5660
REGULATION OF THE SECURITIES MARKET

Edmund W. Kitch
Professor
University of Virginia Law School

Abstract

Securities regulation is a field that covers the interaction between the law and the securities industry. This includes many different topics, some addressed by some form of public law, some by private law and some by industry agreements, practices and customs. The literature on these numerous different topics is large and diffuse. Two exceptions are the literature on insider trading (Chapter 5650) and on the market for corporate control (Chapter 5640). An unresolved issued is what impact differences in legal regimes governing the securities industry actually have on the behavior of securities markets. The American laws of securities regulation have been viewed as (1) protecting investors, (2) increasing market efficiency, (3) completing organization of the market 'firm', (4) capturing wealth for some members of the industry and (5) affecting competition in the industry. The American literature on securities regulation has centered on two themes. One is the role and meaning of efficiency in the context of securities markets and their regulation. The second is the nature of the remedies for fraud or misrepresentations in connection with securities transactions.
JEL classification: K22
Keywords: Investors, Firms, Fraud, Misrepresentation, Securities Transactions

1. Introduction

There are many different interrelationships between securities markets and the law. For instance, securities are themselves contracts which create property rights. Participants in the securities markets buy and sell securities under the terms of specialized contracts. A principal concern of the law is fraud, deception and manipulation in securities markets, behavior that may be subject to private tort remedies, administrative penalties and criminal sanctions. Private organizations such as exchanges play an important role in organizing securities markets and regulating their participants. Securities markets are subject to some level of supervision and control by a public office or commission. The contract rights traded on securities markets may be issued by public or private bodies, or they may simply be, as is the case for exchange traded derivatives, obligations of the exchange clearing house itself.

Because securities regulation encompasses so many disparate topics, the literature addresses numerous aspects of the legal rules and regulations which apply to the activity of issuing and trading securities without a focus on any particular issues. Two notable exceptions are the extensive literatures on insider trading, covered in Chapter 5650, and on takeovers and the market for corporate control in Chapter 5640. This chapter sketches out other topics related to the regulation of securities markets.

The literature on securities regulation is diffuse and unfocused because securities regulation is understood as a field of public law that cuts across every aspect of the securities industry. Issues that in another industry would be private law issues of contract, property or tort, or matters that would be addressed by industry custom or practice, are issues of public law in securities regulation. For instance, the legal response to fraud or misrepresentation is a central preoccupation of the field of securities regulation, but is this response best analyzed and understood as an issue relating to the law's general response to false statements in different contexts, or is the law of securities fraud a distinctive and different area, with its own unique problems and legal responses?

It is interesting to speculate as to why insider trading and the market for corporate control have attracted a much more intensive and focused academic interest.

The law of insider trading in securities regulation has presented a distinctive legal response to the issue of the right of persons to act on the basis of the information which they possess. The general approach of the law has been to permit persons to use their own heads for their own advantage. The traditional exceptions have been in the case of narrow categories of confidential, technical or marketing information or in the presence of specific contractual restraints, and then only in the form of private remedies for the person injured by the misuse of the information. In the securities regulation area, the US has pioneered (and exported to the rest of the world) legal rules that have made the use of material non-public information in securities markets a crime, as well as providing administrative sanctions and private remedies.

The market for corporate control has attracted attention because it is a device by which the control of important economic institutions can be wrested from one incumbent management and transferred to another. Only because the tender offer procedures used to accomplish this are subject to securities regulations is the market for corporate control a securities regulation topic.

In any jurisdiction, the law governing the issuance of and trading in securities is a mix of public laws and regulations, requirements of private industry organizations, industry custom and private contractual arrangements. The portion that is generated privately in the form, for instance, of industry agreements, customs and practices, is often difficult for scholars to access. The portion that is generated publicly will be more easily accessible in the form of published laws, regulations and regulatory and judicial decisions, and thus is more likely to be made the subject of academic description and analysis. In all jurisdictions the public portion will, like the part of an iceberg that is above the water, tell only a part of the story.

The United States is a jurisdiction that imposed public regulation on securities markets at a relatively early date. In the first part of the twentieth century most states adopted what were called 'Blue Sky Laws' which subjected brokers and dealers to public oversight and required that securities be registered with a public agency before they were sold. Then in 1933 and 1934, partly in response to the market crash of 1929 and the ensuing Great Depression, the United States Congress created a national regulatory agency with similar powers. The national securities laws, in turn, have been the subject of a substantial US literature. Most of this literature has been descriptive, but much was at least implicitly normative. All of it assumed, usually implicitly, that markets were regulated in order to produce better economic results. A relatively small portion of the literature has used explicit economic analysis. Thus the line between the 'law and economics literature' on securities regulation and the 'other' literature on securities regulation is blurred.

In recent decades, a central issue for many jurisdictions has been whether or not the US regulation is a desirable normative baseline for reform of the regulation of securities markets. The US consensus view - both academic and as expressed by US political and industry representatives - has been that it does. This view has been adopted to a greater or less extent in many different jurisdictions. The two major non-US markets - the United Kingdom and Japan - have pursued distinctive approaches. The UK in particular has had considerable success in building a London-based global securities market using a regulatory approach that self-consciously rejects many features of the US model.

The bibliography that follows this article illustrates the disparate range of topics that can be thought to fall within the economic analysis of securities regulation. The remainder of this entry offers some thoughts on the problem of how to define the field, how to evaluate the regulation, and the present state of the literature.

2. The Jurisdiction of the US Securities and Exchange Commission

One way to delineate the varied topics that fall within securities regulation is simply to describe the matters that are within the jurisdiction of the United States Securities and Exchange Commission. The Securities and Exchange Commission administers the provisions of four securities statutes. The Securities Act of 1933, The Securities Exchange Act of 1934, The Investment Company Act of 1940, the Investment Advisor's Act of 1940, and the Trust Indenture Act of 1939. The most important and far-reaching of these statutes is the Securities and Exchange Act of 1934, which, among many other things, created the Securities and Exchange Commission as an independent federal agency.

The Securities and Exchange Act covers the following aspects of the securities industries. (1) Self-regulatory organizations or SROs, including all exchanges and the National Association of Securities Dealers (NASDA), (2) licensing of brokers and dealers, (3) margin credit, (4) manipulation of securities markets, (5) information reporting by issuers of securities, (6) solicitation of proxies by issuers of securities, (7) position reporting by officers and five percent shareholders, (8) position reporting by holders of large positions in securities markets, (9) misrepresentation, deception or insider trading in connection with the purchase or sale of a security, and (10) tender offers. A common structural feature of the statute is to require that the regulated entity (exchange, broker, dealer, issuer, and so on) be registered, and to give the Securities Exchange Commission discretion to control what the registered entity can, cannot and must do.

The Securities Act of 1933 requires that public offerings of securities by issuers and issuer affiliates must be registered with the Securities and Exchange Commission. The Investment Advisor's Act is a licensing statute for persons who offer investment advice to the public. The Investment Company Act of 1940 gives the Commission authority to regulate the structure and activities of investment companies, more commonly known as mutual funds. The Trust Indenture Act regulates some of the terms of the indentures that set the terms of bonds sold in public offerings.

In the US, in addition to the Securities and Exchange Commission, the Commodities Futures Trading Commission (CFTC) regulates the futures markets, whose activities have expanded from trading in future contracts on agricultural commodities to trading in futures on securities indexes. The CFTC is a successor institution to an agency within the Department of Agriculture of the federal government that regulated the futures exchanges at a time when they dealt exclusively in agricultural commodities.

