypt, Bulgaria, Kazakhstan, and Qatar, had used CACs prior to Mexico in 2003. Mark Gugiatti & Anthony Richards, *The Use of Collective Action Clauses in New York Law Bonds of Sovereign Borrowers*, 35 GEO. J. INT'L L. 815, 820-22 (2004). Importantly, none of these other insurers did so in as public or highly debated fashion as Mexico.

40. *See* Salmon, *supra* note 7, at 100-01. Indeed, Uruguay's use of CACs seems to have started the movement towards making them common practice.

41. *See* John B. Taylor, Under Sec'y of Treasury for Int'l Affairs, U.S. Dep't of Treasury, Address at the Fitch Ratings' Latin America Conference New York City Supporting Economic Growth in Latin America (Apr. 27, 2004), *available at* 2004 WL 892056, at *2 (announcing that CACs were the new market standard for New York law-governed sovereign bonds).

legal obligation to disclose, whether one piece of information is more material than the other. The substantive response, which strikes us as more satisfying, is that the reason we chose these three events to compare is that they are roughly comparable in importance. The Exit Consent innovation was a method of dealing with the problem of hold-out creditors, a problem that was exemplified by the use of *Pari Passu* litigation strategy. The shift to CACs was the market's response (with some urging from the official sector) to both the crudeness of the Exit Consent strategy and the heightened problems of hold-outs that the *Pari Passu* litigation exemplified. So, in a sense, Exit Consents and *Pari Passu* on the one hand and the shift to CACs on the other hand, all roughly deal with the same problem, that of hold-outs, and thus represent an apples to apples comparison.⁴²

III. DISCLOSURE OBLIGATIONS

Through the shifts in the relative power balance between sovereign bondholders and the sovereigns that occurred in the Exit Consent innovation, the *Pari Passu* shock, and the explicit move toward CACs, we examine the disclosure decisions of sovereigns and implicitly, the advice given by their attorneys. We compare the disclosure of key terms and risk factors in sovereign bond deals prior to the series of shifts (that occurred from 2000 to 2003) against the disclosures in bond deals after the series of shifts.

42. This rough equivalence between the three events is evident in all of the prominent overview discussions of recent events that the authors of this Article are aware of. *See supra* note 3 and sources cited therein. In effect, the move to CACs of the type that Mexico used in 2003 was a trade between the creditors and the issuers. The issuers got the voting percentages to alter payment terms reduced from unanimity to 75% and that reduced the holdout problem. But the creditors got the voting requirements on altering key nonpayment terms like *Pari Passu* increased from 50% (sometimes 66.67%) to 75%, thereby reducing the ability of the sovereigns to use the Exit Consent strategy. From a market perspective, it is not as yet clear whether the trade changed anything. *See generally* Brad Setser, *The Political Economy of Sovereign Bankruptcy* (Jan. 8, 2005) (unpublished manuscript, on file with authors) (reporting on the market participation view that while CACs were an elegant academic solution, it wasn't clear that they were more effective at dealing with holdouts than Exit Consents); Sayantan Khosal & Marcus Miller, *Creditor Coordination, Moral Hazard, and Creditor Coordination Procedures*, 113 *ECON. J.* 276 (2003), available at <http://www.csgr.org> (arguing that the capacity of collective action clauses to solve international debt crises is likely to be limited and that only experience will demonstrate the benefits and limits of these clauses vis-à-vis other restructuring techniques); Federico Weinschelbaum & Jose Wynne, *Renegotiation, Collective Action Clauses, and Sovereign Debt Markets*, 67 *J. INT'L ECON.* 47 (2005) (arguing that CACs are an "irrelevant dimension" of debt contracts).

At least two factors may lead a sovereign issuer to disclose information about changed contractual meaning: reputation and legal compliance.

A. Reputation

The sovereign and its attorneys may care about its market reputation. Investors who later learn that a shift in meaning of terms has occurred, whether through a new interpretation of existing terms or through an explicit change in the language of the terms, will reduce their view of the credibility of attorneys and issuers who did not disclose this change up front. This, in turn, may lower the willingness of investors to purchase subsequent offerings from such issuers and attorneys. Issuers therefore, regardless of legal mandate, have an incentive to disclose information that investors would consider important (in legal parlance, material information).⁴³

B. Compliance

Legal requirements may also lead to disclosure of changes in the relative allocation of rights afforded in a sovereign bond agreement. The disclosure obligations for registered sovereign issuances are governed by the Securities and Exchange Commission's (SEC) Schedule B.⁴⁴ Schedule B, in contrast to the schedules that govern

43. Cf. Howell E. Jackson & Eric J. Pan, *Regulatory Competition in International Securities Markets: Evidence from Europe in 1999-Part I*, 56 BUS. LAW. 653, 685 (2001) ("While International-style offerings are not subject to the formal disclosure standards of the United Kingdom or other member states in which institutional investors may be located, the quality of disclosure documents that accompany these offerings and the due diligence work that underlies this documentation are, according to numerous of our interviewees, of a much higher quality than the formal disclosure requirements of most, if not all, European countries.").

44. See Lee C. Buchheit, *The Schedule B Alternative*, INT'L FIN. L. REV., July 1992, at 6, 6. Sovereign offering sales governed by New York law documents generally have a statement in their enforcement section that the sovereign is not waiving its sovereign immunity with regard to enforcement actions under either federal or state securities laws. See, e.g., Republic of Korea, Post-Effective Amendment No. 2 to Registration Statement under Schedule B of the Securities Act of 1933 (Form Pos Am), at 56-57 (May 15, 2003). This may strike those unfamiliar with sovereign offerings as the sovereign opting out of liability under the federal securities laws. The foregoing reading would be incorrect for multiple reasons, the most direct being: (1) that the federal securities laws are mandatory, not optional—issuers cannot opt out of liability by simply telling investors that there is no regulatory protection; and (2) foreign sovereigns lose their sovereign immunity when they act in their commercial capacities—issuing debt on the international debt markets is a commercial action. The question then is what role this routine disclaimer is playing. Lee Buchheit explained to us that the purpose of these disclaimers is to protect against investors arguing that the choice of New York law is—in effect—invoking the entire regulatory

U.S. domestic corporations, affirmatively requires only a minimal amount of information regarding the offering, on matters such as pricing, payments schedule, and volume.⁴⁵ The SEC imposes no affirmative duty on sovereigns to disclose anything about their contracts.⁴⁶

To the extent there is an affirmative obligation on the part of the sovereigns to disclose contract risks, it has to come from elsewhere. There are at least two possible sources of this affirmative obligation to speak. They are: (1) the obligation that statements, although literally true, are not misleading through their incompleteness under 17 C.F.R. § 240.10b-5 (Rule 10b-5) and section 10(b) of the Securities and Exchange Act of 1934 (Exchange Act)⁴⁷ and (2) the duty to update for shelf registration offerings under 17 C.F.R. § 230.415 (Rule 415) and the undertaking pursuant to 17 C.F.R. § 229.512 (Item 512(a)) as translated into the sovereign context.⁴⁸

apparatus of the federal and state securities systems even when the securities are sold in a manner that does not invoke them (such as if the offering under New York law is done in Mongolia, to Mongolian investors). Assuming though that the manner of sales and the nature of the offerees is such that the federal securities laws would apply—such as they inevitably would in an SEC registered offering—there is no question that the SEC's regulatory authority applies. See Lee Buchheit, *Choice of Law Clauses and Regulatory Statutes*, INT'L FIN. L. REV., Mar. 1996, at 11, 11-13.

45. See Buchheit, *supra* note 44, at 6-7.

46. See *id.*

47. See Securities and Exchange Act of 1934, § 10(b), 15 U.S.C. § 78j (2000); 17 C.F.R. § 240.10b-5 (2005). The lack of meaningful affirmative disclosure obligations in the *Schedule B* context elevates the importance of the obligation not to speak in half-truths. See James D. Cox, *Rethinking U.S. Securities Laws in the Shadow of International Regulatory Competition*, 55 LAW & CONTEMP. PROBS., Autumn 1992, at 157, 192-93.

48. See 17 C.F.R. §§ 229.512, 230.415. For foreign governments, there is a procedure parallel to that permitted by Rule 415. Interpretive Release Relating to Delayed Offerings by Foreign Governments or Political Subdivisions Thereof, Securities Act Release No. 6240, 20 SEC Docket 1358 (Sept. 10, 1980). The procedure was streamlined and refined in subsequent releases and letters. See Interpretive Release Relating to Continuous and Delayed Offerings by Foreign Governments or Political Subdivisions Thereof, Securities Act Release No. 33-6424, 26 SEC Docket 20 (Sept. 2, 1982); Shelf Registration, Securities Act Release Nos. 33-6499, 34-20384, 35-23122, 29 SEC Docket 138 (Nov. 17, 1983). In 1987, the SEC issued two no-action letters which allowed certain registrants who filed annual reports on Form 18-K to incorporate by reference information from their Form 18-K into the shelf registration statement. See Hydro-Quebec & Province de Quebec, SEC No-Action Letter, 1987 WL 108294 (May 28, 1987); Federal Business Development Bank, SEC No-Action Letter, 1987 WL 108848 (Dec. 30, 1987). During the 1990s, the SEC further refined the shelf process for foreign governments, permitting additional incorporation by reference from the Form 18-K and no longer requiring annual distribution of a prospectus. See, e.g., Commonwealth of Australia, SEC No-Action Letter, 1995 WL 150693 (Apr. 4, 1995) (describing the mechanics of offering off the shelf and periodic reporting by foreign governments with effective shelf registration statements); Government of Victoria and

1. The Duty To Speak in Whole Truths

Consider first the duty to refrain from disclosing materially incomplete statements under Rule 10b-5 and section 10(b) of the Exchange Act (the prohibition against half-truths).⁴⁹ A source of a sovereign's obligation to disclose Bond Contract risks in the offering documents comes from the disclosure that the sovereign already makes. There is no affirmative obligation on sovereigns to disclose in the prospectus or the prospectus supplement, in the case of a shelf registration, information on contract risks or anything to do with the Bond Contracts.⁵⁰ Nonetheless, every sovereign in our database chose to disclose the essential terms and conditions of its debt contracts in its prospectus supplements (or in the case of the handful of private offerings, in the offering circulars).⁵¹ In addition, sovereigns make disclosures in the prospectus supplement regarding pending litigation and the possibility of enforcement.⁵² Market forces provide one explanation for this voluntary disclosure. A sovereign that fails to disclose what everyone else in the market discloses sends a negative signal to potential investors, leading to reduced demand for the sovereign's bond offering. The unanimous voluntary provision of such information is indicative of the strength of these market forces.

Once the sovereign engages in voluntary disclosure, the securities laws may step in to impose additional duties to disclose. Under Rule 10b-5, statements that are literally true can create liability if they create a materially misleading interpretation because they leave out some key fact (or, in other words, are half-truths).⁵³ A sovereign that continues to use the exact same disclosure in the prospectus regarding its contract provisions even after the underlying substantive rights have shifted, runs the risk of violating the prohibition against

Treasury Corp. of Victoria, SEC No-Action Letter, 1995 WL 374637 (June 23, 1995) (same); Republic of Argentina, SEC No-Action Letter, 1995 WL 645492 (Nov. 1, 1995) (same).

49. See 15 U.S.C. § 78j; 17 C.F.R. § 240.10b-5.

50. See 17 C.F.R. § 229.512.

51. In most cases, the relevant disclosures as to contract language are also made in the prospectuses (that the prospectus supplement can incorporate by reference). For convenience, we refer only to prospectus supplements in the text, even where the relevant disclosure was made by reference to the prospectus.

52. These disclosures are usually made in a "General Information" section of the sales documents. See, e.g., Republic of Korea, Preliminary Prospectus Supplement (Form 424(b)(3) (May 27, 2003)).

53. See Langevoort, *supra* note 2, at 90-91.

half-truths.⁵⁴ The duty not to make half-truths under Rule 10b-5 applies to both registered and nonregistered sovereign bond issuances.⁵⁵

2. The Statutory Obligation To Update

Second, consider the duty to update in the context of shelf registration offerings. Shelf registration issuers face a separate duty to disclose in addition to Rule 10b-5. Issuers in a shelf registration must update the registration statement when “fundamental” changes occur to the information disclosed in the primary documents on file with the SEC (as well as material changes in the plan of distribution).⁵⁶ Suppose the registration statement on file discloses that the bond payment terms may be modified only with a unanimous vote of the bondholders. The Exit Consent shock imposes a new risk on the bondholders that diverges from this representation. To the extent this change is considered “fundamental,” issuers would have a duty to disclose this change in a prospectus supplement that is part of the registration statement.

3. The Matter of Market Awareness

One might ask whether in fact a duty is created under either Rule 10b-5’s prohibition against half-truths or the Item 512(a) undertaking to update shelf registration statements if information on the omitted key fact is available elsewhere for investors and is thus part of the “total mix” of information. Consider the contractual interpretive shocks involving the use of Exit Consents and the *Pari Passu* clause. These shocks were well publicized. If the information was generally known to the investors of sovereign bonds, the information would be part of the total mix of information and thus not represent a material (and presumably also not a fundamental) omission on the part of the issuer.⁵⁷ Not all investors (including in particular the growing segment

54. See generally *id.* at 118-24 (explaining how forward-looking disclosures which were accurate when made may trigger a duty to disclose if subsequent events make the prior statement misleading).

