Securities Law Special: An ECL First

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"Until we see a CEO and general counsel march off to jail together – for a long, uncomfortable and non-country club sentence – capitalism is at risk, because people are losing confidence."[1]

With these words, Mr. Tom Stickel, chairman of the California Chamber of Commerce, accurately articulated the sentiment of lawmakers in the U.S. shortly after the collapse of the Enron Corporation. A lot of people lost a lot of money and something had to be done. Fast.

This is the first special issue of the Journal dedicated to securities law. The quote at the beginning summarises the justification for this ECL special. Not very long ago, financial markets regulation was something for specialists only, and hardly appeared on the radar screen of executives. This has now changed, irreversibly. The meteoric rise of stock markets in the (late) 1990s attracted a large number of new investors. The subsequent nose dive of stock prices in the early 21st century and the malpractice uncovered at Enron, Worldcom, Parmalat and others constituted a significant blow to investor confidence. It also exposed imperfections of those markets and the rules governing them. Legislators responded: the desire to increase and reinforce transparency and disclosure requirements, and to effectively prevent insider trading, market manipulation and other forms of market abuse – only to name a few – are recent examples of efforts to restore confidence.

Within a matter of years, the sheer volume of European financial markets regulation increased dramatically, hand-in-hand with the consequences of non-compliance with the provisions thereof. As a result, securities law compliance has become a hot topic in boardrooms across Europe and beyond.

In the first article of this special, David Mayhew considers whether the EU Market Abuse Directive creates true harmonisation of market abuse across Europe. A case in 2004 involving cross-border bond transactions by Citigroup shows how one single set of facts can be interpreted differently by national regulators having jurisdiction over the matter.

The second article looks at how the EU legislator responded to the recent cases of accounting fraud and other financial malpractice in the EU and the U.S., and what the current status of the main initiatives is.

The third article, by ECL associated editor Peter Roos, demonstrates that securities law is not just about compliance and safety nets, but also about doing and facilitating deals. Because of increased transparency obligations in the U.S., it is now possible for everyone to browse deal terms in takeover contracts simply by consulting EDGAR, the public online database maintained by the U.S. Securities and Exchange Commission. As Mr Roos' article shows, the database contains useful precedents for corporate law practitioners.

As always, this issue also contains a Country Status Reports section, highlighting recent developments in a selected number of jurisdictions. This time, the Reports are dedicated to developments in the field of securities law in Belgium, Denmark, Germany, Italy, Portugal and Spain. It is interesting to witness the parallels between the developments in these countries.

1 Statement of Mr. Tom Stickel, chairman of the California Chamber of Commerce, quoted in Abraham C. Reich and Michelle T. Wirtner, "What do you do when confronted with client fraud?", *Business Law Today* Vol. 12 No. 1 (September/October 2002), 39.