3. The Functions of Securities Regulation

Another way to look at regulation of securities markets is to look at the functions that are performed by the legal arrangements related to securities markets. This view of the subject is more appropriate for a comparative analysis, since it is not dependent on the particular provisions of any one country's legal arrangements.

3.1 Functions of 'Exchanges'

Securities markets existed before there was any explicit body of laws called 'securities regulation'. These markets were based on private arrangements, backed up by the willingness of courts to enforce contracts and provide remedies for fraud. The core private arrangement was the Exchange, consisting of both a place where trading took place and set of understandings among its members. This private organization would be governed by a governing board, selected by its members. The Exchange performed a number of different functions.

(a) Limited access to trading facility The exchanges required pre-clearance of the persons allowed to trade on the exchange, usually in the form of permitting only members to trade on the exchange. This procedure reduced the need for any one member of the exchange to be concerned about the identity and trust worthiness of any particular counter party.
(b) Standardized trading rules The exchanges established standardized trading rules, governing such questions as standard units of trading, pricing increments, time of trading, delivery and payment procedures, and so on. This standardization made it possible for the transacting parties to focus on only one variable of the transaction - the price.
(c) Clearing procedures The exchange would specify the rules relating to the obligations of the parties to an exchange contract to carry out the contract by delivery of the security and of payment. To facilitate the process, the exchange might operate a clearing office.
(d) Exclusive roles for members The exchange may specify specialized roles for certain members, and specify in what roles members may act. For instance certain members may be allowed to function only as dealers, making a market in securities, and others only as brokers representing customers. Or the exchange may designate certain members as monopoly dealers or specialists for particular securities.
(e) Dispute resolution Because it is important for traders on the exchange to know what their assets and obligations are as quickly as possible, exchanges provide for the resolution of disputes about trades outside the courts through a system of exchange sponsored arbitration. This avoids the problem of the

uncertainty created by lengthy court proceedings, and forecloses the ability of parties to argue that any contract is unenforceable under public policy relating to gambling or other matters.

(f) Exclusive rights in information The trading activity on exchanges generates information about the value of securities, information which is itself valuable. The exchange regulates access to that information and may attempt to exploit its value through, for instance, charges for access to the information.

(g) Listing Requirements In order to ensure that securities trading on the exchange meet some minimum procedural and quality requirements, the exchanges set requirements for 'listing' a security on the exchange. This listing procedure was particularly important in connection with newly offered issues, since approval for listing helps the issuer's underwriters sell the new issue to the public. These listing requirements set minimum size requirements (to ensure that there is a sufficient float of outstanding shares to make regular exchange trading possible), and specify requirements for information preparation and disclosure. These listing requirements often include the requirement that financial data be audited by recognized professional accountants.

Even an entirely privately structured securities market will implicate the law of fraud. Legal systems usually provide both civil and criminal remedies for fraud. The existence of securities markets creates the possibility of generating large profits by the dissemination of false information. The law of fraud operates to deter this behavior. The fraud problem is, experience has shown, particularly acute in the case of equity securities. Because equities have no contractually fixed rights, but are simply a claim on the residual values of an enterprise, their value depends upon estimates about the future value of the enterprise, and the market's estimate of that future value can be affected by false but credible information. Thus a fraud perpetrator can profit hugely by providing favorable but false information, and selling shares into the market at the inflated price. Such events, which are a recurrent aspect of the existence of securities markets, lead to demands, including demands by those involved in the securities industry itself, that the enforcement authorities and the courts take action.

3.2 Expanded Functions of Modern Securities Regulation

Modern securities regulation has expanded far beyond the core functions of enforcing contracts and property rights and providing civil and criminal remedies for intentional fraud. These expanded functions include the following.

1. Licensing of participants in the activity. A government agency may take over, in whole or in part, the function of licensing participants in the industry. Even though exchanges have membership restrictions, the exchanges will not reach participants in the trading that occurs off the exchanges. A government agency may be in a better position to screen applicants due to access to confidential government information and enforcement powers that can be used to deter false applications. Such licensing may also function to restrict non-exchange trading and strengthen the role of the exchanges, and to restrict competition in some or all parts of the industry.
2. The activities of exchanges may become subject to supervision by a government agency. This supervision helps to overcome the perception that exchanges are being operated only for the benefit of their members, to the detriment of the public, the customers for exchange services.
3. The regulation may attempt to control the use of leverage and trading in various types of derivative securities in order to reduce market fluctuations and the threat of insolvency of market participants when fluctuations occur.
4. Issuers of publicly traded securities and their managers may be made subject to direct regulation relating to issues such as the voting rights of securities holders, information disclosure, prohibition of insider trading, recovery of short-swing profits, and accounting and auditing procedures.
5. Securities laws may provide enhanced civil remedies, a variety of administrative remedies, and criminal penalties. These remedies may be enforced by criminal prosecutors, a specialized agency, or private parties, or by a combination of any of the three.

4. What Difference does the Modern Regulation Make?

An important but largely unaddressed question about particular regimes of securities regulation is what actual effects they have on the markets to which they apply. For instance, what differences are there between the American securities markets after 1934, subject to national regulation, and the American securities markets before national regulation was imposed? What differences are there between the American securities markets, subject to American regulation, and the UK or Japanese securities markets, subject to different regulation? It is easy enough to observe various differences in the regulation, such as the comparative frequency of private, class-action damage actions based on Rule 10b-5 in the United States and the absence of a similar litigation in other countries. But do the differences in regulation have an impact on the way in which the markets behave, and if so, are those differences that have any economic or social importance?

The proponents of national securities regulation in the US had a clear view on this question. In their view, the US stock market crash of 1929 was an important causal factor of the depression of the 1930s. The argument, most graphically set out by Galbraith (1955) at a later date, was that the stock market had been overvalued. As buyers and sellers became aware of this overvaluation, stock market prices fell. The fall in prices of securities caused a drop in personal wealth. The drop in personal wealth caused people to reduce their spending. This reduction in spending caused a reduction in demand, which caused producers to cut prices, cut production, and reduce employment. This caused a further fall in the value of their securities, which set off the whole downward spiral again. In addition, the reduced consumption of the unemployed fed the cycle. Thus the objective of the national securities acts of the 1930s was to force companies to provide accurate, if not pessimistic, information about their value and to reduce speculative excesses in securities markets. The legislative history of the acts shows that this view played an important role in the arguments for the regulation.

This view of the role of the securities markets in the 1930s' depression has been discredited. First, the magisterial monetary history of Friedman and Schwartz (1963) argued with considerable power that the depression had its genesis not in the securities markets but in the monetary policies of the Federal Reserve Board, which shrank the US money supply at a sharp and unprecedented rate. Second, the market crash of 1987, which was as large as the 1929 crash in percentage terms, but which was accompanied by monetary ease rather than monetary tightening, did not lead to any significant contraction in economic activity. The securities markets of 1929 were not a speculative cesspool whose rot spread to the large economy, rather they were an accurate predictor of the impending economic decline.

The opposite view, that differences in the structure of securities regulation make no difference, is suggested by the work of finance economists. Finance is the part of economics focused on the study of financial markets. Finance economists have found that securities markets are efficient. Indeed, they have not identified any securities markets that are not efficient. This suggests that whatever differences there are in the regulation of securities markets, the differences are unimportant since all markets are efficient, and efficiency is the paramount normative criterion that an economic institution should meet. However, this result is an artifact of the unusual way in which finance economists define efficiency. They define efficiency in terms of the properties of the price series generated by securities markets. They have found that the price series generated by securities markets are random, and they equate this property with efficiency.