55. See 17 C.F.R. § 240.10b-5.

56. See 17 C.F.R. § 229.512(a)(1)(ii) (2005); see also *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194, 1208-09 (1st Cir. 1996) (discussing the obligation of the issuer using the shelf offering process to update its disclosures in its final sales documents).

57. The defense in question is often referred to as the “truth on the market” defense. It is a fact intensive defense, which means that it will often be rejected at the motion to dismiss stage. See *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 167 (2d Cir. 2000) (discussing the defense); *Provenz v. Miller*, 102 F.3d 1478, 1492-93 (9th Cir. 1996) (same).

of retail investors who participate in sovereign offerings), however, may follow even well-publicized external interpretive shocks.⁵⁸ Because no public market exists prior to the sovereign offering for the particular bonds being issued, no price mechanism exists to transmit such information to investors.

Even for sophisticated institutional investors, idiosyncratic variations may exist across different sovereigns that result in a differential effect from both the Exit Consent and *Pari Passu* shocks. Sovereigns that provide for only a limited ability for bondholders to change nonpayment terms possess a relatively low potential of using Exit Consents to restructure bond payments terms. Arguably countries with greater (or lower) than average risks had a duty to disclose precisely how the Exit Consent procedure—used first by Ecuador and later by Uruguay—would affect the unanimity voting clause described in their prospectus supplements. Particularly because few investors prior to these shocks focused on the sections of the contract dealing with both the Exit Consent and *Pari Passu* shocks, investors may lack knowledge both of the idiosyncratic differences in the actual Bond Contract language (although investors can obtain the Bond Contracts typically included as part of the exhibits to the prospectus supplement) and, more importantly, exactly how such language might be interpreted in light of the shock. To the extent the issuer has nonpublic expertise in predicting how its idiosyncratic variation will play itself out after the shocks,⁵⁹ this information is arguably material for even sophisticated investors.

Now consider the explicit shift from UAC to CACs in the underlying Bond Contract. The provisions of the Bond Contract are typically found in the fiscal agency agreement (in rare cases, there is a trust indenture) that is attached as an exhibit to the shelf registration statement. Here, there is arguably less of a duty to disclose than in the case of a contractual interpretive shock. In the case of an interpretive shock, individual countries may have differential exposure to the shock not generally known to the public. In the case of an explicit change in the contract terms for a particular country, investors with access to the fiscal agency agreement will have access to the specific

58. See generally Felix Salmon, *Stop Selling Bonds to Retail Investors*, 35 GEO. J. INT'L L. 837 (2004) (discussing some of the complications created by the presence of retail investors).

59. An issuer, for example, may have nonpublic information documenting the history and motivation behind the idiosyncratic variation. This information may then affect how a court will interpret the variation at a later point in time.

change within the four corners of the set of offering documents, including exhibits. Unlike the case of an interpretive shock where the impact of idiosyncratic differences may be difficult to divine, the impact of the CAC shift is relatively straightforward to determine once the explicit contract language is known (for example, when the voting threshold moves from 100% down to 75%).

Despite the theoretical access to information concerning an explicit change in the contractual terms (and the likelihood that a duty to disclose is *less* than that of an interpretive shock), we contend that the duty to disclose is not *zero*. Most investors never read the boilerplate fiscal agency agreement attached as an exhibit. Because such contracts are boilerplate, there exists an expectation among investors that such language always remains identical. The special value of boilerplate terms is that they save on monitoring costs. Investors can assume that they are receiving the same terms that everyone else is receiving and, therefore, there is less need to scrutinize the terms. Boilerplate terms provide investors with comfort because they are terms that the market has already scrutinized and priced as a package. The practice of issuers to flag important components of the Bond Contract in the prospectus itself further reinforces the disincentive to investors to pay attention to the attached fiscal agency agreement. Even where the Bond Contract is attached as an exhibit, we contend that courts are unlikely to treat such information—particularly when novel to the market—as part of the total mix of information in determining the materiality of prominent, misleading language summarizing the contract in the prospectus or prospectus supplement. And where a particular contract term contains idiosyncratic, albeit material, differences from the standard used throughout the market, such deviations especially need to be flagged because investors are unlikely to be scrutinizing their contracts for these differences from the norm.

4. The Case Law on Market Awareness

The case law on disclosure obligations in the context of boilerplate Bonds Contracts is unfortunately not only sparse, but also silent on the question of whether deviations from the standard form (be they an overall shift in the standard form or an idiosyncratic deviation from the standard form) need to be explicitly flagged as part of the risk disclosures in the selling documents. As noted above, our view is that an analysis of the economics of boilerplate terms suggests that investors are not expecting these deviations from the standard

form to be meaningful and, therefore, the nondisclosure of material deviations misleads.⁶⁰ On the surface, the judicially created defenses of “truth on the market” or “market acceptance” might look to be at odds with our position because both the specific contract language variation at issue and new interpretation are available to the public. And in an efficient market, all information available to the public is thought to be already incorporated into prices, suggesting immateriality of that information as a legal matter. A close examination of the case law, however, suggests the mere availability of this information to the public is not enough for an issuer to mount a “market awareness” defense. A defense of “truth on the market” or “market awareness” only works when the defendant can demonstrate that the information at issue—here, the information as to the relevance of the deviations from the standard form—was well known to all relevant parties.⁶¹ The question then is, what constitutes “well

60. The classic article on the economics of boilerplate contracts is Marcel Kahan & Michael Klausner, *Standardization and Innovation in Corporate Contracting (or “the Economics of Boilerplate”)*, 83 VA. L. REV. 713 (1997). The general point that investors are unlikely to pay close attention to the language in boilerplate terms is borne out also in the case law on the judicially created defense of “bespeaks caution.” With this defense, issuers typically point to cautionary statements in their public disclosures that should have warned investors that they should not have attached undue weight to assertions (typically projections) being made by company officials. Courts, although generally accepting of this defense, have been skeptical of it when the cautionary language being pointed to is in the form of boilerplate risk disclosures in a sales documents on the grounds that investors are unlikely to pay much attention to the boilerplate. See, e.g., *In re World Access, Inc. Sec. Litig.*, 119 F. Supp. 2d 1348, 1356 (N.D. Ga. 2000) (bespeaking that caution defense does not apply where the warning “contain[s] only minimal boilerplate language”); see also Susanna Kim Ripken, *Predictions, Projections, and Precautions: Conveying Cautionary Warnings in Corporate Forward-Looking Statements*, 2005 U. ILL. L. REV. 929, 950 (citing to both cases and the conference report on the matter).

61. For example, in *In re Apple Computer Securities Litigation*, 886 F.2d 1109, 1111 (9th Cir. 1989), where the court held for the defendants because much of the allegedly undisclosed information had already entered the market through more than twenty magazine and newspaper articles (including in *Business Week* and the *Wall Street Journal*), the court was careful to limit its holding to information that is “transmitted to the public with a degree of intensity and credibility sufficient to effectively counterbalance any misleading impression created by the insiders’ one-sided representation.” *Id.* at 1115-16. By contrast, in *Kaplan v. Rose*, 49 F.3d 1363, 1376 (9th Cir. 1995), the court denied defendants’ motion for summary judgment due to the purportedly “obscure” sources which published the corrective information. Along these lines is also *Marksman Partners, L.P. v. Chantal Pharmaceutical Corp.*, 927 F. Supp. 1297, 1306-08 (C.D. Cal. 1996), where the disputed marketing agreement was attached as an addendum to Form 10K. Nothing in the Form explained the significance of its terms or disclosed that revenues were being recognized while the buyer had right of return or before the buyer was actually obligated to make payment; the court held that the disclosure of the marketing agreement itself was inadequate in terms of negating other misleading statements. See *In re Newbridge Networks Sec. Litig.*, 962 F. Supp. 166, 178 (D.D.C. 1997) (stating that it is inadequate for defendants simply to point to a change in one

known to all.” Leading cases such as *In re Apple Computer Securities Litigation*,⁶² suggest that a proxy that courts are likely to use is the number of articles in prominent newspapers and magazines that discuss the matter at issue.⁶³ In that case, articles discussing problems with Apple’s new product, Lisa, appeared in over twenty magazines and newspapers, including the *Wall Street Journal* and *Business Week*.⁶⁴ By contrast, the court in *Kaplan v. Rose* explained that pointing to a handful of obscure sources would not suffice for such a defense.⁶⁵

We examine the amount of media attention associated with the three events that we are studying: the CAC shift, and the relevance of idiosyncratic variations subsequent to the Exit Consent and *Pari Passu* shocks. On the CAC shift led by Mexico in 2003, numerous articles have appeared in publications including the *Wall Street Journal*, *Euromoney*, *Financial Times*, *Latin Finance*, and the *International Financial Law Review*.⁶⁶ And the sum total number of articles and official sector pronouncements discussing the shift to CACs was well over twenty within a few months after the Mexico shift in February 2003.⁶⁷ Given the large number of articles, an issuer defending a suit by an investor suing for failure to disclose the shift to CACs would not have difficulty mounting a “market awareness” defense. On the other hand, we can find no more than one or two published discussions of the importance of the idiosyncratic variations that have

analyst’s growth estimates to show that corrective information had effectively altered the total mix of information).

62. 886 F.2d 1109, 111 (9th Cir. 1989).

63. *Id.*

64. *Id.*

65. 49 F.3d 1363.

66. See, e.g., John Authers, *G20 Considers Way To Stop Debt Talks Becoming Broader Crises: Possible Code of Conduct*, FIN. TIMES, Oct. 28, 2003, at 11; Maria O’Brien, *Going Against the Grain*, LATIN FIN., Mar. 2005, at 35; Craig Karmin, *Power Player: A Fund Chief Flexes Muscles When Countries Need a Loan*, WALL ST. J., Oct. 26, 2004, at A1; Felix Salmon, *Bondholders Won’t Back New Principles*, EUROMONEY, Dec. 1, 2004, at 42; Andrew Crooke et al., *Twenty Trends to Watch Out For in 2005*, 24 INT’L FIN. L. REV. 14 (2005).

67. A February 22, 2006, search in the Westlaw database ALLNEWS for between the dates January 1, 2003, and January 1, 2004, produced 125 hits for a search of the term “collective action clause.” More broadly, the following are the results for three different searches that we conducted on February 13, 2006. First, a search for “collective action clauses”_p Mexico provided twenty-one articles just between *Financial Times* and *Latin Finance* in LEXISNEXIS. More broadly, in the EBSCO Business Source Premier collection, “collective action clause” in the record provided forty-eight hits. Finally, searching for the term in the text yielded 231 hits. The search results are for materials that go back to 1998 (EBSCO includes the following journals: *International Finance Law Review*, *Journal of International Economics*, *Bank of England Quarterly Bulletin*, *Latin Finance*, *Euroweek*, *Global Finance*, *Forbes*, *Euromoney*, *CATO Journal*, and *Economic Affairs*).

resulted from the *Pari Passu* and Exit Consent shocks, suggesting that a “market awareness” defense would be hard to mount. Indeed, in the *Pari Passu* and Exit Consent cases, we suspect that the very reason why the idiosyncratic variations were not corrected by issuers was to avoid flagging these variations to courts (and possibly future hold outs).

IV. HYPOTHESES

Whether a duty to disclose arises from Rule 10b-5 directly or from updating requirements imposed through shelf registration, both sources of disclosure duties requires that the issuer first make some affirmative statement that is or has become materially misleading. We focus on two such affirmative statements in the prospectus (or prospectus supplement) used as part of the sovereign’s offering.

First, sovereign issuers frequently highlighted the unanimity voting provision for changes to payment-related terms in the prospectus supplement. Issuers of New York law-governed bonds almost always included (at least prior to 2003), in the Modification and Amendments section of their prospectus supplement, an explanation that the vote of “each holder of series” is required to make alterations to the payment terms. The statement providing for unanimous approval for a change in payment terms became problematic after the Exit Consent shock in 2000. Postshock sovereigns enjoyed the ability to force restructuring of payment terms even without the unanimous support of the bondholders. Continuing with an unqualified disclosure statement in the prospectus supplement regarding the presence of a UAC also would be problematic for issuers who include explicit CAC terms in their contractual provisions (as issuers increasingly did starting from 2003 after Mexico’s very public move to CACs).

Second, sovereign issuers typically include statements in either the Introduction, Enforcement, or Risk Factor sections of their prospectus supplements discussing the inability of bondholders to sue for payment in court (an “enforcement” risk factor). Standard disclosure is that enforcement against the sovereign is difficult because of the trouble any litigant is going to have in negotiating sovereign defenses against attempts to enforce, even where sovereign immunity is waived, and the elusive nature of sovereign assets, most of which tend to be located outside the reach of plaintiffs. Mexico, for example, included the following statement in its prospectuses for the time period of this study: “Mexico is a sovereign foreign state.

Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Mexico or to attach the assets of Mexico in aid of the execution of any judgment against Mexico.⁶⁸ This, on its face, is an assertion about the low risk of hold-out creditor litigation. After the *Pari Passu* shock, which gave hold-out creditors greater legal leverage to sue to enjoin preferential treatment of new sources of credit, such as the IMF and those creditors who voluntarily agree to accept a lower payment, the enforcement risk factor arguably is materially incomplete. Indeed, the *Elliott Associates* litigation increased the risk of holdout litigation so much that the IMF even proposed putting in place a sovereign bankruptcy scheme known as the Sovereign Debt Restructuring Mechanism (SDRM).⁶⁹ The more vulnerable to an *Elliott*-style attack the particular sovereign's *Pari Passu* language is, the more misleading is the failure to explicate the reduced barriers to enforcement and the corresponding increase in the holdout risk.⁷⁰

Using these affirmative statements and the accompanying duty to complete or update such statements, we test the following hypotheses.

