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Book Review

Mark J. Loewenstein
University of Colorado Law School

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International Securities Law: A Contemporary And Comparative Analysis, Marc I. Steinberg, Kluwer Law International (1999).

International Securities Law: A Contemporary and Comparative Analysis, by Professor Marc Steinberg, is an excellent resource for the legal practitioner and academic. This book surveys several different topics on international securities law, providing essential information and thoughtful analysis. Of equal importance, it is well researched and rich with references, facilitating more detailed research into the many areas that it covers. It is thus an excellent resource for someone seeking an overview of a particular subject and for someone about to embark on a more thorough project.

The first chapter, entitled *Disclosure in Global Securities Offerings*, both reviews the present law and makes recommendations for the future of this key area of international securities law. Professor Steinberg gives a thumbnail sketch of the disclosure laws in the U.S. and eight other countries, together with an overview of the evolving situation in the European Community. He then considers the various international initiatives to accommodate the differences in national law, which he classifies under two headings: cooperation and reciprocity. Under the former, countries work together toward a common regulatory policy, including disclosure. Under the latter, countries give reciprocal affect to the regulatory actions of other countries, much like one state recognizes the validity of a corporation incorporated in another jurisdiction.

Professor Steinberg suggests that cooperation may serve the global economy better, and he proposes a process by which that might be achieved. While he favors a common disclosure document, he recognizes that a one-size-fits-all disclosure regime may not be ideal, given the sharp differences in various capital markets.

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*Mark J. Loewenstein is a Professor of Law at the University of Colorado School of Law.

He therefore recommends the creation of three different disclosure regimes - one for developed markets, one for ''semi-developed'' markets and a third for emerging markets. This work could take place, he suggests, under the auspices of the International Organization of Securities Commissions (IOSCO), which already has made significant progress on international cooperation. The solution he proposes seems practical and achievable. The chapter concludes with an extensive appendix providing additional detail on the various disclosure regimes summarized in the chapter. The appendix serves as Professor Steinberg's ''full disclosure'' of the law in this area.

Chapter two considers the laws of insider trading. Here too, the author surveys the law of several countries and directives of the European Community. As one reads the short summaries of insider trading law in various jurisdictions, another use of the book becomes apparent: it is a resource for the reconsideration of U.S. law. All too often we forget that other nations struggle with the same legal problems that we do. Insider trading is an excellent example of this. As the recent case of *United States v. O'Hagan*[1] demonstrates, our law is far from settled. The *O'Hagan* case resolved one contentious issue, that the misappropriation and use of material nonpublic information violates section 10(b) of the Securities Exchange Act of 1934. The decision is controversial, however, as scholars debate its soundness.[2] This issue would be resolved differently under the laws of various countries. Australia, for instance, seems to adopt the view expressed in *SEC v. Texas Gulf Sulphur Co.*[3] that *anyone* in possession of material nonpublic information is prohibited from trading on that information. Other jurisdictions, such as France, seek to define, by statute and regulation, those who are subject to trading restrictions. The approaches and experiences in these countries should

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[1]521 U.S. 642 (1997).

[2]See, e.g., Richard W. Painter, Kimberly D. Krawiec and Cynthia A. Williams, *Don't Ask, Just Tell: Insider Trading After* United States v. O'Hagan, 84 Va. L. Rev. 153 (1998); Amy Fahey, *United States v. O'Hagan: The Supreme Court Abandons Textualism to Adopt the Misappropriation Theory*, 25 FORDHAM URB. L. J. 507 (1998).

[3]401 F.2d 833 (2d Cir.), cert. denied sub nom. Coates v. S.E.C., 394 U.S. 976 (1968).

help shape the debate in the United States.[4] Unfortunately, we Americans often ignore the experiences of foreign jurisdictions. Professor Steinberg's work may contribute to a change here, as he makes foreign law so accessible to the American observer.