In normal usage, efficiency is the property of a process in which the outputs generated from the inputs are maximized. Since securities markets make use of many different inputs, and their outputs affect many different aspects of the economy, it is difficult to determine whether particular arrangements are efficient in this sense.

George Stigler, in pioneering work, attempted to determine whether the passage of the 1933 Securities Act had had a favorable impact on buyers of public offerings made under the provisions of the act. The question he asked was: have buyers who purchased the post-act regulated offerings done better than the buyers who purchased unregulated offerings? He studied a sample of pre-act offerings, comparing the returns to buyers of securities in public offerings with the return to buyers of a diversified portfolio of securities in the market at the same time. He then studied a similar sample of post-act offerings, making the same comparison. He found that the returns (as compared to the market) of the pre- and post-act buyers were the same. Thus purchasers protected by the regulation were no better off than they were before the act was passed. These findings suggested that the regulation did not help the purchasers of securities (Stigler, 1964). However, Stigler did find that the variance of the results was greater in the pre-act period. Stigler's basic results were subsequently replicated in Jarrell (1981) and Simon (1989). Friend and Herman (1964) were highly critical of the Stigler study, and argued that this reduction in variance was a desirable effect, because it reduced the risk of investing in offerings subject to the act.

Missing from this exchange was any analysis of whether securities regulation could or should be expected to either (1) improve the returns available to investors or (2) reduce the risk of a group of investments as a class. The idea that securities regulation could or should improve the returns obtained by investors is particularly improbable. The return that investors obtain will be the result of (1) the quality of the investment and (2) the price. The price, in turn, will be determined by the competition of investors to purchase the investment. To the extent that securities regulation is effective in making it easier and less risky to value the investment, that will increase the competition to purchase it and drive the price up. Any gain (less the costs of complying with the regulation) will be captured by the seller of the investment, not the buyer. Securities regulation can, on the other hand, reduce the riskiness of a the class of investments that investors are permitted to buy. For instance, if securities regulation permitted only conservative investments to be offered - say, for instance, only government bonds - then the investment risk would be reduced. But would that be a good thing? The reduction in risk would be achieved at the cost of suppressing the opportunity for risky investments that would be socially productive. The securities markets are themselves institutions that enable investors to assume risk by diversifying their portfolios. In the securities markets investments can be acquired in small amounts tailored to preserve the diversification of the buyer's portfolio. The debate about the significance of the finding that the 1933 Securities Act reduced the variance of the buyer's returns took precisely this form. Friend and Herman, and later Seligman (1982), argued that this was a good thing. Stigler argued that it was simply the result of raising the costs of making public offerings, and that the effect of raising the cost was to cut out the riskier offerings.

5. The Goals of the Regulation

Further efforts to identify what impact different systems of securities regulation have on securities markets should be informed by an effort to first identify the impact which securities regulation is thought to have. There are numerous different goals or objectives that have been identified with securities regulation. The principal goals are:

5.1 Investor protection

The most commonly asserted objective of securities regulation is the protection of investors. However, what this 'protection' constitutes is never spelled out. Given that investment transactions involve the transfer of money between consenting adults for a product that is not socially harmful, it is difficult to identify what the regulation is protecting investors from. The simple idea that the regulation will protect investors by providing them with higher returns is, as has already been discussed, implausible on its face.

A more sophisticated variant of the theme of investor protection is that the purpose of the regulation is to protect investors in order to help issuers and securities salesman sell securities to the public. The public resists buying securities because of fears that any particular issue may be fraudulent. Potential buyers have to invest real resources to protecting themselves against fraud. The regulation, by providing an effective deterrent against fraud, reduces this cost for buyers and makes it possible to sell securities at higher prices, helping issuers and the securities industry.

Whether or not contemporary securities regulation actually achieves a reduction in the amount of fraud is unclear. First of all, securities fraud has always been subject to criminal and civil remedies. Second, buyers are not helpless. They can, for instance, deal with established firms with good reputations for honesty and integrity, diversify their portfolios, and insist upon and examine carefully information about the investment. The additional strategy of contemporary securities regulation is to add a network of advance licensing procedures. It is made a crime to attempt to sell securities without a license, and it is made a crime to offer securities that have not been registered with public officials. Can this licensing network screen out the potential fraudulent actors? Or is it inevitably overwhelmed by the administrative routine and volume of paper work, so that even scam artists can obtain the required licenses, and use them to increase the credibility of their offering? American newspapers regularly report enormous swindles involving the sale of fraudulent securities. In the US there has been a persistent problem with 'Penny Stock' frauds, operated out of high pressure sales offices called 'boiler rooms' because of the selling heat put on the salesmen. These frauds are usually conducted by licensed securities salesman employed by licensed securities firms, and offer their victims the opportunity for quick profits in stocks that at least superficially appear to have satisfied regulatory requirements. In spite of the fact that regulators have made control of penny stock frauds an enforcement priority, and in spite of the fact that federal statues have been extensively amended to make penny stock scams more difficult to operate, they appear to continue to flourish. It is not particularly plausible that criminal activity can be reduced by requiring criminals to register with the government before they commit the crime.

A sales practice permitted by US securities regulation but not permitted in many other jurisdictions such as the UK is cold calling. This is the practice of calling potential investors at their homes and inducing them to invest over the phone. This is a sales technique used by boiler room sales operations, and also used by large and established US brokerage houses. A ban on cold calling confines securities salesman to their existing customer base and persons who affirmatively seek out the services of the securities salesman. The very fact that the potential investor knows enough to seek out the securities salesman ensures that the investor has at least some knowledge of securities markets.

Another view of investor protection is that securities regulation helps sophisticated investors help themselves. By requiring that material information be made available to investors, the regulation makes it possible for sophisticated investors to analyze the information and separate the good investments from the bad ones. It is not clear, however, why sophisticated investors need the help of regulation to get this information. Any potential investor can require, as a condition of investing, that he or she be provided with specified information. And providing the requested information fraudulently has always been a crime.

5.2 Efficiency

Beginning around 1980 there appeared in the literature an argument by scholars trained in law and economics that the purpose and effect of securities regulation is to make securities markets specifically, and capital markets generally, more efficient. The style of this argument echoed the many arguments in the law and economics literature that the common law is efficient. Here the argument was applied to a scheme of statutory regulation. The argument was that securities regulation required the production of more public information by firms than they would provide in an unregulated market. Because information is valuable to actors other than the firm itself, an unregulated firm would produce less information than would be produced by an unregulated firm motivated only by its own interests. This increased information results in more accurate pricing of securities, and contributes to more accurate or correct economic decisions throughout the economy, with a consequent increase in economic output by the whole society or perhaps, even, the world (Easterbrook and Fischel, 1984, 1991; Gilson and Kraakman, 1984; Kahan, 1992; Langevoort, 1992). Needless to say, this story has a happy and reinforcing congruence with the view of the financial economists that securities markets are efficient, even though they use efficiency in a quite different sense. It is a story that purports to explain why securities markets have the properties they have been found to have.