Hypothesis One: Issuers are less likely to disclose information that arguably should be disclosed pursuant to Rule 10b-5 and Item 512(a) where a *material (or fundamental) change occurs in how existing contractual language is interpreted*. Conversely, issuers are more likely to disclose information that arguably should be disclosed pursuant to Rule 10b-5 and Item 512(a) where a *material (or fundamental) change occurs in the explicit contractual language*.

Critics may quibble with our arguments for why there is a legal obligation to discuss the Exit Consent or *Pari Passu* shocks or the CAC shift. Even where the obligation to disclose is not clear cut, we contend that making a relative comparison of disclosure practices for the two types of changes in the underlying allocation of substantive rights (contractual interpretive shock versus explicit change in contract terms) can help illuminate what drives disclosure practices. The ready availability of the explicit contract language coupled with

68. United Mexican States, Prospectus Supplement, Debt Exchange Warrants 2 (2005).

69. See Anne Krueger, A New Approach to Sovereign Debt Restructuring, Address at the National Economists' Club Annual Members' Dinner (Nov. 26, 2001) [hereinafter Krueger, NEC Address]; see also Anne Krueger, A New Approach to Sovereign Debt Restructuring, Address at the Indian Council for Research on International Economic Relations (Dec. 20, 2001).

70. See Salmon, *supra* note 23, at 148-49.

the widespread and public shift to CACs, at least by early 2004, weakens the argument that issuers had to flag the CAC clause prominently in the prospectus supplement. In contrast, the lack of public discussion over the disparate impact of the Exit Consent innovation and the *Pari Passu* shock on issuers leads to a greater likelihood that investors lack information on such nuances, leading to a greater duty to disclose for sovereigns under either Rule 10b-5 or the Item 512(a) undertaking. Where issuers make disclosure changes exclusively due to legal requirements, we expect that issuers will be more likely to flag changes in the substantive contractual rights due to the Exit Consent and *Pari Passu* shocks than with the explicit shift to CAC terms, particularly for countries that shifted to CACs after the majority of other sovereigns did so.

Despite the greater duty to disclose shifts in the underlying substantive contractual rights due to interpretive shocks compared with explicit changes in the contract language, Hypothesis One posits the exact opposite result. Issuers and attorneys may hesitate to disclose changes in the substantive allocation of rights for several reasons, particularly for shifts that occur through an interpretive shock. First, any flagged change in the terms may raise a red flag for investors, indicating that they should stop and take a closer look at the deal documents. In the fast paced world of sovereign bond offerings, investors, rather than slowing down to evaluate the deal with the red flag, may simply turn to another deal. Issuers and attorneys therefore may hesitate to flag even material changes in the allocation of rights out of a fear that it may result in a loss of investor interest in the offering.

Second, issuers and attorneys may wish not to highlight the potential shift, particularly if the shift results from a possible interpretive change in the pool of preexisting terms, out of a fear that highlighting the risk may affect how future courts interpret the terms. Once an issuer and its attorneys concede that a risk exists, courts may view this concession as an implicit admission that the new interpretation in fact is correct.⁷¹ Of course, if all issuers could band

71. Cf. Michelle Boardman, *Contra Proferentem: The Allure of Ambiguous Boilerplate*, 104 MICH. L. REV. (forthcoming 2006) (observing the presence of such concerns in the context of insurance boilerplate insurance contracts); Choi & Gulati, *supra* note 33. In the period immediately following the interpretive shocks, one might wonder why the issuer cannot simply include a conditional disclaimer in its disclosure, indicating that the affirmative disclosure about the interpretive shock is not meant to reflect an opinion on the interpretation of the clauses in question. The mere fact that an issuer raises the interpretive shock in the prospectus, even if conditional, may lend credibility to this interpretation.

together to disavow the new interpretation, this may sway a court to do away with the new interpretation. As a practical matter, however, such coordination is unlikely. Moreover, if subsequent courts see that some parties change their terms and others do not, it will be harder to argue to the court that the market is unambiguous in having an understanding different from that which caused the interpretive shock.

Third, issuers and attorneys may not disclose a new risk simply out of a status quo bias. Much like boilerplate terms, the documents behind an offering are themselves boilerplate to a great extent. Rather than fiddle with the documentation, attorneys may simply wish to cut and paste absent an obvious reason to change the documentation. Transactional lawyers preparing disclosure documents in sovereign shelf deals need to use rules of thumb in order to be able to complete their deals quickly. The time and inclination of such attorneys to search out changes in the marketplace that require disclosure are limited. Given the lack of time, one possible rule of thumb is to always disclose explicit contractual changes as any change is likely important and is easy for the lawyers to observe. In contrast, any search that requires the attorneys to look beyond the offering documents requires extra effort and may slow down the offering. Lawyers who specialize in repeat deals with boilerplate contracts, in order to save on transaction costs, may follow self-serving rules of thumb such as "there is no obligation to alter the disclosure if the explicit language in the contracts remains the same."

Hypothesis Two: The probability of an issuer disclosing a material change in the contract language pursuant to Rule 10b-5 is higher the greater the number of other participants in the market who are also disclosing such a change.

Hypothesis Two stands in contrast to the requirements of Rule 10b-5. Among other things, Rule 10b-5 requires that "material" half-truths are avoided.⁷² The more widespread an announcement of a market shift is, the more likely such a legal shift is part of the marketplace's total mix of information and thus not material. In precisely those instances where the rest of the market has disclosed a legal shift, any one issuer faces the lowest requirement under Rule 10b-5 to disclose the shift itself. Conversely, where no one else in the market has disclosed, information on the shift is less likely in the public domain and thus more likely to be material. Rule 10b-5 imposes the greatest

72. See 17 C.F.R. § 230.415 (2005).

duty to disclose such a shift (in light of a conflicting positive statement) in such circumstances.

Hypothesis Two posits that network effects surrounding disclosure practices result in issuers generating exactly the *opposite* pattern of disclosure from what the law suggests: disclosure of legal change when others in the market have also moved to make similar disclosures and nondisclosure when others in the market have also not disclosed. In prior research, we found that contract language for individual sovereigns in these boilerplate contracts was remarkably unresponsive to exogenous shocks, instead remaining identical in not only language, but also in matters such as font, paragraph structure, and even page-numbering.⁷³

In this Article, we explore the question of whether there exists a similar pattern of inertia in disclosure language across time for individual sovereigns. Once a particular type of disclosure becomes standard, issuers that make such disclosure will not cause investors in the market to pause (while those that do not run the risk that investors may treat nondisclosure as a negative signal). Similarly, attorneys may look to the market standards for disclosure as a signal of what the consensus belief of the market is on what the law requires for disclosure when the legal mandate is ambiguous.

V. EMPIRICAL ANALYSIS

We test our hypotheses using a time series dataset for several sovereign issuers. We focused solely on sovereigns issuing bonds governed by New York law. The three contractual shifts we examine (Exit Consent, and *Pari Passu* interpretive shocks and the explicit shift from UACs to CACs) were all functions of New York law. In addition, these New York law-governed bonds were more likely than bonds denominated in euros or yen to be aimed at U.S. investors and, thus, more likely subject to the disclosure obligations imposed by the U.S. federal securities laws.

We selected Mexico, Brazil, and Colombia as representative of the most important countries in terms of sovereign bond deal volume of New York law-governed issuances. In order to get some geographic variation, we added in Italy from Europe, China and the Philippines from East Asia, Lebanon and Israel from West Asia, Jamaica from the West Indies, and South Africa from Africa. For each sovereign, we obtained a set of at least ten contracts that covered the

73. See Choi & Gulati, *supra* note 4, at 15.

twenty-year period 1985-2005. To the extent possible, we attempted to focus our data collection efforts on the 1995-2005 period. But some countries do not come to the international bond markets as often as others, forcing us to look to a longer period to complete our datasets.

We collected available prospectuses and prospectus supplements from the Thompson Financial database. Looking at a set of at least ten prospectuses and prospectus supplements for each sovereign (except where noted) allows us to discern patterns of behavior for individual sovereigns. For some of these countries, such as Jamaica, China, and Lebanon, we were unable to get a full set of ten issuances, because these countries come to the international bond market infrequently (and often with private placements as opposed to registered offerings). We nonetheless picked China and Jamaica in particular because they were, by the date of this writing, the only two issuers who under New York law had not moved to CACs and this decision not to move, as we explain later, itself raises an interesting disclosure question.

In total, the dataset for this Article contains 114 sales documents, 104 of which were prospectus supplements from registered offerings and 10 of which were offering circulars from private offerings.

Table I: List of Sovereign Issuers

	Sovereign	Number of Offerings (Registered, unless specified)
1.	Mexico	20
2.	Italy	19
3.	Colombia	15
4.	Brazil	15
5.	Philippines	13
6.	South Africa	10
7.	Jamaica	8 (4 private)
8.	China	6 (3 private)
9.	Israel	5
10.	Lebanon	3 (3 private)

For each country, we collected information related to the particular offering, including the issuer, whether the offering was registered, the amount of the offering, the interest rate, and the issue date. We also collected information on the other participants in the offering, including the identity of the issuer counsel, the investment

bank counsel, and the lead investment bank in the offering.⁷⁴ From the underlying bond contract/fiscal agency agreement, we coded a number of different contract provisions including:

1. The voting percentage required for a change to the payment terms (principal and interest) and, if the voting percentage is 100% (for example, unanimity), exactly what group of bondholders are included in this unanimity requirement (VOTEBY);
2. Whether the terms that required a higher vote threshold (generally, unanimity) for change were specifically enumerated or, alternatively, broadly prohibited unenumerated changes to something like “payment terms” (ENUMERATED);
3. The voting percentage required for a change to the terms of secondary importance—for example, the nonpayment terms (such as the governing law, negative pledge, waiver of sovereign immunity, place of payment, and *Pari Passu*) (THRESHOLD);
4. The presence of “Extra Provisions” in the contract that, like the modification terms, require a vote of the shareholders at the higher VOTEBY threshold in order to change the terms; and
5. The *Pari Passu* clause.

Lastly, we collected information on the disclosures in the prospectus, prospectus supplements, or offering circular (in the case of private placements) on affirmative disclosures made that relate to (1) any explicit warnings about the use of UAC or CAC clauses and (2) any enforcement-related disclosure in the Risk Factors section. As discussed above, these affirmative disclosures may become misleading if not changed after the Exit Consent or *Pari Passu* shocks or the explicit shift to CACs in the underlying contract language, giving rise to a duty to disclose these shifts in the underlying substantive rights of the contracts.

In assessing the disclosures in the prospectus, prospectus supplements, and offering circulars, several key events are important over the time period of our study:

1. The Exit Consent shock in 2000;
2. The *Pari Passu* shock in 2000;
3. The public move after much debate on the part of Mexico to CAC clauses for payment terms in February 2003; and
4. The declaration of the U.S. Treasury on February 3, 2004 of the CACs as the new “standard” for New York law-governed bonds.⁷⁵

74. In the interest of space, we do not report the offering amount, interest rate, issuer counsel, investment bank counsel, and investment bank. For those interested in such data, please see Choi and Gulati, *supra* note 21, at 929.

The move on the part of Mexico to CACs in particular was a watershed event. Not only was Mexico's move highly publicized, it also marked the beginning of a dramatic marketwide shift on the part of sovereign issuers of New York law-governed bonds toward CACs. To demonstrate this shift, we segmented the data for the 1995-2005 period in terms of UAC bonds versus CAC bonds as reported in Table II below. For 2002 and prior years, over 96% of the issuances are UAC governed (Lebanon being the outlier in 2000 and 2001). Then in 2003, the year of Mexico's shift, Table II reports that almost one-third of the issuances in our database were done using CACs. That fraction shifts to over 75% with CACs in 2004 and then to over 90% with CACs in 2005. Consistent with the public statements of the United States Treasury, we see that by 2005, CACs have become the market standard.

Table II: UAC to CAC Shift

Year	Number of CAC Offerings	Number of UAC Offerings
2005	11	1
(As of Nov. 1, 2005)		
2004	14	4
2003	5	11
2002	0	9
2001	1	13
2000	1	13
1999	0	10
1998	0	7
1997	0	2
1996	0	5

Given these key events, we discuss the disclosure practices of the ten countries in our sample as these events occurred. We ask whether countries altered their disclosure practices to take account of these four events.

A. *Mexico*

For Mexico, we obtained twenty registered issuances. There is no disclosure as to the shift in contractual rights due to either the Exit Consent technique or an *Elliott Associates*-style, *Pari Passu* attack in any of the prospectus supplements issued subsequent to those shocks occurring in 2000. The disclosures made regarding contractual

75. Press Release, John B. Taylor, Under Sec'y of Int'l Affairs, U.S. Dep't of Treasury, Statement of Under Secretary John B. Taylor Regarding Decisions by Countries to Issue Bonds with Collective Action Clauses (CACs) (Feb. 3, 2004), *available at* <http://www.treas.gov/press/releases/js1144.htm>.

provisions and their corresponding risks remain identical throughout our sample period. The exception is that Mexico made prominent disclosure of the switch from UACs to CACs in its prospectus supplements from February 2003 to date.