The next chapter deals with the thorny issue of international accounting standards. Harmonization of accounting standards across the globe is essential if we are to have a global capital market. This chapter details the ongoing effort to achieve that harmonization, reviewing the work of the European Union, IOSCO and the International Accounting Standards Committee. Professor Steinberg also briefly discusses accounting standards in Germany and Japan, giving some perspective on the difficulties of harmonizing accounting disclosures across borders.

Chapter four discusses a topic more familiar to U.S. lawyers, offerings by U.S. issuers to foreign purchasers, the province of Regulation S and Rule 144A. Professor Steinberg provides a comprehensive and readable guide to these provisions. He concludes with the expressed hope that the SEC will "continue to show flexibility"[5] so that a global marketplace for securities can continue to develop.

The next chapter delves into the murky world of the Memorandum of Understanding ("MOU"). MOUs are an essential device in international cooperation, particularly with respect to enforcement of antifraud rules. These informal agreements between the SEC and foreign regulators help the SEC police cross-border fraud. Professor Steinberg provides the history of this practice, starting with the 1982 MOU with Swiss officials, and surveys the many MOUs that have been implemented since then. The number of these cooperative understandings and their reach around the globe will surprise many readers. Again, this chapter is a tremendous resource, collecting dozens of MOUs and providing citations to them. Professor Steinberg also details the efforts of IOSCO to provide guidance in this area with its report entitled *Principles for Memoranda of Under-*

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[4]See, e.g., Kai Schadback, *The Benefits of Comparative Law: A Continental European View*, 16 B.U. Int'l L. J. 331 (1998)(extolling the virtues of comparative law).

[5]Marc I. Steinberg, International Securities Law: A Contemporary And Comparative Analysis (Kluwer Law International 1999) note 1, at 202.

standing.[6] This chapter also includes an appendix setting forth MOUs between the SEC and regulators in England, Germany and India. The reader can see first hand how these MOUs look and are intended to operate.

The final chapter, which discusses emerging markets, represents a departure from the pattern in the first five chapters. In this chapter, Professor Steinberg provides a road map to lead lawmakers in emerging countries to a sensible securities law. Thus, this chapter is less a review of "what is" than of "what might be." The author recognizes that while the elaborate and sophisticated U.S. system of regulation is a useful starting point, it is hardly a description of a likely ending place. Rather, emerging markets must develop regulatory approaches that are compatible with their "cultures and reflective of the costs and efficiencies implicated."[7] This approach is one that corporate law experts should have adopted when they proposed a system of corporate governance for Russia. Instead, those reformers relied too heavily on the American system and failed to consider adequately the particular cultural differences arising from a controlled economy.[8]

Professor Steinberg sets forth several decision points and suggests useful alternatives for those crafting a regulatory system for emerging markets. For instance, he discusses whether it is preferable to rely on self-regulatory organization or an SEC-type of governmental agency to provide oversight of the capital markets. Professor Steinberg describes the advantages and disadvantages of each, ultimately recommending the establishment of some sort of governmental agency so that investors will have confidence in the markets. He covers other topics in a similarly thoughtful way. The chapter ends with two useful appendices, one an extensive outline of the business and legal aspects of emerging markets and the second a report of IOSCO on the objectives and principles of securities regulation.

A final aspect of this book is worth noting. Each of the chapters deals with a discrete topic and does so in a comprehensive fashion. This enhances the usefulness of the book as a research tool - the

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[6]Id. at 205-210.

[7]Id. at 255.

[8]See, Bernard Black, Reinier Kraakman, Anna Tarassova, *Russian Privatization and Corporate Governance; What Went Wrong?* John M. Olin Program in Law and Economics, Working Paper No. 178, Sept., 1999, available on-line at http://papers.ssrn.com/paper.taf?abstract_id=181348.

researcher can focus on one chapter and not fear that additional information on that topic is elsewhere in the book. At the same time, the book provides some discussion of all of the important topics in international securities law. In short, this readable and well-researched book makes a valuable contribution to the scholarship on international securities law.