This Panglossian story is based only on the stated aspiration of the securities laws: to require the production of all information material to investors. It is not based on an examination of the actual information contained in the disclosure documents produced under the securities laws, on any analysis of whether the information they contain is in fact the information required to increase the accuracy of pricing decisions, or on any explanation of how the regulators could identify what that information is. It depends on the simple argument that more information always leads to better decisions, no matter what the information is, and ignores the fact that the production of information itself has costs, which in a complete efficiency analysis must be balanced against any benefits resulting from its production. I, for instance, have pointed out that not only are there the direct administrative costs of collecting, organizing and presenting the information, which may be different information than the firm would otherwise collect, but that making the information public has direct costs to the firm because it will affect the actions of competitors and others, and that the risk of harm is increased the more economically (and hence competitively) relevant the information is (Kitch, 1995).

5.3 Complete the organization of the market ‘firm’

Another perspective is to view the public and private aspects of securities regulation as a combined effort to create competitive market institutions which will attract securities business. This aspect of securities regulation has been more prominent in recent years as US and UK firms and regulators have adjusted their regulation in order to attract or keep business from each other and other jurisdictions. Or, to take another example, in the United States exchange-traded derivatives regulated by the CFTC compete with over- the-counter derivatives which are largely unregulated. Many users prefer the exchange-traded derivatives because of their transparency, the ease of entering and leaving positions, and the elimination of counter party risk through the exchange clearing house. Other users prefer over the counter derivatives because of their confidentiality, and the fact that the terms of the contract can be customized. These two markets, one regulated by the CFTC and the other largely unregulated, compete.

In this view, the public, regulatory aspects are designed to deal with coordination problems that face the individual securities firms. The government agency helps the private firms coordinate the basic structure and organization of the markets so that the markets are attractive to potential customers. A public agency, unlike private firms, can impose collective solutions and engage in coordination relatively free of antitrust scrutiny.

The principal feature of securities regulation that is inconsistent with this view of its function is that most of its provisions are mandatory. Buyers and sellers are not permitted to choose whether or not they wish to enter into a transaction subject to the regulation. If the transaction falls within the regulation it applies. If the regulation was in fact designed to increase the attractiveness of the market to the transacting parties, it would not need to force unwilling parties to accept its costs and benefits.

Recently, a number of US scholars have argued that securities regulation should, at least to a greater extent than it does now, permit party choice. For instance Roberta Romano has argued that the ‘Delaware model’ of US corporate law competition should be extended to securities regulation, and that issuers should be permitted to choose the jurisdiction whose securities laws would apply to their securities. This would force regulators, just like issuers, to compete for investors. In the case of the regulators, this competition would be a competition to offer a regime of securities regulation that enhances the value of the securities offered under it (Romano, 1998; see also Choi and Guzman, 1996; Mahoney, 1997).

5.4 Capture Wealth

Public choice analysis has also been applied to the securities laws, most notably in the area of insider trading (see Chapter 5650, Section 10; Phillips and Zecher, 1981). The public choice analysis views the securities laws as the product of political competition among groups whose wealth is affected by the provisions of the laws. Macey and Miller (1991a) have suggested, for instance, that the blue sky laws originated with concern on the part of bankers, who viewed securities as competition for deposit dollars. The passage of the securities laws in the 1930s moved the important decisions about securities regulation to the federal level. As long as currency exchange controls made it difficult for US businesses to access foreign capital markets, the national legislators and SEC Commissioners had a monopoly on the terms and conditions imposed on access to securities markets. This gave the national politicians considerable leverage to extract concessions from the industry.

5.5 Protect the Industry from Competition

The view that securities regulation is a device for organizing the industry into a cartel has had considerable influence in the area of securities regulation (Baxter, 1970). In the 1970s this led to an attack under the antitrust laws on the New York Stock Exchange fixed commissions. The Exchange, as part of its membership rules, had required that members adhere to specified minimum commissions. These antitrust actions were unsuccessful (*Gordon v. New York Stock Exchange*, 422 US 659 (1975)). However, Congress amended the Securities and Exchange Act in 1975 to change provisions in the act that sanctioned fixed commissions, and the SEC abolished them as of May 1, 1975. Subsequently, commission rates have dropped significantly. However, turnover rates increased even more, leading to an increase in industry income. This ‘big bang’ strategy was subsequently followed in the UK (Poser, 1991), and in other countries.

At the same time, Congress empowered the SEC to engage in form of central planning for the securities industry by a series of statutory amendments designed to spur the creation of a ‘National Market System’. It is fair to say that in spite of its enhanced statutory powers, the SEC’s planning has not played an important role in the subsequent evolution of the industry (Macey and Haddock, 1985; Poser, 1991).

Recently, Christie and Schultz (1994) reported that market makers on the National Market System of the NASDA (the ‘NASDAQ’ market) never quoted prices in 1/8ths in many important stocks. This was suggested as evidence that the market makers were colluding to keep the spread from falling below 1/4th of a dollar (Dutta and Madhavan, 1997). These findings have led to civil and administrative actions, a reorganization of the NASDA and its affiliated NASDAQ market, and the introduction of quotations in 1/64ths on that market.

6. The Literature

A principal concern of the law and economics literature on securities markets has been the role and meaning of the concept of efficiency in this area (Gordon and Kornhauser, 1985; Lee and Bishara, 1985; Stout, 1988, 1995; Wang, 1986). This is a discussion that has been made more confusing by the special meaning that the finance economists have given the term efficiency, and it is the financial economists' concepts of efficiency that have been the focus of the discussion. There has not been even a preliminary examination of the question of what characteristics or regulatory structure would make a securities market more efficient in the usual sense of that term.

Most writing in the securities area in the United States has focused on the remedies for fraud. The private cause of action which arises in the United States under section 10(b)-5 of the 1934 Securities and Exchange Act is a distinctive feature of US securities law. This cause of action exists for misrepresentations that are unintentional, and can be enforced by a class action composed of all those who purchased after the misrepresentation without a showing that the members of the class relied on the misrepresentation. Some writers are of the view that this cause of action is an important incentive to insure the accuracy of statements made by market actors. Others view the cause of action skeptically, and express the concern that the threat of 10(b)-5 simply operates to increase the cost of providing information and to enrich lawyers (Alexander, 1991; Arlen and Carney, 1992; Carney, 1989). Since a similar cause of action is not available in other jurisdictions, it might be possible to demonstrate differences between the behavior of US and non-US markets resulting from this difference in legal remedies.

Bibliography on Regulation of the Securities Market (5660)

Adams, Michael (1994), 'Macht von Banken und Versicherungen - Wettbewerb im Finanzdienstleistungssektor-, Stellungnahme zur öffentlichen Anhörung des Deutschen Bundestages - Ausschuß für Wirtschaft -, 8. Dezember 1993 (Power of Banks and Insurances)', *Zeitschrift für Bank- und Börsenrecht*, 77-86.

Alexander, Janet Cooper (1991), 'Do the Merits Matter? A Study of Settlements in Securities Class Actions', **43** *Stanford Law Review*, 497-598.

Alfaro Aguila-Real, Jesús (1995), *Interés Social y Derecho de Suscripción Preferente. Una Aproximación Económica* (Economic Efficiency of a Strict Construction of the 'Interest of the Corporation' Clause in Corporate Law), Madrid, Ed. Cívitas, 160 p.

Arlen, Jennifer H. and Carney, William J. (1992), 'Vicarious Liability for Fraud on Securities Markets: Theory and Evidence', *University of Illinois Law Review*, 691-740. Reprinted in

Andersen, Jensen and Mortensen (eds) (1993), *Governance by Legal and Economic Measures*, Copenhagen, Gad.