First, take Exit Consents. Mexico's prospectus supplements disclose that modifications to the payment terms of the bonds cannot be made without the consent of "each" bondholder of the series. In other words, unanimous approval is required. Mexico makes such a representation prior to the Exit Consent innovation in 2000. After the Exit Consent shock, the representation is no longer accurate, given the ability of less than a majority to change the payment-related terms using Exit Consents. In subsequent bond offerings, Mexico made no mention of this shift in its prospectus supplements. Instead, Mexico continued with the exact same "each" bondholder of the series disclosure as before.

Take *Pari Passu* next. The Risk Factors section of the prospectus supplements state: "Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."⁷⁶ This means that holdout creditors are limited in the tools they may use to block restructurings. The Risk Factor disclosure in Mexico arguably becomes misleading after the *Elliott* case and subsequent litigation over the *Pari Passu* clause in England, Belgium, and the United States, after which it became less difficult to obtain and enforce judgments against the defaulting sovereign. However, there is no change in the disclosure. The statement, "it may be difficult for you to obtain or enforce judgments against Mexico" is repeated in every issuance subsequent to the *Elliott Associates* litigation despite the change in the substantive legal rights enjoyed by individual bondholders.

In contrast, when Mexico altered its modification clause for payment terms in February 2003, it disclosed this shift prominently on the cover page as well as in the summary of the offering and in the Risk Factors section of the prospectus supplement. Investors, if they looked, could find the shift from UACs to CACs in the Bond Contract attached as an exhibit. Mexico was the very first country to move to CACs in its registered bonds under New York law and made the move in a highly publicized manner.⁷⁷ Mexico's shift to CACs was probably the most publicized and publicly debated contract revision the

76. See, e.g., United Mexican States, *supra* note 68, at 2.

77. See Gelpert, *supra* note 1, at 19.

international financial markets have seen in a half-century. Nonetheless, Mexico provided *three* explicit warnings at the very front of the prospectus supplement.⁷⁸ And this pattern of disclosure of the risk of CACs on the cover page, in the summary of the offering, and in the Risk Factors section continues well into 2005 for subsequent Mexico offerings, long after CACs have become established market practice and part of the “total mix” of information.

B. Brazil

Brazil, like Mexico, is one of the major sovereign borrowers on the international financial markets. The dataset for Brazil contains fifteen registered issuances. The pattern of disclosure is much the same as for Mexico. With regards to the Exit Consent and *Pari Passu* shocks in 2000, Brazil did not change its disclosure in the prospectus supplement in subsequent bond offerings. Instead, despite the shift in the risk of restructuring and the ability of individual investors to litigate against the sovereign, Brazil continued with the exact same disclosure relating to its UACs and the risks to individual investors in enforcing against a sovereign issuer.

On the unanimity requirement for modification to payment terms, Brazil disclosed in the prospectus supplement that the approval of “the holder of each debt security of an affected series” has to be obtained prior to there being a change to the payment terms. That language remained identical in prospectus supplements for offerings after the advent of Exit Consents in 2000 (and up until Brazil’s eventual shift to CACs described below). As for enforcement, Brazil explained to investors that: “Brazil is a foreign sovereign state and accordingly it may be difficult to obtain or enforce judgments against it.”⁷⁹ As with Mexico, this statement continued to be repeated in identical fashion in the prospectus supplement even after the *Pari Passu* litigation in Brussels.

Brazil engaged in a radically different course of disclosure in the prospectus supplement when it shifted from UACs to CACs in the underlying explicit contractual language. With the shift to CACs,

78. Relevant to all of the foregoing matters, Exit Consents, *Pari Passu*, and CACs, Mexico also represents at the outset of its prospectus supplements that “[Mexico] has not omitted other facts, the omission of which makes this prospectus supplement and the accompanying prospectus as a whole misleading.” In effect then, Mexico warrants in each of its prospectus supplements that there are no half-truths in it. United Mexican States, *supra* note 68, at S-3.

79. Federative Republic of Brazil, Prospectus Supplement 13 (2005).

Brazil, one of the earliest movers to CACs, after Mexico, made every effort to alert investors to the new risks presented by CAC contract terms. Disclosure of the CAC shift was made on the cover page, the summary of key terms, and in the Risk Factors section of the prospectus supplement. Significantly, this shift in disclosure occurred immediately when Brazil moved to CACs in April 2003. Even into 2005, when investors arguably have no need for disclosure of the shift to CACs (by this time, CACs have become a standardized boilerplate term for New York law-governed bonds), Brazil continued with its prominent disclosure of the use of CAC terms. Somewhat bizarrely, the prominence of the CAC disclosure *increased* between the initial move to CACs in April 2003 and late 2005. In April 2003, there was no Risk Factors disclosure of the CACs while, in late 2005, Brazil included a Risk Factors discussion of the CAC term.

C. Colombia

For Colombia, we have fifteen registered offerings. As with Mexico and Brazil, Colombia's post-2000 prospectuses do not disclose the implications of the Exit Consent or *Pari Passu* shocks. Instead, Colombia continues with the same pre-2000 disclosures regarding its use of a unanimous action clause (up until its shift to CACs) and the litigation risks facing individual investors. With respect to enforcement risks, Colombia has much the same statement as Mexico and Brazil.⁸⁰

Unlike Mexico or Brazil though, the underlying contractual language in Colombia's Bond Contracts does not remain precisely the same. Between 1999 and 2000, Colombia changed the language regarding the voting threshold for changes in nonpayment terms, a crucial feature of the use of Exit Consents, from "Each" to "Each Debt Security of such series affected thereby."⁸¹ As detailed elsewhere, the latter language allows for a more aggressive use of Exit Consents than the former.⁸² Even though there was this explicit change in the wording that altered the Exit Consent risk for investors,

80. The disclosure is: "Colombia is a foreign sovereign. It may, therefore, be difficult for investors to obtain or enforce judgments against Colombia." Republic of Colombia, Prospectus, Debt Securities Warrants 10 (2003).

81. We attempted to make informal inquiries as to why the language had changed and the best we could get was that the individual lawyers (as opposed to the law firms themselves) had changed. There was no suggestion whatsoever that the change had been made in order to take advantage of the Exit Consent innovation.

82. See Choi & Gulati, *supra* note 4, at 16-17.

Colombia made no mention of this shift in its Risk Factor disclosure section of the prospectus supplement during the same time period.

With the move to CACs, by contrast, we see heightened disclosure in the prospectus supplement as with Mexico and Brazil. Colombia explicitly warns its investors that it has switched to CACs not only on the cover sheet of the prospectus supplements, but also in the summary of key terms and, in 2005, in a *new* Risk Factors section. Colombia not only discloses the actual language of the CAC contract as an exhibit, but it also warns investors in three distinct and prominent portions of the prospectus supplement that this shift to CACs has occurred.

What explains Colombia's move to disclose in the prospectus supplement the explicit change in language regarding the CAC clause, but not to disclose the more subtle shifts in language for the voting threshold to change nonpayment terms? We believe two factors explain the difference. First, Colombia followed the lead of Mexico and Brazil (both of whom issued sovereign debt using CACs before Colombia) in disclosing its CAC in the prospectus supplement. Once such disclosure became standard for CAC clauses, all countries followed suit upon implementation of a CAC clause. Disclosure here is less due to any legal requirement (particularly when CACs become prevalent and part of the total mix of information) but more because the practice of disclosure itself becomes part of the standard offering practice. Once standard, any deviation may be viewed with suspicion by investors. In contrast, Colombia's change in the voting threshold for its nonpayment terms that we discussed earlier did not follow any general shift in the marketplace nor was there any standardized form of disclosure for this shift. Second, because the shift in the explicit voting threshold language for nonpayment terms directly implicated the Exit Consent shock, explicitly discussing the implications of the explicit shift would run the risk of possibly negatively affecting how courts might interpret the provisions important for the use of Exit Consents looking into the future.

D. Italy

The pattern for Italy is much the same. Our dataset consists of nineteen registered issuances. Neither the Exit Consent nor *Pari Passu* shocks are disclosed in the post-2000 issuances. The relevant statements in the prospectus supplements that might be argued to be half-truths in light of these shocks remain exactly the same, issuance

after issuance from the pre-2000 period up through 2005 (except for the eventual shift to CACs which are disclosed as discussed below).⁸³

The lack of disclosure of the *Pari Passu* shock is noteworthy in the case of Italy. The version of the clause starting with the October 2000 issuance is among the most vulnerable to an *Elliott Associates*-style attack. Italy's *Pari Passu* clause states: "We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."⁸⁴ This variation on the *Pari Passu* clause appears to articulate precisely the position that Elliott Associates took in the Brussels litigation, making Italy particularly vulnerable to holdouts.⁸⁵ Yet, even with such an extreme version of the clause, there is no explicit caution to investors as to the heightened risk of holdout litigation. Instead, the same boilerplate disclosure is made relating to the difficulty of investors to litigate against a sovereign.⁸⁶

With respect to the explicit shift to CACs, Italy makes prominent disclosure of the CAC shift in multiple locations in the sales document (including on the cover page and in the summary of key offering terms). And this prominent disclosure of the CAC shift occurs in every one of the seven issuances in our dataset between 2003 (after Mexico's initial move to CACs) and 2005. Indeed, up until the date of this Article, every new Italian issuance under New York law contains the very same prominent warnings about CACs that were put in place in 2003, despite the general market awareness of the prevalence of CACs in New York law-governed bonds.

E. China

China is one of the three countries, together with Israel and Jamaica, for which we have fewer than ten issuances. Similar with the other sovereign issuers, China's disclosures show no changes in response to either the Exit Consent or *Pari Passu* shocks. Take the *Pari Passu* shock first. Here, China makes the same enforcement

83. The unanimity language disclosed is that the "approval of all affected holders of the series" is required. And the enforcement language is that "Italy is a foreign sovereign government" and that "[c]onsequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy." Republic of Italy, Prospectus Supplement S-3 (2004).

84. *Id.* at 59.

85. See Buchheit & Pam, *supra* note 29, at 887 n.36.

86. In addition, this "extreme" language in the post-2000 offerings is also different from the milder language in the one prospectus supplement that we have in our dataset from prior to that time period (a change in language that appears to correspond to the switch in lawyers from Sullivan & Cromwell LLP to Skadden, Arps, Slate, Meagher & Flom, LLP).

disclosure language in every one of the six prospectus documents we have (three registered and three private offerings).⁸⁷ The language remains identical both before and after the *Pari Passu* shock.

China's prospectus disclosure response to the Exit Consent innovation is more interesting. China's underlying contractual language changes from the pre- to post-Exit Consent period. In its 1996 issuance, the modification clause in the Bond Contract requires, for changes to payment terms, a vote by "holder[s] of each Debt Security of *such series* affected thereby."⁸⁸ The next Bond Contract document in our database is from 2001, after the Exit Consent innovation. There, we find the language stating that a change to payment terms requires a vote of the "holder[s] of each Note or Bond affected thereby." The new language that we find in China's 2001 issuance Bond Contract potentially makes it easier for a nonmajority of bondholders to change nonpayment terms using Exit Consents.⁸⁹ Nonetheless, despite the increase in the ability for sovereigns to exploit the Exit Consent procedure, China does not disclose this possibility in its offering documents. Instead, it continues throughout the time period of our study to disclose the presence of a unanimous action clause relating to payment terms, without qualification, both before and after the Exit Consent innovation.⁹⁰

China is also interesting because of its refusal, as of the date of this writing, to move to CACs in its explicit contract terms. Subsequent to the initial move by Mexico to CACs in February 2003, China has completed at least three issuances under New York law. In all three offerings, China used UACs. In October 2003, CACs were still relatively novel; only a handful of countries had moved to CACs following Mexico's initial move in February 2003. But by October of 2004, there were hardly any New York law-governed issuances with a UAC. By this point in time, China's use of UACs was no longer

87. The caveat is that investors should be aware that: "China is a foreign sovereign state. Consequently, it may be difficult for you to obtain or enforce judgments of Courts in the United States or other jurisdictions against China." People's Republic of China, Offering Circular 18 (2003).

88. *Id.*

89. See Choi & Gulati, *supra* note 4, at 16-18.

90. In 2003, the language changes again to say that a vote of the "holder of each of the debt securities of the series which would be affected" is required, which reduces vulnerability to Exit Consents. Again, there is no disclosure. And then in 2004, there is a change in language again, changing vulnerability to Exit Consents—with the vote required of the holder of each of the affected notes or bonds, as the case may be. The fact of vulnerability of payment terms to restructuring by less than unanimity (due to Exit Consents), again, is not disclosed.

standard. Among new issuances, China's contracts were now outliers. There is at least a colorable argument that China's deviation from the new standard places a legal requirement for China to disclose this deviation. To the extent investors assume that they were purchasing debt governed by standard form contracts, China should have disclosed that it was no longer following standard practice. China made no mention however in its prospectus supplements of its outlier status.

F. Philippines

For the Philippines, we have thirteen registered issuances. For both the Exit Consent and *Pari Passu* shocks, we find no change in the disclosure practices in the prospectus supplements. The disclosures made, with respect to the unanimity requirement for changes to payment terms and the risk to investors due to the difficulty inherent in enforcement actions against sovereigns, remain identical from before to after the shocks (up until the shift to CACs).⁹¹

With respect to the *Pari Passu* clause, the lack of disclosure in the enforcement clause after the *Pari Passu* shock is noteworthy. The underlying Philippines Bond Contract uses a clause that is especially vulnerable to an *Elliott Associates*-type attack. Its clause says that the debt "ranks at least equally in *right of payment*," which makes it more vulnerable than that of sovereigns whose clauses merely say the debt "ranks equally."⁹² For the Philippines in particular, the risk of holdout litigation is significantly increased after the *Pari Passu* shock. Despite this heightened holdout risk, there is no change in the disclosure that is made. Instead, the identical statement, "enforcement is difficult" is repeated in every issuance after the *Elliott Associates* litigation.

