

## FOREWORD

BY MORGAN SHIPMAN\*

This symposium illuminates a variety of present and future core issues in American securities regulation. Containing articles by distinguished accountants, attorneys, and regulators, the symposium also provides a welcome balance of professional views.

### *Role of Accountants and Attorneys*

The editors perceptively place Mr. Samuel A. Derieux's exploration of public accountability under the securities laws at the beginning of the symposium. Mr. Derieux, Chairman of the AICPA, discusses the nature of professionals' responsibility in disclosure, the current changes, and the need to adjust. He demonstrates how accountants and attorneys both have significant attesting (in addition to advocacy) functions and why each profession must sharpen its cooperation with and appreciation of the role of the other. Mr. Derieux notes the high stakes—public confidence in the securities markets—and the inevitability of greater demands by the public and the regulators for progress by the professionals. At the same time, he realistically examines the limits upon perfectibility. The optimal role and duties for accountants and attorneys in securities regulation will, I predict, be *the* most important issue in the disclosure process for the next decade. Mr. Derieux provides needed perspective.

The next article, by Mr. David B. Isbell, counsel to the AICPA, on accountants duties and liabilities is an invaluable specific analysis of the existing AICPA, SEC, and judicial authorities. Replete with close reasoning, the article goes as far as one can in sound counseling and prediction of change. At key points there are instructive comparisons of the duties of accountants and attorneys. If, as I believe, accountants and attorneys actually cover much the same ground (though in differing forms of communication) in the securities regulation materials they pass on or prepare, Mr. Isbell's penetrating view of accountants problems is of immediate and personal interest to the securities bar in anticipating future developments concerning attorneys duties.

In "A Civil Libertarian Looks at Securities Regulation," Mr. Monroe H. Freedman, Dean, Hofstra University School of Law, is usefully provocative. This seminal piece reminds us that attorneys do usually represent clients in an adversary system, that in some particulars the SEC's enforcement techniques may be questionable, and that even a justifiable

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concern about massive securities frauds does not excuse a deviation from due process of law.

### *The Exchanges and the Trading Markets*

Mr. James W. Walker, Jr., Executive Vice President of the American Stock Exchange, provides a highly useful guide for attorneys dealing with the Exchange in any context governed by its regulations. The many recent procedural changes are helpfully explored.

Mr. Gordon L. Calvert, Vice President and General Counsel-Washington of the New York Stock Exchange, writes about one of the current controversial trading markets issues—the central market system and the existing exchange auction markets. The NYSE's view of where we are, where we should be going, and how we should get there is presented well and clearly.

### *Real Estate Securities*

Several articles explore crucial current problems concerning real estate securities. First, the recent controversial extension of Regulation T to broker-dealers selling investment contracts which involve installment payments or assessment features or which involve the extension of credit by third parties is fully explained and probed by Ms. Janet Hart, Assistant Director, Division of Supervision and Regulation, Federal Reserve Board. This action has been widely criticized as irrelevant to the macroeconomic policies of the margin rules. Ms. Hart, however, masterfully lays out and defends the FRB's rationale. If one believes, as I do, that the extension is a mistake which should be corrected by the FRB or Congress, the FRB concerns stated by Ms. Hart must first be analyzed and met.

Second, an integrated view of California's regulation of real estate investments is provided by Mr. Brian R. Van Camp, California's Commissioner of Corporations. Because the regulation of real estate investments is often most intensive on the state level and because California is almost uniformly innovative, Mr. Van Camp's article is important. In one concise piece, all the weapons in a vigorous state commissioner's arsenal—substantive fairness, suitability, disclosure, broker-dealer regulation, and the taming of projections—are understandably described, and their use in attempting to convert basically archaic tax-motivated business forms (limited partnerships and business trusts) into sound structural arrangements is outlined. A great issue to be decided in the fairly near term is the role of state regulation. With respect to tax-motivated limited partnership offerings (a truly new departure in financing technique

during the past few years), most of the burden of investor protection has fallen upon the states, because the SEC's disclosure-only powers have proven too limited. Mr. Van Camp's article demonstrates the response by a vigorous state administrator. Many other states have similarly acted. Has the result been an unnecessary tangle for national offerings? Would everyone be better off with the federal Investment Company Act (or a variant of it) extended to all truly public investment entities in order to regulate conflicts of interest, excessive leveraging, and other problems on a continuing basis and with substantial preemption of state authority to regulate offerings of investment companies subject to such extensive structural regulation by the SEC?

Last, the article by Mr. Kenneth A. Mounce, an Arthur Andersen & Co. partner, on real estate accounting and projections cuts to the essential problems. He analyzes the deficiencies in the current accounting based on historical costs and explores what might be done with projections and periodic reporting of appreciation in property values. Obviously an astute student of the real estate business, Mr. Mounce traces the harmful effects which the current accounting deficiencies can have on management and investor decisions. Life does indeed seem to follow accounting.

#### *The Intrastate Exemption and Rule 147*

Mr. Donald B. Gardiner, a Columbus attorney, keenly analyzes the narrowing of the intrastate exemption accomplished by, or codified in, the SEC's recently adopted rule 147. Having an optimal blend of history, policy, analysis, and counseling, the article is extremely useful and is also an interesting case study in the effects of detailed line-drawing and codification.

#### *Pooling of Interests Accounting*

In "Business Combinations Revisited: A Temporary Defense of the Status Quo," Mr. Philip A. Defliese, managing partner of Coopers and Lybrand, re-examines the APB's most important pair of opinions—Opinion No. 16, *Business Combinations*, and Opinion No. 17, *Intangible Assets*. This is a well-reasoned and highly articulate pragmatic contemporary defense of the compromise reached in those opinions. The purchase-pooling controversy, crucial conceptually and in practical impact, seems to have eternal life. Mr. Defliese's article skillfully demonstrates why there is no perfect solution and why the existing compromise may be the best practical outcome for the time being.

*The Piper Aircraft Opinion*

Mr. Charles F. Dugan, II and Ms. Mary Ellen Fairfield, Columbus attorneys, probe the many holdings of the Second Circuit's latest opinion concerning the contest for control of Piper Aircraft Corporation. The court's reasoning and dispositions in this landmark case concerning standing, duties of diligence, remedies, and aider and abettor liability all are dissected. The results are a valuable roadmap for counsel engaged in or defending against a takeover bid and also, because of the breadth of the opinion and the article, deep insight into key issues such as duties, scienter, and remedies in a wide range of securities transactions.

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The symposium is highly reassuring. Busy accountants, lawyers, and regulators have taken quite seriously the continuing education functions of their professions by sharing with a large audience their experience and their carefully prepared thoughts and analyses. Many of these articles were first presented as speeches at the University of California Securities Regulation Institute held earlier this year. The impressive success of that conference, in attendance and in quality of presentations, is becoming typical of continuing education programs.