Arrow, Kenneth J. (1964), 'The Role of Securities in the Optimal Allocation of Risk Bearing', **31** *Review of Economic Studies*, 91-96.

Arruñada, Benito (1990a), *Control y Regulación de la Sociedad Anónima* (Control and Regulation of Joint-Stock Companies), Madrid, Alianza Editorial.

Arruñada, Benito (1990b), 'La Regulación de la Información Empresarial (Regulation of Corporate Information)', **51** *Boletín del Círculo de Empresarios*, 11-42.

Arruñada, Benito (1992a), 'Crítica a la regulación de las Opas (A Critic on the Regulation of Takeovers)', **203-4** *Revista de Derecho Mercantil*, 29-67.

Arruñada, Benito (1992b), 'La Conversión Coactiva de Acciones Comunes en Acciones sin voto para Lograr el Control de las Sociedades Anónimas: De Cómo la Ingenuidad Legal Prefigura el Fraude (Mandatory Conversion of Common Shares into Non-Voting Shares to Reach Corporate Control over Joint-Stock Companies: How Legal Simplicity Leads to Fraud)', **71** *Revista Española de Financiación y Contabilidad*, 283-314.

Arruñada, Benito and Paz Ares, Cándido (1995), 'Conversion of Ordinary Shares into Non-Voting Shares', **15** *International Review of Law and Economics*, 351-392.

Ayres, Ian (1991), 'Back to Basics: Regulating How Corporations Speak to the Market', **77** *Virginia Law Review*, 945-999.

Bainbridge, Stephen M. (1991), 'The Short Life and Resurrection of SEC Rule 19c-4', **69** *Washington University Law Quarterly*, 565 ff. Reprinted in 1992 *Securities Law Review* 377.

Bainbridge, Stephen M. (1994), 'Revisiting the One-Share/One-Vote Controversy: The Exchanges' Uniform Voting Rights Policy', **22** *Securities Regulation Law Journal*, 175-219.

Bainbridge, Stephen M. (1995), 'Securities Act Section 12(2) After the Gustafson Debacle', **50** *Business Lawyer*, 1231-1271.

Banoff, Barbara Ann (1984), 'Regulatory Subsidies, Efficient Markets, and Shelf Registration: An Analysis of Rule 415', **70** *Virginia Law Review*, 135-185.

Barclay, Michael J. and Holderness, Clifford G. (1992), 'The Law and Large Block Trades', **35** *Journal of Law and Economics*, 265-294.

Baxter, William F. (1970), 'NYSE Fixed Commission Rates: a Private Cartel Goes Public', **22** *Stanford Law Review*, 675-712.

Beaver, William H. (1980), 'The Nature of Mandated Disclosure', in Posner, Richard A. and Scott, Kenneth E. (eds), *Economics of Corporation Law and Securities Regulation*, Boston, Little Brown.

Benston, George J. (1973), 'Required Disclosure and the Stock Market: An Evaluation of the Securities Exchange Act of 1934', **63** *American Economic Review*, 132-155.

Benston, George J. (1976), *Corporate Financial Disclosure in the U.K. and the U.S.A.*, Farnborough, Hants, Saxon House.

Berglof, Erik (1994), 'A Control Theory of Venture Capital Finance', **10** *Journal of Law, Economics, and Organization*, 247-267.

Booth, Richard A. (1994), 'The Uncertain Case for Regulating Program Trading', **1994** *Columbia Business Law Review*, 1-71.

Bradford, C. Steven (1996), 'Transaction Exemptions in the Securities Act of 1933: An Economic Analysis', **45** *Emory Law Journal*, 591-672.

Butler, Henry N. and Ribstein, Larry E. (1994), 'Corporate Governance Speech and the First Amendment', **43** *University of Kansas Law Review*, 163-206.

Carney, William J. (1989), 'The Limits of the Fraud on the Market Doctrine', **44** *Business Lawyer*, 1259-1292.

Choi, Stephen J. and Guzman, Andrew T. (1996), 'The Dangerous Extraterritoriality of American Securities Law', **17** *Northwestern Journal of International Law and Business*, 207-241

Christie, W. and Schultz, P. (1994), 'Why do Nasdaq Market Makers Avoid Odd-eighth Quotes?', **49** *Journal of Finance*, 1813-1860.

Cochrane, James L. (1994), 'Are US Regulatory Requirements for Foreign Firms Appropriate?', **17** *Fordham International Law Journal*, 58-67.

Coffee, John C. (1984), 'Market Failure and the Economic Case for a Mandatory Disclosure System', **70** *Virginia Law Review*, 717-753.

Corgill, Dennis S. (1993), 'Securities as Investments at Risk', **67** *Tulane Law Review*, 861-954. Reprinted **26** *Securities Law Review*, 1994.

Cox, James D. (1993), 'Regulatory Competition in Securities Markets: an Approach for Reconciling Japanese and United States Disclosure Philosophies', **16** *Hastings International and Comparative Law Review*, 149-173.

Cox, James D. (1996), 'Just Desserts for Accountants and Attorneys after Bank of Denver', **38** *Arizona Law Review*, 519-545. Reprinted in **29** *Securities Law Review*, 427.

Cox, James D. (1997), 'The Fundamentals of an Electronic-Based Federal Securities Act (Markets and Information Gathering in an Electronic Age, Securities Regulation in the 21st Century)', **75** *Washington University Law Quarterly*, 857-886.

Cox, James D. (1997), 'Making Securities Fraud Class Actions Virtuous (Rule 23: Class Actions at the Crossroads)', **39** *Arizona Law Review*, 497.

Dennis, Roger J. (1988), 'This Little Piggy Went to Market: The Regulation of Risk Arbitrage After Boesky', **52** *Albany Law Review*, 841-892.

Dietl, Helmut and Picot, Arnold (1995), 'Information (De-)Regulation of Capital Markets from the Viewpoint of New Institutional Economics', **30** *Hitotsubashi Journal of Commerce and Management*, 29-46.

Dutta, Prajit K. and Madhavan, Ananth (1997), 'Competition and Collusion in Dealer Markets', **52** *Journal of Finance*, 245-276.

Easterbrook, Frank H. and Fischel, Daniel R. (1984), 'Mandatory Disclosure and the Protection of Investors', **70** *Virginia Law Review*, 669-715.

Easterbrook, Frank H. and Fischel, Daniel R. (1991), *Mandatory Disclosure', Chapter 11 of The Economic Structure of Corporate Law*, Cambridge, Cambridge University Press.

Fanto, James A. (1996), 'The Absence of Cross-Cultural Communication: SEC Mandatory Disclosure and Foreign Corporate Governance', **17** *Northwestern Journal of International Law & Business*, 119-206.

Fischel, Daniel R. (1987), 'Organized Exchanges and the Regulation of Dual Class Common Stock', **54** *University of Chicago Law Review*, 119-152.

Fischel, Daniel R. and Ross, Robert R. (1991), 'Should the Law Prohibit 'Manipulation' in Financial Markets?', **105** *Harvard Law Review*, 503-553.

Fox, Merritt B. (1984), 'Shelf Registration, Integrated Disclosure, and Underwriter Due Diligence: An Economic Analysis', **70** *Virginia Law Review*, 1005-1034.

Friedman, Howard M. (1982), 'Efficient Market Theory and Rule 10b-5 Non-Disclosure Claims: A Proposal for Reconciliation', **47** *Missouri Law Review*, 745-762.