In contrast, when the Philippines switched to a CAC for modification to payment-related terms (almost a year after Mexico moved to CACs and after a number of other big borrowers including Uruguay, Brazil, Turkey, South Korea, and South Africa had already moved to CACs), it disclosed this move on the front page of its prospectus supplements and in every prospectus summary issued

91. The articulation of the unanimity requirement was the assertion in every prospectus (prior to the shift to CACs) that the vote of "each holder of a series" was required for any alteration to payment terms to be made. As to enforcement, the Introduction to the prospectus supplements explained: "The Republic is a foreign state. Consequently, it may be difficult for you to obtain or realize upon judgments of courts in the United States against the Republic."

92. See FMLC REPORT, *supra* note 30, at 19-21 (describing the differing vulnerabilities of differently worded *Pari Passu* clauses).

subsequent to February 2004. There is another twist though. After it moved to CACs in February 2004, the Philippines reversed course and in June 2004 issued bonds under the old UAC-type contracts. This reversion to UACs though is *not* flagged on the front page of the prospectus nor in the summary of the terms (perhaps because affirmatively disclosing the presence of UACs is not standard disclosure practice in New York, even though by June 2004, UAC issuances themselves have become nonstandard). The Philippines then switched back to CACs in September 2004. After the switch back, the Philippines again flagged the use of CACs in the prospectus supplement on the cover page and in the summary of terms.⁹³

G. Lebanon

Lebanon poses an interesting contrast to the countries issuing New York law-governed bonds that moved to CACs after Mexico in February 2003. A handful of countries had in fact moved to CACs some years prior to Mexico, although none in as public a manner as Mexico. Lebanon was among those countries. All of the countries that adopted CACs after Mexico also followed Mexico in making sure that there was prominent disclosure in multiple places in their prospectus supplements of the fact that these countries were now using CACs. In the prospectus supplement prior to Mexico's 2003 offering, Lebanon and its lawyers did not make any attempt to provide the same kinds of prominent warnings regarding CACs to their investors. Lebanon mentions the use of CACs briefly in the private placement offering memorandum, but does not otherwise flag the use of CACs on the front cover page or in the Risk Factors section. This raises the question of why public disclosure of CACs was made by all the countries that followed Mexico's example in February 2003, but none was made by Lebanon. Lebanon not only failed to flag the move to CACs prior to Mexico, it also continued this disclosure practice well after Mexico's shift to CACs even in 2005.

Lebanon differs from the other countries in our database in that almost all of its issuances were nonregistered private placements. The same level of disclosure obligations may not apply to Lebanon as it

93. Also interesting, while appearing to adopt the standard CAC terms that Mexico and the majority of other sovereigns used, the Philippines had one small difference in its terms in that it does not have changes to the "place of payment" as a "Reserved Matter" (whereas Mexico and the majority of other sovereigns who switched to CACs do). This small deviation from the standard form of the CAC clause used by most other sovereigns is not disclosed.

does to the other issuers in our database. Specifically, the Item 512(a) undertaking to update the registration statement does not apply to nonshelf offerings.⁹⁴ The only remaining obligation to disclose rests with the obligation not to engage in half-truths under Rule 10b-5.⁹⁵ One explanation for the choice by Lebanon not to flag its pre-Mexico shift to CACs therefore lies with reduced disclosure obligations. Nonetheless, an alternate explanation exists. If disclosure practices are sticky, due to network effects, then Lebanon would not change its disclosure practices from the norm until a marketwide shift occurs.

Although not conclusive, there are indications of a network effect. Take the Lebanese shift to CACs in 2000, prior to Mexico's very public and market-shifting move to CACs in 2003. Putting aside the caveats discussed above, Lebanon knew that it was an isolated mover to CACs. Almost no one else used CACs in their New York law-governed bond issuances and, as a result, Lebanon, lacking a market standard requiring disclosure, did not disclose the shift in its offering documents, consistent with the network effect hypothesis (Hypothesis Two).⁹⁶ Why, though, did Lebanon not shift to disclosing its use of CACs after Mexico's shift to CACs in 2003 once a new disclosure practice of prominently disclosing the use of CACs in the prospectus supplement arose in the marketplace? A more nuanced explanation of a network effect is possible for Lebanon that may explain this puzzle. The Lebanese offering was done in the United Kingdom, through the London office of a New York law firm. And the use of CACs was standard in the United Kingdom long before 2000. Lebanon's U.K.-based attorneys responsible for disclosure practices were simply following the standardized disclosure practices for *English* sovereign bond deals with CACs, irrespective of the disclosure requirement for the switch to CACs for bonds governed under New York law (as were the Lebanese bonds).⁹⁷

94. See 17 C.F.R. § 229.512 (2005).

95. See *id.* § 240.10b-5.

96. See *supra* Part IV.

97. Further evidence for this network story can be found in the offering documents for Bulgaria, Qatar, and Egypt, three of the other countries identified by Guggiati and Richards as among the earliest movers to CACs under New York law (the one early mover for which we were unable to track down offering circulars was Kazakhstan). See Guggiati & Richards, *supra* note 39, at 821. Bulgaria, Qatar, and Egypt were not in our original database. But the puzzle over Lebanon caused us to track down contracts for these countries as well. We found the following from our supplementary dataset of three sales documents for Bulgaria, two for Egypt, and two for Qatar:

Whilst issuing under New York law, all three were using U.S. law firms based in London. All three were also making nonregistered offerings. Bulgaria and Qatar,

Regarding the Exit Consent and *Pari Passu* shocks, Lebanon's behavior is the same as the other sovereigns'. That is, Lebanon makes no change in the explicit disclosures with regard to its UAC (while it still used a UAC) and the risk factor regarding enforcement against sovereigns.⁹⁸

H. Israel

For Israel, we have five registered offerings. Israel was one of the last movers to CACs. Israel issued sovereign bonds in June 2003, months after Mexico, Brazil, and Uruguay all moved to CACs, but chose at the time to remain with a UAC. In its issuance in February 2004, at the point when CACs had become the market standard for New York law-governed bonds, Israel finally moved to CACs.⁹⁹ As with other issuers toward the end of our study's time period when CACs had become the prevailing standard, Israel flagged prominently the use of CACs on the front page of the prospectus supplements and in the summary of the offering a few pages later, despite the broad market expectation of the use of CACs.

As for the Exit Consent and the *Pari Passu* shocks, the pattern is the same for Israel as it is for all the other countries in our database. There is no change in the disclosure language regarding UACs (prior

like Lebanon, do not make prominent disclosure of their use of CACs (nor do they flag the impact of either the exit consent or *pari passu* shocks). The only one of the early movers to CACs that does make prominent disclosure of its different clauses is Egypt (in the summary section); and Egypt is the only one of these early movers that did not use the standard London-type CAC. Instead of a seventy-five percent threshold for altering Reserved Matters, Egypt uses 85% (and the standard practice with English Law CACs is to use 75%). What we have then is further confirmation that Lebanon did not perceive the need to make additional disclosures so long as it was plugging into a market standard.

With Bulgaria, we also find that Bulgaria switches *back* from CACs to UACs in 2002. As we saw with the Philippines that also did a switchback to UACs, there was no prominent disclosure of this Bulgarian switch. The offering dates and amounts for the bonds for these countries were: Lebanon (5/6/01 (\$400 million), 6/19/00 (\$2.5 million programme)); Bulgaria (10/9/02 (\$759 million), 11/6/01 (Euro 250 million)); Egypt (7/5/01 (\$500 million & \$1 billion)); Kazakhstan (10/1/97 (\$300 million)); Qatar (6/26/00 (1.4 billion), 5/18/99 (\$1 billion)). All of these offerings circulars were obtained off the Thompson Financial Database, except for the one New York law-governed bond for Kazakhstan, which was provided to us by Anthony Richards from his database.

98. On enforcement, Lebanon discloses, both before and after the *pari passu* shock, that: "The Republic is a sovereign state. Consequently, it may be difficult for investors to obtain or realize upon judgments against the Republic." Lebanese Republic, Pricing Supplement 2 (2003).

99. See Taylor, *supra* note 75.

to the shift to CACs) and enforcement risks warning investors of the shift in substantive rights resulting from the shocks.¹⁰⁰

I. Jamaica

Along with China, Jamaica is one of the few issuers under New York law that has not shifted to CACs as of this writing. Our dataset has eight Jamaican issuances (four registered and four private). The pattern is the same as with China. There is no disclosure of the failure to move to CACs, even in May 2005, at which point CACs had become the dominant market practice in New York law-governed sovereign bonds.

As for the Exit Consent and *Pari Passu* shocks, there is no response in the disclosure language to the shocks of 2000. Jamaica's *Pari Passu* language, in particular, is on the more vulnerable side vis-à-vis an *Elliott Associates*-type attack.¹⁰¹ This difference, nonetheless, did not induce disclosure on the part of Jamaica.

J. South Africa

The general patterns for the ten registered South African issuances are the same as for the other sovereigns. South Africa makes no change in its disclosures despite the occurrence of the Exit Consent and *Pari Passu* interpretive shocks.¹⁰² With the explicit shift to the CAC term, the pattern is again much the same as with the other sovereigns. South Africa prominently disclosed the shift to CACs in South Africa's prospectus supplement.

There is an interesting aspect of the South African disclosure practices, though, that mirrors both Colombia and Brazil. In 2003,

100. The precise disclosure regarding unanimity was that the approval of the "[h]older of each security" was required for a change to be made to the payment terms. As for enforcement, the disclaimer was: "The State of Israel is a foreign sovereign government. Consequently, it may be difficult for you to sue Israel or to collect upon a judgment against Israel." State of Israel, Prospectus Supplement 46 (2003).

101. Jamaica's *pari passu* clause for its issuances in 2002, 2004, and 2005 reads: "The [debt securities] . . . will rank at least *pari passu* without any preference among themselves. The payment obligations of Jamaica under the [debt securities] will at all times rank at least equally with all other payment obligations of Jamaica." Government of Jamaica, Prospectus Supplement S-1 (2002).

102. On unanimity, the standard disclosure made by South Africa is that the approval of the "holder of each debt security of such series affected" is required. And on enforcement, the disclaimer is that "The South African government is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against the South African government." Republic of South Africa, Prospectus Supplement S-4 (2002).

when South Africa first shifted to CACs, it was one of the earliest movers (moving after Mexico, Brazil, and Uruguay). At that point, while South Africa disclosed the move to CACs in the summary of terms, it made no mention of CACs on the cover page of the prospectus supplement. By the time South Africa filed its May 2004 issuance, three months had elapsed since the United States Treasury declared victory in terms of the CAC initiative and CACs had become the market standard in New York. Presumably, such prominent disclosure of the CACs in the offering documents was less necessary at this point. Yet, in May 2004, South Africa *added* a warning concerning the CAC on the cover page of the prospectus supplement, increasing its disclosure.

VI. SUMMARY OF FINDINGS

The clearest pattern in our data for the ten countries studied is that the idiosyncratic relevance of the Exit Consent and *Pari Passu* shocks to individual sovereigns was not disclosed. By contrast, the shift to CACs was disclosed prominently for every sovereign but Lebanon, and continues to be disclosed prominently, almost two years after the very public shift to CACs was initiated by Mexico. In legal terms, we see an inversion of what existing legal mandates require. The explicit CAC shift on the part of specific sovereign issuers, especially for issuances starting in early 2004 after CACs had become the market standard, we argue did not need to be disclosed in the prospectus supplement, let alone prominently on the cover page, Risk Factors section, and in the summary of key terms. By this time period, the shift to CACs in the New York market was well-known and thus likely immaterial. Nonetheless, every single sovereign that shifted post-Mexico continued to flag the use of CACs prominently. If anything, the prominence of the disclosure of CACs seems to increase over time, as in the cases of Colombia, Brazil, and South Africa.

As for the idiosyncratic variation among countries caused by the Exit Consent and *Pari Passu* shocks—two shocks that arguably created a lot more risks for investors than did the CAC shift—countries make no changes in their disclosure. Prior disclosures regarding the contractual rights of bondholders—such as statements regarding the likely difficulty of enforcing judgments against the Sovereign or the voting requirements for an alternation of the payment terms to the bonds—remain identical, even though the

substantive rights change. Issuers and their lawyers disclose precisely opposite to what the law requires. But why?

Hypothesis One stated that we should expect to see disclosure after an explicit change in the underlying contractual language and not so when the meaning of the existing language changes due to exogenous factors such as an errant court interpretation. One reason for this difference is the possible use of rules of thumb on the part of busy transactional attorneys. It is easy to observe and disclose explicit changes in the underlying contractual terms. It is perhaps not as easy to search the marketplace for changes in how courts and others may interpret the existing contract terms in the state of uncertainty following an interpretive shock. At first cut, our evidence supports Hypothesis One. The CAC shifts in contract language are disclosed prominently in the prospectus. The Exit Consent and *Pari Passu* shifts are interpretive changes in the meaning of existing language, and they do not get disclosed in the prospectus.

