



ELSEVIER

International Review of Law and Economics 27 (2007) 70–95

International
Review of
Law and
Economics

Recent developments in liability for nondisclosure of capital market information

Susanne Kalss

Vienna University of Economics, Augasse 2-6, 1090 Wien, Austria

Abstract

The article first outlines the recent development of the European capital market as a whole and second describes the legal answers on the phenomena of globalisation and the high dependence on information technology. After revealing the two main phenomena of the capital market, namely asymmetric information and opportunistic behaviour the article deals with disclosure duties on the European and national level of EU-member states and focuses finally on the liability for non-disclosure and tries to embed this legal institute in the broad range of legal instruments to strengthen the efficiency of capital market law.

© 2007 Published by Elsevier Inc.

Keywords: Capital market; Disclosure; Asymmetric information; Information duties; Liability for breach of disclosure duties

1. General considerations

1.1. Capital market—key market of the economy

Capital markets are *functional centers* in a national economy with the duty of providing firms with capital. They play a central part in every market economy (*key market*).¹ An efficient financial system is crucial for *sustained economic growth*. In the last years,

E-mail address: susanne.kalss@wu-wien.ac.at.

¹ Kalss in *Basedow/Baum/Hopt/Kandal/Kono*, Economic Regulation and Competition 112; *Baum*, European Business Organization Law Review 2004, 677 (678); cf OECD, Economic Survey—Germany 2004: developing risk capital markets, 5. Aug. 2005; OECD, Promoting fair and transparent regulation, Discussion Paper, 16 Feb. 2001; www.oecd.org.

0144-8188/\$ – see front matter © 2007 Published by Elsevier Inc.

doi:10.1016/j.irl.2007.04.005

capital markets have been undergoing a *fundamental change*: new technical opportunities, internationalisation, and broader access to the offer of financial services have created a new competitive situation that has enforced dynamic forces of structural changes.² Major trends include innovation and progress in information and communications technology; institutionalisation and professionalisation of market participants; shifts of economic power among the different market participants; intermediation and simultaneous disintermediation, including broadening of the scope of purveyors of investment-related services;³ structural change in the landscape of providers of trading facilities (alternative trading systems, international alliances between stock exchanges and/or trading platforms, internal matching of orders by huge market participants); globalisation of the trading in securities and offering-related services as the mobility and internationality of market participants (brokers and other financial services, issuers and major investors) increase due to technical support; the increasing importance of equity financing accompanied by the creation of new financial products and investment strategies; and policy and regulatory activities to facilitate cross-border capital flows, market access and innovation in exchange services by deregulation on the one hand, and expanded regulation of affiliated and ancillary services on the other hand.⁴

Capital market and capital market law are moving targets because of the tremendous and even accelerating changes of the market environment regarding both participants and trading techniques. It is the main task of the state to create the *appropriate legal framework* for the optimal *proper functioning* of the market economy and the *capital markets* to fulfil its main task, to channel capital from households to firms, and to provide *financial system stability*.⁵ Basic considerations in capital market law for providing the proper working of capital markets are *equal treatment of the market participants*, safeguarding of the *protection of investors* and the protection of *confidence in financial markets* as a significant impetus for capital market regulation.⁶

1.2. *Typical phenomena of the capital market*

Two important phenomena characterise relations between participants in capital markets, e.g. issuers, investors and intermediaries: (i) unequal information by the parties (*asymmetric information*), and (ii) the high probability of *opportunistic behaviour*.⁷

² Kalss, New challenges for stock exchanges, investment firms and other market participants, in *Basedow/Baum/Hopt/Kanda/Kono*, Economic Regulation and Competition 113; *Micheler*, Bank Archiv 2000, 990.

³ *Nobel*, Börsenallianzen und -fusionen, in *Schneider* (Ed.), Lutter-Festschrift (2000) 1485 et seq; *Köndgen*, Mutmaßungen über die Zukunft der europäischen Börsen, in *Schneider* (Ed.), Lutter-Festschrift (2000) 1415.

⁴ *Doralt/Kalss*, The EU-model of Corporate Law and Financial Market Regulation, in *Bermann/Pistor*, Law and Governance in an Enlarged Europe 269 f; *Micheler*, Bank Archiv 2000, 990 ff.

⁵ *Kalss*, Liability of Banks, in *van Boom/Koziol/Witting*, Pure Economic Loss 77; *Köndgen* in *Basedow/Baum/Hopt/Kanda/Kono*, Economic Regulation and Competition 29 ff.

⁶ *Kalss* in *Basedow/Baum/Hopt/Kanda/Kono*, Economic Regulation and Competition 121.

⁷ *Fleischer*, Gutachten zum 64. DJT (2002); *Kalss* in *van Boom/Koziol/Witting*, Pure Economic Loss 78; *Kalss* in *Basedow/Baum/Hopt/Kanda/Kono*, Economic Regulation and Competition 121.

متن کامل مقاله

دریافت فوری ←

ISIArticles

مرجع مقالات تخصصی ایران

- ✓ امکان دانلود نسخه تمام متن مقالات انگلیسی
- ✓ امکان دانلود نسخه ترجمه شده مقالات
- ✓ پذیرش سفارش ترجمه تخصصی
- ✓ امکان جستجو در آرشیو جامعی از صدها موضوع و هزاران مقاله
- ✓ امکان دانلود رایگان ۲ صفحه اول هر مقاله
- ✓ امکان پرداخت اینترنتی با کلیه کارت های عضو شتاب
- ✓ دانلود فوری مقاله پس از پرداخت آنلاین
- ✓ پشتیبانی کامل خرید با بهره مندی از سیستم هوشمند رهگیری سفارشات