Friedman, Milton and Schwartz, Anna J. (1963), *A Monetary History of the United States, 1867-1960*, Princeton, Princeton University Press.

Friend, Irwin and Herman, Edward S. (1964), 'The SEC through a Glass Darkly', **37** *Journal of Business*, 382-405.

Friend, Irwin and Westerfield, Randolph (1975), 'Required Disclosure and the Stock Market', **65** *American Economic Review*, 467-472.

Galbraith, John Kenneth (1955), *The Great Crash, 1929*, Boston, Houghton Mifflin.

Georgakopoulos, Nicholas L. (1995), 'Frauds, Markets, and Fraud-on-the-Market: The Tortured Transition of Justifiable Reliance from Deceit to Securities Fraud', **49** *University of Miami Law Review*, 671-730.

Gilson, Ronald J. and Kraakman, Reinier H. (1984), 'The Mechanisms of Market Efficiency', **70** *Virginia Law Review*, 549-644.

Gilson, Ronald J. and Kraakman, Reinier H. (1993), 'Investment Companies as Guardian Shareholders: The Place of the MSIC in the Corporate Governance Debate', **45** *Stanford Law Review*, 985-1010.

Gordon, Jeffrey N. (1988), 'Ties That Bond: Dual Class Common Stock and the Problem of Shareholder Choice', **76** *California Law Review*, 1-85.

Gordon, Jeffrey N. and Kornhauser, Lewis A. (1985), 'Efficient Markets, Costly Information, and Securities Research', **60** *New York University Law Review*, 761-849.

Grundfest, Joseph A. (1990), 'Internationalization of the World's Securities Markets: Economic Causes and Regulatory Consequences', **4** *Journal of Financial Services Research*, 349-378.

Grundfest, Joseph A. (1994), 'Disimplying Private Rights of Action under the Federal Securities Laws: the Commission's Authority', **107** *Harvard Law Review*, 961-1024. Reprinted in **27** *Securities Law Review* 199.

Grundfest, Joseph A. (1995), 'Why Disimply?', **108** *Harvard Law Review*, 727-747.

Haddock, David D. (1989), 'An Economic Analysis of the Brady Report: Public Interest, Special Interest, or Rent Extraction?', **74** *Cornell Law Review*, 841-864.

Haddock, David D. and Macey, Jonathan R. (1987), 'Regulation on Demand: A Private Interest Model, with an Application to Insider Trading Regulation', **30** *Journal of Law and Economics*, 311-352.

Harding, Don (1982), 'Implications of the Efficient Market Hypothesis for Securities Regulation', in Cranston, Ross and Schick, Anne (eds), *Law and Economics*, Canberra, Australian National University, 129-144.

Hasabrouck, J. and Sofianos, G. (1993), 'The Trades of Market Makers: An Empirical Analysis of NYSE Specialists', **48** *Journal of Finance*, 1565-1593.

Hertig, Gerard (1994), 'Imperfect Mutual Recognition for EC Financial Services', **14** *International Review of Law and Economics*, 177-186.

Hilke, John C. (1991), 'Mandatory Government Investment "Advice": the Effects on Investors of State Merit Regulation of Mutual Funds and Common Stocks', **14** *Research in Law and Economics*, 113-190.

Hu, H. (1989), 'Swaps, the Modern Process of Financial Innovation and the Vulnerability of a Regulatory Paradigm', **138** *University of Pennsylvania Law Review*, 333-435.

Ingram, Robert W. and Chewning, Eugene G. (1983), 'The Effect of Financial Disclosure Regulation on Security Market Behavior', **58** *Accounting Review*, 562-580.

Jaffe, Jeffrey F. (1974), 'The Effect of Regulation Changes on Insider Trading', **5** *Bell Journal of Economics*, 93-121.
Jarrell, Gregg A. (1981), 'The Economic Effects of Federal Regulation of the Market for New Security Issues', **24** *Journal of Law and Economics*, 613-675.
Jarrell, Gregg A. (1984), 'Change at the Exchange: The Causes and Effects of Deregulation', **27** *Journal of Law and Economics*, 273-312.
Johnson, David B. (1994), 'Property Rights to Investment Research: the Agency Costs of Soft Dollar Brokerage', **11** *Yale Journal on Regulation*, 75-113.
Kahan, Marcel (1992a), 'Securities Laws and the Social Costs of 'Inaccurate' Stock Prices', **41** *Duke Law Journal*, 977-1044.
Kahan, Marcel (1992b), 'Games, Lies and Securities Laws', **67** *New York University Law Review*, 750-800. Reprinted in **26** *Securities Law Review* 127, 1994.
Kahan, Marcel (1995), 'The Qualified Case Against Mandatory Terms in Bonds', **89** *Northwestern University Law Review*, 565-622.
Kahan, Marcel and Tuckman, Bruce (1993), 'Do Bondholders Lose from Junk Bond Covenant Changes', **66** *Journal of Business*, 499-516.
Kanda, Hideki (1992), 'Debtholders and Equityholders', **21** *Journal of Legal Studies*, 431-448.
Kidwell, David S., Marr, M. Wayne and Thompson, G. Rodney (1987), 'Shelf Registration: Competition and Market Flexibility', **30** *Journal of Law and Economics*, 181-206.
Kitch, Edmund W. (1984), 'A Federal Vision of the Securities Laws', **70** *Virginia Law Review*, 857-873.
Kitch, Edmund W. (1992a), 'The Securities Exchange Commission', in Newman, Peter, Milgate, Murray and Eatwell, John (eds), *The New Palgrave Dictionary of Money and Finance*, London, Macmillan.
Kitch, Edmund W. (1992b), 'Manipulation', in Newman, Peter, Milgate, Murray and Eatwell, John (eds), *The New Palgrave Dictionary of Money and Finance*, London, Macmillan.
Kitch, Edmund W. (1995), 'The Theory and Practice of Securities Disclosure', **61** *Brooklyn Law Review*, 763-887.
Kitch, Edmund W. (1996a), 'Competition Between Securities Markets: Good or Bad?', in Oditah, Fidelis (ed.), *The Future for the Securities Market: Legal and Regulatory Aspects*, Oxford, Clarendon, 233 ff.
Kitch, Edmund W. (1996b), 'Gustafson v. Alloyd Co.: An Opinion That Did Not Write', **99** *Supreme Court Review*, 99-124.
Klausner, Michael (1994), 'Letting Banks Trade CRA Obligations Would Offer Market-Based Efficiencies', *American Banker*.
Kornhauser, Lewis A. and Gordon, J. (1985), 'Efficient Markets, Costly Information, and Securities Research', **60** *New York University Law Review*, 761-849.
Kripke, Homer (1975), 'Can the SEC Make Disclosure Policy Meaningful', **31** *Business Lawyer*, 293-317.
Kripke, Homer (1979), *The SEC and Corporate Disclosure: Regulation in Search of a Purpose*, New York, Law and Business Inc.
Langevoort, Donald C. (1985), 'Information Technology and the Structure of Securities Regulation', **98** *Harvard Law Review*, 747-804.

Langevoort, Donald C. (1992), 'Theories, Assumptions, and Securities Regulation: Market Efficiency Revisited', **140** *University of Pennsylvania Law Review*, 851-920. Reprinted **25** *Securities Law Review*, 581 (1993).

Langevoort, Donald C. (1994), 'The Reform of Joint and Several Liability under the Private Securities Litigation Reform Act of 1995: Proportionate Liability, Contribution Rights and Settlement Effects' (Symposium on the Private Securities Litigation Reform Act of 1995)', **51** *Business Lawyer*, 1157-1175.