Closer examination, though, poses a few questions for this hypothesis. First, we have one shift to CACs that did not get prominent disclosure. Lebanon did not disclose the use of CACs prominently when it issued bonds using CACs in 2000, well before the Mexico-induced shift in February 2003. However, the Lebanon data point may be an outlier due to Lebanon's U.K.-based attorneys.

There are some additional holes in Hypothesis One. At least three of the ten sovereigns had minor changes in their contract language that (1) occurred around the time of either the Exit Consent shock or the *Pari Passu* shock and (2) that arguably altered the risks faced by investors vis-à-vis those interpretive shocks. Those countries were Italy, Colombia, and China. And here, despite the fact that the contract language did change, and the shocks arguably made these changes material ones, there was no disclosure of the changes in language. At first glance, this pattern appears inconsistent with the part of Hypothesis One that says that changes in explicit contract language that materially changes the underlying contractual allocation of rights will be disclosed in the offering documents. Again, as with the Lebanese data, there is a way to modify the hypothesis to reconcile this data as well. The CAC shift in contract language was a big one. The entire text of the modification clause got taken out and replaced by an entirely new clause that was almost a whole single-spaced page long. In contrast, the language changes for Italy, Colombia, and China that affected the impact of the interpretive shocks were all very minor word alterations to the contract language.

Perhaps these were inadvertent changes—some overambitious junior associate simply clarifying a clause—as opposed to changes in substantive terms. But, plausible though the inadvertent change theory strikes us, we have one further inconsistent instance. The Philippines, as discussed above, when it switched back to UACs in its Bond Contract after switching to CACs earlier (and prominently disclosing the CAC shift), did not disclose the switch back to UACs prominently in the offering documents despite the explicit and major change in the underlying Bond Contract. This inconsistency in Hypothesis One, though, make more sense under Hypothesis Two, which is that disclosure practices exhibit considerable network effects.

Hypothesis Two posits that sovereigns are more likely to make disclosure of matters that others typically disclosed in their offering documents. More concretely, the likelihood of disclosure increases as the number of others engaged in the same disclosure practice increases. Possibly, sovereigns and their lawyers look to the widespread use of a particular disclosure practice as a signal of what the law requires (rather than delve into the legal requirements directly, which, as we discuss above, can be somewhat ambiguous). It is also possible that investors come to expect a particular type of disclosure in the offering documents. Those who fail to provide such disclosures send a negative signal to the marketplace, resulting in investors simply moving on to another offering.

Although not conclusive, there are indications of a network effect. Take the Lebanese shift to CACs in 2000 first. Putting aside the caveats discussed above, Lebanon knew that it was an isolated mover to CACs. No one else used CACs in their New York law-governed bond issuances at the time. Lebanon in fact did follow a standard, the prevailing English bond standard of disclosure with respect to CACs (with no prominent disclosure), with which Lebanon's U.K.-based attorneys were familiar.¹⁰³

By February 2003, though, when Mexico moved to CACs, market sentiment had coalesced into opposition to the IMF's proposal for a new bankruptcy court for sovereigns and willingness to move to CACs. When Mexico moved to CACs, there was a high likelihood that others would follow it because the move was part of a coordinated effort between the official and private sectors. But this does not tell us anything regarding disclosure and network effects.

103. And the same explanation holds for Bulgaria and Qatar. See Gugiatti & Richards, *supra* note 39 and accompanying text (describing the disclosures in the Bulgarian and Qatari sales documents).

Why did Mexico choose to make prominent disclosure in three places at the front of its sales document, of its decision to move to CACs when the prevailing market standard involved no such disclosure? One response is that the SEC pushed for disclosure of the CACs, resulting in a shift in the market disclosure standard. Anecdotaly, various market participants informally told us that SEC officials told Mexico's lawyers and the lawyers for the other early movers, such as Uruguay and Brazil, that prominent disclosure of the CAC shift needed to be made.¹⁰⁴

It is important to note though that there is no indication that the SEC told any of these issuers that prominent disclosure of the CAC risk would need to be disclosed *long after* CACs had become the market standard. Disclosure of the shift is more material to the investors at the time of the shift itself. Well after the shift, once the CACs are the new standard, investors are unlikely to learn anything new from prominent disclosure of the use of CACs. Yet, long after the United States Treasury had publicly announced victory on the CAC initiative, our data shows that sovereigns continued with the prominent disclosure of the shift to CACs on the cover pages of every one of the issuances that involved CACs. Significantly, disclosure on the prospectus cover page is not costless. Space on the cover page of a prospectus supplement is scarce; only the most important disclosures get to be on the cover. As one prominent sovereign debt lawyer explained regarding disclosures on the cover page: "There is usually a reason for elevating a disclosure item to that page, just as a newspaper editor has to decide each evening what will be elevated to the above-the-crease front page in tomorrow's edition."¹⁰⁵ That same point applies, albeit to a lesser extent, to the Risk Factors and Summary sections that appear at the front of the sales document. Only the most important material gets mention here. Yet, we see that CAC disclosure, despite having become pointless from both the legal compliance and investor informativeness points of view, continues to find its way to the front of the sales documentation, even well after the market standard for New York law-governed bonds moves to CACs.

For three of these issuers—Colombia, Brazil, and South Africa—the prominence of the announcement regarding CACs

104. Although a number of practitioners and regulators were willing to speak to us on this topic, they were unwilling to let us attribute specific statements to them.

105. E-mail from Lee Buchheit, Partner, Cleary, Gottlieb, Steen & Hamilton, to Mitu Gulati, Professor of Law, Duke Univ. Sch. of Law (Dec. 30, 2005, 09:36 EST) (on file with authors).

actually increases, not decreases, as CACs become more prominent. Colombia and Brazil, in their later issuances (in 2004 and 2005) start discussing CACs in their Risk Factors sections. Similarly, South Africa, in its first CAC issuance in 2003, did not mention the CACs on the front page of the prospectus supplement. In its 2004 issuance, South Africa discloses its use of CACs to change payment terms prominently on the center of the cover page of its prospectus supplement. Lebanon is the exception that proves the rule. Lebanon, even in a 2005 issuance with a CAC, chose not to flag the use of the CAC prominently in its offering documents. Lebanon's documents, however, were prepared in the United Kingdom through the London office of a U.S. law firm. To the extent the London office was used to disclosing according to the prevailing practice in the United Kingdom, where CACs long had been the standard, Lebanon's lack of disclosure on its use of CACs is consistent with this standard.

VII. CONCLUSION

We started with an ideal image of how issuers and their attorneys determine what information to disclose. Under this image, issuers and their attorneys deliberate at great length on what the law requires in terms of disclosure. It is here, in making judgments about what the law requires, that lawyers add their greatest value—at least, so we were told when we were law students (and so we tell our own students). Once these difficult judgments are made about what are the legal requirements for disclosure, issuers will comply with these requirements and disclose such information. Our data leads us to question whether issuers and their attorneys in high-priced transactional practice in fact follow this ideal image.

Even where legal mandates are relatively clear, issuers and their attorneys may fail to disclose required information. The Exit Consent and *Pari Passu* shocks produced significant changes in the underlying allocation of substantive rights between sovereigns and their creditors. Despite the likelihood that their standard disclosures became materially misleading half-truths after the shocks, sovereign issuers chose not to modify these disclosures in the offering documents. One possible reason why issuers may choose to ignore a possible disclosure duty is the fear that disclosing the changes wrought by the interpretive shocks may act as an admission to future courts that the issuer agrees with a prior court's view on the shock. Where the issuer chooses not to highlight the interpretation, they will hesitate to make disclosures on the interpretation.

Some may respond that issuers choose not to disclose because the law, in fact, does not require disclosure at all. Perhaps the change in underlying contractual rights due to the interpretive shocks fails to rise to the level of materiality. We look at the disclosure decisions made on the explicit shift to CAC terms to assess whether the lack of legal duty drives the disclosure decision. We argue that, as a relative matter, whatever duty to disclose exists for the interpretive shocks is less powerful for the explicit contractual shift to CACs. Every sovereign bond offering includes the explicit contract terms as an exhibit to the offering documents, giving investors an ability to find the terms as part of the total mix of information. In contrast, nothing within the four corners of the offering documents plus exhibits gives investors complete information on the ongoing litigation surrounding the use of Exit Consents or the *Pari Passu* clause. Idiosyncratic differences exist among sovereigns that may affect how Exit Consents and the *Pari Passu* clause impact a particular sovereign, often in uncertain ways in which the sovereign may enjoy an informational advantage in determining. The lack of information for the interpretive shocks heightens the disclosure duty. Despite the relatively lower duty to disclose the shift to CACs, sovereign issuers almost uniformly flagged this shift prominently in the offering documents.

Not all the failures to disclose are due to an active desire to influence the market (or courts). If this were the case, we should see issuers consistently disclosing good information and hiding bad information. Our data on the idiosyncratic variation caused by the Exit Consent and the *Pari Passu* shocks, where issuers were affected differently by the shocks (some positively and others negatively), suggests that no one discloses idiosyncratic variation vis-à-vis the supposedly standard form contracts, regardless of whether these shocks were investor friendly or not. Recall, for example, that the Italian *Pari Passu* clauses were among the most vulnerable to an *Elliott Associates*-style attack. Assuming rationality, one can tell the story that Italy must have calculated that investors would like a bond issuance that provided holdout creditors with weapons (the more weapons that are in the hands of holdouts, the less likely the sovereign is to seek a restructuring and, thus, the lower interest rate investors will demand). But if this were the case—and it is hard to see any other rational explanation for Italy's behavior—it is strange that Italy did not prominently disclose the fact that it has a special proinvestor clause that the other sovereigns are not providing. A similar pattern arises when one looks at the disclosures that Jamaica and China make

with respect to their refusal to move to CACs. One possible reason behind the refusal to move was because these sovereigns thought that some subset of investors would prefer UACs. But, if that were so, we should expect to see both these sovereigns prominently disclose that they are the only two countries to have retained the creditor-protective UACs. Instead, we see no attempt to disclose this deviation from standard practice despite the benefit to the issuers of flagging this deviation.

The lack of disclosure may instead arise out of an absence of deliberation on the part of issuers and their attorneys. Under intense time pressure in a shelf-registered offering, attorneys may engage in only a limited search for information that should be disclosed in the prospectus supplement, focusing on easily observable changes, such as to the explicit contract language. Use of such a rule of thumb may also lead attorneys to look to market-wide disclosure practices in determining what to disclose. Instead of analyzing the various litigation risks that their contracts pose, transactional lawyers appear to follow the perceived standard in the market for disclosure practices. If the rest of the market is disclosing a certain piece of information, then this may provide an easily observable signal that the market or law (or both) require such disclosure. Network effects also may lead a sovereign to copy market-wide practices. Deviating from a standardized form of disclosure may lead investors in the market to question the issuer's motive, reducing the viability of a shelf-registered offering. We report evidence of network effects in the disclosure practices surrounding CACs. Even after CACs became the market standard, reducing the need to flag the CACs, issuers continued the same prominent disclosure practice for CACs. In certain circumstances, the degree of prominence increased as the CAC became the market standard, despite the decreasing materiality of such information as it joined the total mix of information.

One may wonder how exactly a shift occurs in the market standard for disclosure practices. One possible explanation in the U.S. securities context looks to the role of the SEC. The SEC staff was acutely aware of the debate surrounding Mexico's eventual shift to CACs. Issuers and their attorneys, with knowledge of the SEC's focus on CACs, may have felt pressure to disclose such terms prominently. In contrast, the SEC arguably was less aware of the idiosyncratic impact of the Exit Consents and *Pari Passu* shocks on different issuers. If SEC awareness, as opposed to the desire to inform investors is the driving force determining what information gets

disclosed, that suggests that disclosure will inevitably be of a low quality. The SEC staff, because of resource constraints and lower expertise levels vis-à-vis the elite firms, is only going to be aware of the biggest and most public events. Ironically then, the information that the market typically already knows about and does not need to be alerted to will garner the SEC's attention and, thus, generate disclosure. We see precisely this pattern of disclosure for the shift in the explicit Bond Contract from UACs to CACs. We leave exploration of the role of the SEC in changing disclosure norms (and the systematic bias of the SEC's focus on more public information where mandatory disclosure provides the least value) to future research.

We have only scratched the surface of the question of how issuers and attorneys determine what information to disclose in their securities disclosure documents. Further inquiry is necessary to determine whether our results generalize to larger data sets or whether some idiosyncratic aspect of the sovereign market instead drives our results.

MEXICO

MEXICO							
ID	BCV	BCD	BCT	BCEP	BCPP	PEW	PED
6/6/05	75%	Yes	66.667%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i>	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	Yes	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
1/4/05	75%	Yes	66.667%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i>	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	Yes	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
9/22/04	75%	Yes	66.667%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i>	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	Yes	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."

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BCPP = Bond Contract *Pari Passu*

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PED = Prospectus (Enforcement Disclosure in the Risk Factors Section)

MEXICO							
ID	BCV	BCD	BCT	BCEP	BCPP	PEW	PED
2/26/03	75%	Yes	66.667%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i>	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	Yes	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
12/4/02	Each	Yes	66.667%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
11/28/01	Each	Yes	66.667%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
8/9/01	Each	Yes	66.667%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
3/23/01	Each	Yes	66.667%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."

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MEXICO							
ID	BCV	BCD	BCT	BCEP	BCPP	PEW	PED
3/29/00	Each	Yes	66.667%	*Principal payable on acceleration *Place of payment *Redemption procedures	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
3/23/00	Each	Yes	66.667%	*Principal payable on acceleration *Place of payment *Redemption procedures	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
10/6/99	Each	Yes	66.667%	*Portion payable on acceleration *Place of payment *Redemption procedures	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
10/4/99	Each	Yes	66.667%	*Principal payable on acceleration *Place of payment *Redemption procedures	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
8/2/99	Each	Yes	66.667%	*Portion payable on acceleration *Place of payment *Redemption procedures	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."

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MEXICO							
ID	BCV	BCD	BCT	BCEP	BCPP	PEW	PED
8/2/99	Each	Yes	66.667%	*Principal payable on acceleration *Place of payment *Redemption procedures	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
4/16/99	Each	Yes	66.667%	*Portion payable on acceleration *Place of payment *Redemption procedures	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
3/25/99	Each	Yes	66.667%	*Principal payable on acceleration *Place of payment *Redemption procedures	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
4/1/98	Each	Yes	66.667%	*Principal payable on acceleration *Place of payment *Redemption procedures	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
3/5/98	Each	Yes	66.667%	*Principal payable on acceleration *Place of payment *Redemption procedures	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."

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MEXICO							
ID	BCV	BCD	BCT	BCEP	BCPP	PEW	PED
9/24/96	Each	Yes	66.667%	*Principal payable on acceleration *Place of payment *Redemption procedures	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	"Mexico is a sovereign government. Thus, it may be difficult for you to obtain or enforce judgments against Mexico in U.S. courts or in Mexico."
[Pre 1995]	Each	Yes	66.667%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"Will rank equal in right of payment among themselves and with all of Mexico's existing and future unsecured and unsubordinated public external indebtedness"	N/A	Did not code

BRAZIL

BRAZIL							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
11/29/05	75%	Yes	66.66%	*Governing law *Submission to arbitration *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	Yes (on cover page, in risk factors, and in summary)	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."

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BRAZIL							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
11/9/05	75%	Yes	66.66%	*Governing law *Submission to arbitration *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	Yes (on cover page, in risk factors, and in summary)	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."
9/6/05	75%	Yes	66.66%	*Governing law *Submission to arbitration *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	Yes (on cover page, in risk factors, and in summary)	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."
6/20/05	75%	Yes	66.66%	*Governing law *Submission to arbitration *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	Yes (no risk factor section, but disclosure on cover page and in summary)	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."

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BRAZIL							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
7/7/04	75%	Yes	66.66%	*Governing law *Submission to arbitration *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	Yes	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."
1/12/04	85%	Yes	66.66%	*Governing law *Submission to arbitration *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	Yes	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."
7/30/03	85%		66.66%	*Governing law *Submission to arbitration *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	Yes	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."

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BRAZIL							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
7/30/03	85%	Yes	66.66%	*Governing law *Submission to arbitration *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	Yes	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."
4/11/02	Holder of each debt security of an affected series	Yes	66.66%	*Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	N/A	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."
1/7/02	Holder of each debt security of an affected series	Yes	66.66%	*Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	N/A	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."

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BCPP = Bond Contract *Pari Passu*

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BRAZIL							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
4/11/01	Holder of each debt security of an affected series	Yes	66.66%	*Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	N/A	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."
5/10/01	Holder of each debt security of an affected series	Yes	66.66%	*Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	N/A	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."
2/24/00	Holder of each debt security of an affected series	Yes	66.66%	*Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	N/A	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."
1/19/00	Holder of each debt security of an affected series	Yes	66.66%	*Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	N/A	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."

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BRAZIL							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
10/18/99	Holder of each debt security of an affected series	Yes	66.66%	*Portion payable on acceleration	"The debt securities . . . will rank at least equally in right of payment with all other payment obligations relating to External Indebtedness."	Yes	"Brazil is a foreign state. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts of the United States against Brazil."

COLOMBIA

COLOMBIA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
11/8/05	75%	Yes	66.67%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	Yes (cover page, summary, and in the risk factors section)	"Columbia is a foreign sovereign state. And accordingly it may be difficult to obtain or enforce judgments against it." (located in the summary and again in the risk factors section)

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COLOMBIA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
1/13/04	75%	Yes	66.67%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	Yes (cover page, summary, but no risk factor section)	"Columbia is a foreign sovereign. It may, therefore, be difficult for investors to obtain or enforce judgments against Columbia." (located in the "enforcement" section)
11/9/04	75%	Yes	66.67%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	Yes	"Columbia is a foreign sovereign. It may, therefore, be difficult for investors to obtain or enforce judgments against Columbia." (located in the "enforcement" section)

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COLOMBIA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
4/10/03	Each holder of a debt security of a particular series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The debt securities will rank equally in right of payment . . . with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	"Columbia is a foreign sovereign. It may, therefore, be difficult for investors to obtain or enforce judgments against Columbia." (located in the "enforcement" section)
11/19/03	Each holder of a debt security of a particular series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The bond will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	"Columbia is a foreign sovereign. It may, therefore, be difficult for investors to obtain or enforce judgments against Columbia." (located in the "enforcement" section)
6/26/02	Did Not Code	Did Not Code	66.67%	Did Not Code	"The New Bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	"Columbia is a foreign sovereign. It may, therefore, be difficult for investors to obtain or enforce judgments against Columbia." (located in the "enforcement" section)

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COLOMBIA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
11/14/01	Each holder of a debt security of a particular series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	"Columbia is a foreign sovereign. It may, therefore, be difficult for investors to obtain or enforce judgments against Columbia." (located in the "enforcement" section)
6/12/01	Each holder of a debt security of a particular series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	"Columbia is a foreign sovereign. It may, therefore, be difficult for investors to obtain or enforce judgments against Columbia." (located in the "enforcement" section)
5/3/01	Each holder of a debt security of a particular series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The notes will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	"Columbia is a foreign sovereign. It may, therefore, be difficult for investors to obtain or enforce judgments against Columbia." (located in the "enforcement" section)

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COLOMBIA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
3/3/00	Each holder of a debt security of a particular series**	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The Bonds and Exchange Bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	"Columbia is a foreign sovereign. It may, therefore, be difficult for investors to obtain or enforce judgments against Columbia." (located in the "enforcement" section)
4/15/99	Each debt security of such series affected thereby	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	
3/2/99	Each debt security of such series affected thereby	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The Bonds and Exchange Bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	

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COLOMBIA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
7/30/98	Each debt security of such series affected thereby	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The Bonds and Exchange Bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	
3/26/98	Each debt security of such series affected thereby	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The Bonds and Exchange Bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	
2/1/96	Each debt security of such series affected thereby	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The Bonds and Exchange Bonds will rank equal in right of payment with all of Columbia's present and future unsecured and unsubordinated external indebtedness."	N/A	

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ITALY

ITALY							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
1/13/05	75%	Yes	66.67%	*Governing law *submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *Portion payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	Yes (on cover page and in summary of offering)	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."
4/28/05	75%	Yes	66.67%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *Portion payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	Yes (on cover page and in summary of offering)	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."

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ITALY							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
2/25/04	75%	Yes	66.67%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *event of default *Portion payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	Yes (on cover page and in summary of offering)	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."
2/19/04	75%	Yes	66.67%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *event of default *Portion payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	Yes (on cover page and in summary of offering)	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."

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ITALY							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
4/7/04	75%	Yes	66.67%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *Portion payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	Yes (on cover page and in summary of offering)	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."
1/7/04	75%	Yes	66.67%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *Portion payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	Yes (on cover page and in summary of offering)	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."

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ITALY							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
11/5/03	75%	Yes	66.67%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *Portion payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	Yes (on cover page and in summary of offering)	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."
6/27/03	Without the approval of all affected holders of the series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."
2/21/03	Without the approval of all affected holders of the series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."

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ITALY							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
2/21/03	Without the approval of all affected holders of the series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."
8/29/02	Without the approval of all affected holders of the series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."
1/23/03	Without the approval of all affected holders of the series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."

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ITALY							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
10/18/01	Without the approval of all affected holders of the series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."
3/30/01	Without the approval of all affected holders of the series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."
2/18/00	Without the approval of all affected holders of the series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."

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ITALY							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
8/6/00	Without the approval of all affected holders of the series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."
10/4/00	Without the approval of all affected holders of the series	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"They will rank equally with all of our present and future unsecured and unsubordinated general borrowing. . . . We will pay amounts due on the debt securities equally and ratably with all general loan obligations of Italy."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."
6/11/96	Without the consent of the holder of each debt security of such series affected thereby	Yes	66.67%	*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The Debt Securities . . . will rank <i>pari passu</i> , without any preference among themselves, with all present and future unsecured and unsubordinated general obligations of Italy for money borrowed."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."

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ITALY							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
August 93	Without the consent of the holder of each debt security of such series affected thereby	Yes		*Place of payment *Redemption procedures *Portion of principal payable on acceleration	"The Debt Securities . . . will rank <i>pari passu</i> , without any preference among themselves, with all present and future unsecured and unsubordinated general obligations of Italy for money borrowed."	N/A	"Italy is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Italy."

CHINA

CHINA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
10/21/04	Holder of each of the Notes or Bonds, as the case may be, which would be affected	Yes	50%	*Place of payment *Portion or principal payable on acceleration *Redemption procedures	"The Notes and Bonds will rank equally with all other general and unsecured obligations of China for money borrowed and guarantees given by China in respect of money borrowed by others."	N/A	"China is a foreign sovereign state. Consequently, it may be difficult for you to obtain or enforce judgments of Courts in the United States or other jurisdictions against China."
10/21/04	Holder of each of the Note or Bonds, as the case may be, which would be affected	Yes	50%	*Place of payment *Portion or principal payable on acceleration *Redemption procedures	"The Notes and Bonds will rank equally with all other general and unsecured obligations of China for money borrowed and guarantees given by China in respect of money borrowed by others."	N/A	"China is a foreign sovereign state. Consequently, it may be difficult for you to obtain or enforce judgments of Courts in the United States or other jurisdictions against China."

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CHINA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
10/22/03	Holder of each of the debt securities of the series which would be affected	Yes	50%	*Portion payable on acceleration *Place of payment *Redemption procedures	"The debt securities . . . will rank equally with all other general and unsecured obligations."	N/A	"China is a foreign sovereign state. Consequently, it may be difficult for you to obtain or enforce judgments of Courts in the United States or other jurisdictions against China."
6/17/01	Holder of each Note or Bond affected thereby	Yes	50%	*Portion of principal payable on acceleration *Place of payment	"Each Note or Bond will rank <i>pari passu</i> with all other general and unsecured obligations of China for money borrowed and guarantees given by China."	N/A	"China is a foreign sovereign state. Consequently, it may be difficult for you to obtain or enforce judgments of Courts in the United States or other jurisdictions against China."
6/17/01	Holder of each Note or Bond affected thereby	Yes	50%	*Portion of principal payable on acceleration *Place of payment	"Each Note or Bond will rank <i>pari passu</i> with all other general and unsecured obligations of China for money borrowed and guarantees given by China."	N/A	"China is a foreign sovereign state. Consequently, it may be difficult for you to obtain or enforce judgments of Courts in the United States or other jurisdictions against China."
6/27/96	Holder of each Debt Security of such series affected thereby	Yes	50%	*Portion of principal payable on acceleration *Place of payment *Redemption procedures	"Each Debt Security will rank <i>pari passu</i> with all other general and unsecured obligations of China for money borrowed and guarantees given by China."	N/A	"China is a foreign sovereign state. Consequently, it may be difficult for you to obtain or enforce judgments of Courts in the United States or other jurisdictions against China."

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PHILIPPINES

PHILIPPINES							
ID	BCV	BC	BCT	BCEP	BCPP	PEW	PED
1/26/05	75%	Yes	66.66%	*Governing law *Submission to jurisdiction *Waiver of immunities *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Republic is a foreign state. Consequently, it may be difficult for you to obtain or realize upon judgments of courts in the United States against the Republic."
9/8/04	75%	Yes	66.66%	*Governing law *Submission to jurisdiction *Waiver of immunities *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Republic is a foreign state. Consequently, it may be difficult for you to obtain or realize upon judgments of courts in the United States against the Republic."
6/29/04	Each holder of a series	Yes	50%	*Portion payable on acceleration *Redemption procedures	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Republic is a foreign state. Consequently, it may be difficult for you to obtain or realize upon judgments of courts in the United States against the Republic."

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PHILIPPINES							
ID	BCV	BC	BCT	BCEP	BCPP	PEW	PED
4/27/04	75%	Yes	66.66%	*Governing law *Submission to jurisdiction *Waiver of immunities *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Republic is a foreign state. Consequently, it may be difficult for you to obtain or realize upon judgments of courts in the United States against the Republic."
3/10/04	75%		66.66%	*Governing law *Submission to jurisdiction *Waiver of immunities *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration			"The Republic is a foreign state. Consequently, it may be difficult for you to obtain or realize upon judgments of courts in the United States against the Republic."