Langevoort, Donald C. (1996a), 'Capping Damages for Open-Market Securities Fraud (Symposium: Securities Litigation, The Fundamental Issues)', **38** *Arizona Law Review*, 639-664.

Langevoort, Donald C. (1996b), 'Selling Hope, Selling Risk: Some Lessons for Law from Behavioral Economics about Stockbrokers and Sophisticated Customers', **84** *California Law Review*, 627 ff.

Langevoort, Donald C. (1997), 'Organized Illusions: A Behavioral Theory of Why Corporations Mislead Stock Market Investors (and Cause Other Social Harms)', **146** *University of Pennsylvania Law Review*, 101-172.

Lax, David A. (1989), 'Commentary: Market Expectations of Bargaining Inefficiency and Potential Roles for External Parties in Disputes Between Publicly Traded Companies', **75** *Virginia Law Review*, 367-381.

Levmore, Saul (1984), 'Efficient Markets and Puzzling Intermediaries', **70** *Virginia Law Review*, 645-667.

Lorie, James H. and Hamilton, Mary T. (1973), *The Stock Market: Theories and Evidence*, Homewood, IL, Richard D. Irwin.

Loss, Louis (1961), *Securities Regulation*, Boston, Little Brown.

Loss, Louis (1983), *Fundamentals of Securities Regulation*, Boston, Little Brown.

Loss, Louis and Seligman, Joel, (1989, with current supplementation), *Securities Regulation*, Boston, Little Brown (II Vols.).

Macey, Jonathan R. and Haddock, David D. (1985), 'Shirking at the SEC: The Failure of the National Market System', **1985** *University of Illinois Law Review*, 315-362.

Macey, Jonathan R. and Miller, Geoffrey P. (1991), 'The Fraud-on-the-Market Theory Revisited', **77** *Virginia Law Review*, 1001-1016.

Macey, Jonathan R., Marr, M. Wayne and Young, S. David (1991), 'The Glass Steagall Act and the Riskiness of Financial Intermediaries', **14** *Research in Law and Economics*, 19-30.

Macey, Jonathan R., Miller, Geoffrey P., Mitchell, Mark L. and Netter, Jeffrey M. (1991), 'Lessons from Financial Economics: Materiality, Reliance, and Extending the Reach of Basic v. Levinson', **77** *Virginia Law Review*, 1017-1049.

Mahoney, Paul G. (1995a), 'Is There a Cure for 'Excessive' Trading?' (Response to an Article by Lynn A. Stout)', **81** *Virginia Law Review*, 713.

Mahoney, Paul G. (1995b), 'Mandatory Disclosure as a Solution to Agency Problems', **62** *University of Chicago Law Review*, 1047-1112. **28** Securities Law Review, 105.

Mahoney, Paul G. (1997a), 'Technology, Property Rights in Information, and Securities Regulation (Markets and Information Gathering in an Electronic Age, Securities Regulation in the 21st Century)', **75** *Washington University Law Quarterly*, 815-848.

Mahoney, Paul G. (1997b), 'The Exchange as Regulator (Symposium: The Allocation of Government Authority)', **83** *Virginia Law Review*, 1453-1500.

Manne, Henry G. (1969), *Economic Policy and the Regulation of Corporate Securities*, Washington, American Enterprise Institute.

McGee, Robert W. (ed.) (1989), *Commentaries on the Law of Accounting and Finance*, Dumont, NJ, Dumont Institute.

McGee, Robert W. (1992), 'Ethical Issues in Acquisitions and Mergers', in McGee, Robert W. (ed.), *Business Ethics and Common Sense*, Westport, Quorum Books, 167-185.

Miller, Geoffrey P. and Macey, Jonathan R. (1990), 'Good Finance, Bad Economics: An Analysis of the Fraud on the Market Theory', **42** *Stanford Law Review*, 1059-1092.

Miller, Geoffrey P. and Macey, Jonathan R. (1991a), 'Origin of the Blue Sky Laws', **70** *Texas Law Review*, 347 ff.

Miller, Geoffrey P. and Macey, Jonathan R. (1991b), 'The Fraud on the Market System Revisited', **77** *Virginia Law Review*, 1001-1016.

Miller, Geoffrey P., Litt, David, Macey, Jonathan R. and Rubin, Edward L. (1990), 'Politics, Bureaucracies, and Financial Markets: Bank Entry Into Commercial Paper Underwriting in the United States and Japan', **139** *University of Pennsylvania Law Review*, 369-453.

Miller, Geoffrey P., Macey, Jonathan R., Netter, Jeffrey and Mitchell, Mark L. (1991), 'Lessons From Financial Economics: Materiality, Reliance, and the Utility of Empirical Methodology in Extending the Reach of Basic V. Levinson', **77** *Virginia Law Review*, 1017-1049.

Mofsky, J.S. (1972), 'SEC Financial Requirements for Broker-Dealers: Economic Implications of Proposed Revisions', **47** *Indiana Law Journal*, 232-248.

Nielsen, Niels Chr. (1993), 'Minoritetsaktionærbeskyttelse - Eller et Velfungerende Market for Virksomhedskontrol (Minority Protection or a Well-functioning Market for Corporate Control)', *Revision og Regnskabsvæsen*.

Nielsen, Niels Chr. and Ebbesen, Jan (1993), 'Stemmelofter - En¢konomisk analyse af den retlige analyse (Restrictions on Voting Rights, An Economic Analysis of the Legal Analysis)', **6** *Juristen*, 251-264.

Palmer, Matthew S.R. (1986), 'The Economics of Law: the Sharebrokers Act 1908', **16** *Victoria University of Welington Law Review*, 277-301.

Phillips, S. and Zecher, R. (1981), *The SEC and the Public Interest*, Cambridge, MA, MIT Press.

Pille, G. (1987), 'Financiële Instellingen en Markten: 2. Secundaire Effectenmarkt (Financial Institutions and Markets: Secundary Securities Market)', in X (ed.), *18de Vlaams Wetenschappelijk Economisch Congres, Brussel 8 en 9 mei 1987, Sociaal-economische Deregulering*, Brussel, V.E.H.U.B., 649-663.

Pitt, Harvey L., Hardison, David B. and Shapiro, Karen L. (1987), 'Problems of Enforcement in the Multinational Securities Market', **9** *University of Pennsylvania Journal of International Business Law*, 375-452.

Poser, Norman S. (1981), 'Restructuring the Stock Market. A Critical Look at the SEC's National Market System', **56** *New York University Law Review*, 883-958.

Poser, Norman S. (1991), *International Securities Regulation*, Boston, Little Brown.

Posner Richard A. and Scott Kenneth E. (eds) (1980), *Economics of Corporation Law and Securities Regulation*, Boston, Little Brown.

Prasad, Ravi (1995), 'Review of Licensing Regime for Security Advisers', *Office of Regulation Review*.

Ribstein, Larry E. (1991), 'Private Ordering and the Securities Laws: The Case of General Partnerships', **41** *Case Western Reserve Law Review*, 1-64.

Ribstein, Larry E. (1992), 'Efficiency, Regulation and Competition: A Comment on Easterbrook and Fischel', **87** *Northwestern University Law Review*, 254-286.

Ribstein, Larry E. (1994), 'Form and Substance in the Definition of a 'Security': The Case of Limited Liability Companies', **51** *Washington and Lee Law Review*, 807-841.

Romano, Roberta (1989), 'The Politics of the Brady Report: A Comment. (Symposium on the Regulation of Secondary Trading Markets: Program Trading, Volatility, Portfolio Insurance, and the Role of Specialists and Market Makers)', **74** *Cornell Law Review*, 865-872.

Romano, Roberta (1991), 'The Shareholder Suit: Litigation Without Foundation', **7** *Journal of Law, Economics, and Organization*, 55.

Romano, Roberta (1996), 'A Thumbnail Sketch of Derivative Securities and Their Regulation', **55** *Maryland Law Review*, 1-83.

Romano, Roberta (1997), 'The Political Dynamics of Derivative Securities Regulation', **14** *Yale Journal on Regulation*, 279-383.

Romano, Roberta (1998), 'Empowering Investors: A Market Approach to Securities Regulation', **107** *Yale Law Journal*, 2359-2430.

Russo, Thomas A. and Wang, William K.S. (1972), 'The Structure of the Securities Market - Past and Future', **41** *Fordham Law Review*, 1-42.

Saari, Christopher P. (1977), 'Note: The Efficient Capital Market Hypothesis, Economic Theory and the Regulation of the Securities Industry', **29** *Stanford Law Review*, 1031-1076.

Samuelsson, Per (1991), *Information och Ansvar. Om B¢rsbolagens Ansvar* (Information and Remedies. Listed Companies and Their Responsibility for False and Misleading Information in the Stock Market), Stockholm, Norstedt.

Scholes, Myron S. (1972), 'The Market for Securities: Substitution versus Price Pressure Effects and the Effects of Information on Share Prices', **45** *Journal of Business*, 179-211.

Schwert, G. William (1977), 'Public Regulation of National Securities Exchanges: A Test of the Capture Hypothesis', **8** *Bell Journal of Economics*, 128-150.

Schwert, G. William (1981), 'Using Financial Data to Measure Effects of Regulation', **24** *Journal of Law and Economics*, 121-158. Reprinted in Posner, Richard A. and Scott, Kenneth E. (eds), *Economics of Corporation Law and Securities Regulation*, Boston, Little Brown.

Seidman, L.R. (1991), 'SEC Rule 144A: The Rule Heard Round the Globe - Or the Sounds of Silence?', **47** *Business Lawyer*, 333-354.

Seligman, Joel (1982), *The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance*, Boston, Houghton Mifflin.

Seligman, Joel (1983), 'The Historical Need for a Mandatory Corporate Disclosure System', **9** Ijournal of Cooporation Law, 1-61.

Seligman, Joel (1995), 'The Obsolescence of Wall Street: A Contextual Approach to the Evolving Structure of Federal Securities Regulation', **93** *Michigan Law Review*, 649-702.

Sevic, Zeljko (1994a), *Pravni Status Centralne Banke u Savremenoj Trzisnoj Privredi* (Status of the Central Bank in a Contemporary Market Economy), Belgrade, Faculty of Law, University of Belgrade.

Sevic, Zeljko (1994b), *Komisioni Posao u Bankarskom Pravu* (Undisclosed Agency Operations Commission Transactions in the Banking Law), Belgrade, Cigoja-stampa.

Sevic, Zeljko (1996), *Centralna banka: Polozaj - Organizacija - Funkcije* (Central Bank: Position - Organization - Functions), Belgrade, Cigoja-stampa.

Simon, Carol J. (1989), 'The Effect of the 1933 Securities Act on Investor Information and the Performance of New Issues', **79** *American Economic Review*, 295-318.

Slain, John J. and Kripke, Homer (1973), 'The Interface between Securities Regulation and Bankruptcy: Allocating the Risk of Illegal Securities Issuance between Securityholders and the Issuer's Creditors', **48** *New York University Law Review*, 261-300.

Stigler, George J. (1964), 'Public Regulation of the Securities Market', **37** *Journal of Business*, 117-142.

Stout, Lynn A. (1988), 'The Unimportance of Being Efficient: An Economic Analysis of Stock Market Pricing and Securities Regulation', **87** *Michigan Law Review*, 613-709.

Stout, Lynn A. (1990), 'Are Takeover Premiums Really Premiums? Market Price, Fair Value, and Corporate Law', **99** *Yale Law Journal*, 1235-1296.

Stout, Lynn A. (1995a), 'Betting the Bank: How Derivatives Trading Under Conditions of Uncertainty Can Increase Risks and Erode Returns in Financial Markets', **21** *Journal of Corporate Law*, 53.

Stout, Lynn A. (1995b), 'Are Stock Markets Costly Casinos? Disagreement, Market Failure, and Securities Regulation', **81** *Virginia Law Review*, 611-712.

Stout, Lynn A. (1995c), 'Agreeing to Disagree Over Excessive Trading', **81** *Virginia Law Review*, 751-755.

Stout, Lynn A. (1996), 'Insurance or Gambling? Derivatives Trading in a World of Risk and Uncertainty', **39** *Brookings Review*.

Stout, Lynn A. (1997), 'Technology, Transactions Costs, and Investor Welfare: Is a Motley Fool Born Every Minute?', **75** *Washington University Law Quarterly*, 791-813.

Thel, Steve (1990), 'The Original Conception of Section 10(b) of the Securities Exchange Act', **42** *Stanford Law Review*, 385-464. Reprinted **23** *Securities Law Review*, 85.

Thel, Steve (1991), 'The Genius of Section 16: Regulating the Management of Publicly Held Companies', **42** *Hastings Law Journal*, 391-503.

Thel, Steve (1995), '$850,000 in Six Minutes - the Mechanics of Securities Manipulation', **79** *Cornell Law Review*, 219-298.

Turnbull, Shann (1974), 'Making the Securities Industry a Growth Business', **Feb.** *Australian Stock Exchange Journal*, 34-40.

Turnbull, Shann (1975), 'Fading Out with a Profit-Planned Corporate Obsolescence', **55** *The Canadian Forum*, 14-16.

Turnbull, Shann (1985), 'Trusteeship as a Technique For Sustainable Industrialisation', in Gandhi, Marg (ed.), *Gandhi Peace Foundation*, New Delhi, 7,8 & 9, 634-643.

Vaahtoranta, Tapani (1996), 'The German Securities Trading Act 1994: A Ban on Insider Trading and An Issuer's Affirmative Duty to Disclose Material Nonpublic Information', **30** *International Lawyer*, 555-558.

Wang, William K.S. (1986), 'Some Arguments that the Stock Market is not Efficient', **19** *U.C. Davis Law Review*, 341-402.

Wang, William K.S. (1988), 'Is a Seller's Rule 10b-5 Cause of Action Automatically Transferred to the Buyer?', *Columbia Business Law Review*, 129-148. Reprinted in Thompson, Robert (ed.) (1991), **33** *Corporate Practice Commentator*, 41-64.

Whincop, Michael J. (1996a), ‘Due Diligence in SME Fundraising: Reform Choices, Economics and Empiricism’, **20** *University of New South Wales Law Journal*, 433-464.

Whincop, Michael J. (1996b), ‘Insider Trading, Property Rights and Market Microstructure: The Case of Primary Securities Markets Transactions’, **7** *Journal of Banking and Finance Law and Practice*, 212-232.

Young, S. David (1988), ‘The Economic Theory of Regulation: Evidence from the Uniform CPA Examination’, **63** *Accounting Review*, 283-291.