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PHILIPPINES							
ID	BCV	BC	BCT	BCEP	BCPP	PEW	PED
2/13/04	75%	Yes	66.66%	*Governing law *Submission to jurisdiction *Waiver of immunities *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Republic is a foreign state. Consequently, it may be difficult for you to obtain or realize upon judgments of courts in the United States against the Republic."
10/16/03	Each holder of a series	Yes	50%	*Portion payable on acceleration *Redemption procedures	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Republic is a foreign state. Consequently, it may be difficult for you to obtain or realize upon judgments of courts in the United States against the Republic."
7/8/03	Each holder of a series	Yes	50%	*Portion payable on acceleration *Redemption procedures	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Republic is a foreign state. Consequently, it may be difficult for you to obtain or realize upon judgments of courts in the United States against the Republic."

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PHILIPPINES							
ID	BCV	BC	BCT	BCEP	BCPP	PEW	PED
1/8/03	Each holder of a series	Yes	50%	*Portion payable on acceleration *Redemption procedures	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Republic is a foreign state. Consequently, it may be difficult for you to obtain or realize upon judgments of courts in the United States against the Republic."
3/5/02	Each holder of a series	Yes	50%	*Portion of principal payable on acceleration	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Republic is a foreign state. Consequently, it may be difficult for you to obtain or realize upon judgments of courts in the United States against the Republic."
9/1/02	Each holder of a series	Yes	50%	*Portion of principal payable on acceleration	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Philippines is a foreign sovereign government and your ability to collect on judgments of US courts against the Philippines may be limited."
3/10/00	Each holder of a series	Yes	50%	*Portion of principal payable on acceleration	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Philippines is a foreign sovereign government and your ability to collect on judgments of US courts against the Philippines may be limited."

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PHILIPPINES							
ID	BCV	BC	BCT	BCEP	BCPP	PEW	PED
3/10/00	Each holder of a series	Yes	50%	*Portion of principal payable on acceleration	"Rank at least equally in right of payment with all of the Philippines' other unsecured and unsubordinated External Indebtedness."		"The Philippines is a foreign sovereign government and your ability to collect on judgments of US courts against the Philippines may be limited."
8/2/99	Consent of the holders of all the outstanding bonds that would be so affected	Yes	50%	*Portion of principal payable on acceleration	"[Subject to Provision 2244 (14) of the Civil Code] the Bonds will rank <i>pari passu</i> in priority of payment with all other unsecured and unsubordinated External Indebtedness."		"The Republic is a foreign sovereign government. Consequently, it may be difficult for investors to realize upon judgments of courts in the United States against the Republic."
4/2/98	Consent of the holders of all outstanding bonds	Yes	50%	*Portion of principal payable on acceleration	"[Subject to Provision 2244 (14) of the Civil Code] the Bonds will rank <i>pari passu</i> in priority of payment with all other unsecured and unsubordinated External Indebtedness."		"The Republic is a foreign sovereign government. Consequently, it may be difficult for investors to realize upon judgments of courts in the United States against the Republic."

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LEBANON

LEBANON							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
10/17/05	75%	Yes	N/A	*Change the identity of the person obligated	"The Notes . . . rank . . . at least <i>pari passu</i> with all other present and future unsecured (subject to Condition 4 – Negative Pledge) Indebtedness of the Republic other than any Indebtedness preferred by Lebanese Law."	No	"The Republic is a sovereign state. Consequently, it may be difficult for investors to obtain or realize upon judgments against the Republic."
5/6/01	75%	Yes	N/A		"The Notes . . . rank and . . . will rank at least <i>pari passu</i> with all other, subject to Condition 3 (Negative Pledge), unsecured Indebtedness of the Republic other than any Indebtedness preferred by Lebanese Law."	No	"The Republic is a sovereign state. Consequently, it may be difficult for investors to obtain or realize upon judgments against the Republic."
6/19/00	75%	Yes	N/A		"The Notes . . . rank at least <i>pari passu</i> with all other present and future Indebtedness of the Republic, other than any Indebtedness preferred by Lebanese Law."	No	"The Republic is a sovereign state. Consequently, it may be difficult for investors to obtain or realize upon judgments against the Republic."

ISRAEL

ISRAEL							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
5/7/05	Not Specified	Not Specified	Not Specified	Not Specified	"The payment obligations of Israel under the bonds will at all times rank at least equally with all other payment obligations of Israel relating to unsecured, unsubordinated external indebtedness."	Not Specified	"Israel is a foreign sovereign government. Consequently, it may be difficult to sue Israel or collect upon a judgment against Israel."

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ISRAEL							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
12/8/04	Not Specified	Not Specified	Not Specified	Not Specified	"The payment obligations of Israel under the bonds will at all times rank at least equally with all other payment obligations of Israel relating to unsecured, unsubordinated external indebtedness."	Not Specified	"Israel is a foreign sovereign government. Consequently, it may be difficult to sue Israel or collect upon a judgment against Israel."
2/26/04	75%	Yes	66.66%	*Governing law *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *STATUS or <i>Pari Passu</i> *Portion payable on acceleration	"The payment obligations of Israel under the Securities will at all times rank at least equally with all other payment obligations of Israel relating to unsecured, unsubordinated External Indebtedness."	Yes	"Israel is a foreign sovereign government. Consequently, it may be difficult to sue Israel or collect upon a judgment against Israel."
6/10/03	Holder of each security	Yes	50%	*Portion payable on acceleration	"The payment obligations of Israel under the Securities will at all times rank at least equally with all other payment obligations of Israel relating to unsecured, unsubordinated External Indebtedness."	N/A	"Israel is a foreign sovereign government. Consequently, it may be difficult to sue Israel or collect upon a judgment against Israel."

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ISRAEL							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
3/8/00	Holder of each security	Yes	50%	*Portion payable on acceleration	"The payment obligations of Israel under the Securities will at all times rank at least equally with all other payment obligations of Israel relating to unsecured, unsubordinated External Indebtedness."	N/A	"Israel is a foreign sovereign government. Consequently, it may be difficult to sue Israel or collect upon a judgment against Israel."

JAMAICA

JAMAICA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
5/25/05	All holders . . . must unanimously consent	Yes	66.66%	*Portion of principal payable on acceleration	"The debt securities . . . will rank at least <i>pari passu</i> without any preference among themselves. The payment obligations of Jamaica under the debt securities will at all times rank at least equally with all other payment obligations of Jamaica."	N/A	"It may be difficult for investors to obtain or realize upon judgments of courts in the United States against Jamaica."
4/29/04	All holders . . . must unanimously consent	Yes	66.66%	*Portion of principal payable on acceleration	"The debt securities . . . will rank at least <i>pari passu</i> without any preference among themselves. The payment obligations of Jamaica under the debt securities will at all times rank at least equally with all other payment obligations of Jamaica."	N/A	"It may be difficult for investors to obtain or realize upon judgments of courts in the United States against Jamaica."

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JAMAICA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
6/17/02	All holders . . . must unanimously consent	Yes	66.66%	*Portion of principal payable on acceleration	"The debt securities . . . will rank at least <i>pari passu</i> without any preference among themselves. The payment obligations of Jamaica under the debt securities will at all times rank at least equally with all other payment obligations of Jamaica."	N/A	"It may be difficult for investors to obtain or realize upon judgments of courts in the United States against Jamaica."
5/24/01	All holders . . . must unanimously consent	Yes	66.66%	*Portion of principal payable on acceleration	"The notes . . . will rank at least <i>pari passu</i> without any preference among themselves and at least equally with all other payment obligations of the Government related to External Indebtedness."	N/A	"Jamaica is a foreign sovereign government. Accordingly, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Jamaica."
12/13/01	All noteholders must unanimously consent	Yes	66.66%	*Portion of principal payable on acceleration	"The Notes . . . will rank equal in right of payment . . . with all of Jamaica's existing and future unsecured and unsubordinated external indebtedness."	N/A	"It may be difficult for investors to obtain or realize upon judgments of courts in the United States against Jamaica."
8/25/00	Holder of each Note affected thereby	Yes	66.66%	*Portion of principal payable on acceleration	"The Notes . . . will rank <i>pari passu</i> without any preference among themselves and at least equally with all other unsecured External Indebtedness of the Government."	N/A	"Jamaica is a foreign sovereign government. Accordingly, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Jamaica."

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JAMAICA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
6/8/98	Holder of each Note affected thereby	Yes	66.66%	*Portion of principal payable on acceleration	"The Notes . . . will rank <i>pari passu</i> without any preference among themselves and at least equally with all other unsecured External Indebtedness of the Government."	N/A	"Jamaica is a foreign sovereign government. Accordingly, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Jamaica."
6/27/97	Holder of each Note affected thereby	Yes	66.66%	*Portion of principal payable on acceleration	"The Notes . . . will rank at least <i>pari passu</i> without any preference among themselves. The payment obligations of the Government under the Notes will at all times rank at least equally with all other payment obligations of the Government."	N/A	"Jamaica is a foreign sovereign government. Accordingly, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against Jamaica."

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SOUTH AFRICA

SOUTH AFRICA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
5/25/04	75%	Yes	66.67%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *Portion payable on acceleration *Status provision	"The Debt Securities . . . will rank equally. Amounts payable in respect of principal and interest . . . will be charged upon and be payable out of the State Revenue Account of the South African Government . . . equally and ratably with all other amounts so charged and amounts."	Yes (on the cover page and in the summary of the offering)	"The South African Government is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against the South African government."
5/16/03	75%	Yes	66.66%	*Governing law *Submission to jurisdiction *Waiver of immunities *Place of payment *Change the meaning of "outstanding" *Agent for service of process *Redemption procedures *Event of default *Portion payable on acceleration *Status provision	"The Debt Securities . . . will rank equally. Amounts payable in respect of principal and interest . . . will be charged upon and be payable out of the State Revenue Account of the South African Government . . . equally and ratably with all other amounts so charged and amounts."	Yes (but not on cover page and only minimally in the summary)	"The South African Government is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against the South African government."

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SOUTH AFRICA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
1/23/02	Holder of each debt security of such series affected thereby	N/A	66.66%	*Portion payable on acceleration *Redemption procedures *Place of payment	"The Debt Securities . . . will rank <i>pari passu</i> . Amounts payable in respect of principal and interest . . . will be charged upon and be payable out of the State Revenue Account of the South African Government . . . equally and ratably with all other amounts so charged and amounts payable in respect of all other general loan obligations of the South African Government."	N/A	"The South African Government is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against the South African government."
5/12/98	Holder of each debt security of the series being modified or amended	Yes	66.66%	*Portion payable on acceleration *Redemption procedures *Place of payment	"The Debt Securities . . . will rank equally. Amounts payable in respect of principal and interest . . . will be charged upon and be payable out of the State Revenue Account of the South African Government . . . equally and ratably with all other amounts so charged and amounts."	N/A	"The South African Government is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against the South African government."

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SOUTH AFRICA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
2/29/00	Holder of each debt security of the series being modified or amended	Yes	66.66%	*Place of payment *Portion payable on acceleration *Redemption provisions	"The Debt Securities . . . will rank equally. Amounts payable in respect of principal and interest . . . will be charged upon and be payable out of the State Revenue Account of the South African Government . . . equally and ratably with all other amounts so charged and amounts."	N/A	"The South African Government is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against the South African government."
6/18/97	Holder of each debt security of such series affected thereby	Yes	66.66%	*Portion payable on acceleration *Redemption procedures *Place of payment	"The Debt Securities . . . will rank <i>pari passu</i> . Amounts payable in respect of principal and interest . . . will be charged upon and be payable out of the State Revenue Account of the South African Government . . . equally and ratably with all other amounts so charged and amounts payable in respect of all other general loan obligations of the South African Government."	N/A	"The South African Government is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against the South African government."

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SOUTH AFRICA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
10/17/96	Holder of each debt security of such series affected thereby	Yes	66.66%	*Portion payable on acceleration *Redemption procedures *Place of payment	"The Debt Securities . . . will rank <i>pari passu</i> . Amounts payable in respect of principal and interest . . . will be charged upon and be payable out of the State Revenue Account of the South African Government . . . equally and ratably with all other amounts so charged and amounts payable in respect of all other general loan obligations of the South African Government."	N/A	"The South African Government is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against the South African government."
2/28/95	Holder of each debt security of such series affected thereby	Yes	66.66%	*Portion payable on acceleration *Redemption procedures *Place of payment	"The Debt Securities . . . will rank <i>pari passu</i> . Amounts payable in respect of principal and interest . . . will be charged upon and be payable out of the State Revenue Account of the South African Government . . . equally and ratably with all other amounts so charged and amounts payable in respect of all other general loan obligations of the South African Government."	N/A	"The South African Government is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against the South African government."

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SOUTH AFRICA							
ID	BCV	BCE	BCT	BCEP	BCPP	PEW	PED
11/10/94	Holder of each debt security of such series affected thereby	Yes	66.66%	*Portion payable on acceleration *Redemption procedures *Place of payment	"The Debt Securities . . . will rank <i>pari passu</i> . Amounts payable in respect of principal and interest . . . will be charged upon and be payable out of the State Revenue Account of the South African Government . . . equally and ratably with all other amounts so charged and amounts payable in respect of all other general loan obligations of the South African Government."	N/A	"The South African Government is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against the South African government."
12/8/94	Holder of each debt security of such series affected thereby	N/A	N/A	N/A	"The Debt Securities . . . will rank <i>pari passu</i> . Amounts payable in respect of principal and interest . . . will be charged upon and be payable out of the State Revenue Account of the South African Government . . . equally and ratably with all other amounts so charged and amounts payable in respect of all other general loan obligations of the South African Government."	N/A	"The South African Government is a foreign sovereign government. Consequently, it may be difficult for investors to obtain or realize upon judgments of courts in the United States against the South African government."

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