BIBLIOGRAPHY

This is the third in a series of annotated bibliographies on corporate law and securities regulation. Most of the books and articles noted here were published in 1979 and 1980. Although the publications represent only seven countries, many of these writings discuss the domestic application of a particular nation's laws and their effect, or potential effect, upon laws and transactions in the remaining nations of the world as well.

The entries are arranged by country of origin and have been selected and annotated by individual country editors. *

Belgium


The draft law to reform the body of company law in Belgium seeks new solutions to the problem of insider trading. For example, contrary to the French law of July 24, 1966, it makes no provision for the notification of transactions to the company concerned or to a public authority.

Indeed, it became clear to the drafters that insider trading results from abuse of the time-lag that exists between the moment that information is known by certain privileged people and the moment that the information is released to the general public. Consequently, they deemed it appropriate to reduce, or even to eliminate, this time-lag in order to remove the possibility of insider trading.

One safety clause contained in the draft law which addresses this problem is that information that could be detrimental to the company must not be disclosed. The commentary to the draft law explains that management will have “to appreciate the significance of facts or decisions under consideration, whether their character is sufficiently established or certain, the importance of

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their possible influence on market prices, and [should any of these facts or
decisions be detrimental to the company,] to balance these considerations
against the interests of the company”.

Anyone who exploits his knowledge of such facts or decisions (disclosure of
which would influence the market price) by buying or selling securities in that
company, is subject to criminal penalties.

France

Boy, Laurence, “Réflexions sur le sort de l'expertise de minorité” (“An
appraisal of the use of the minority shareholders’ right to call in an expert”),

The author begins by establishing the uncertainty of the judicial interpreta-
tion of article 226 of the law of July 24, 1966. Article 226 gives to one or
several shareholders, representing at least 10% of the corporation’s capital, the
right to request of a court the designation of an expert who will be charged
with the task of presenting a report on one or several management decisions.
The author also discusses the more general problem of judicial intervention in
 corporate life. The author thinks that this trend toward judicial intervention is
linked to the general trend toward protection of minority shareholders.

Recent case law indicates that article 226 is beneficial to all shareholders. In
fact, the very purpose of the individual action brought against the corporation
is to make the designated expert submit a report; this report is useful both to
the corporation itself and to the minority shareholders.

The courts seem reluctant to hear a case brought by a shareholder associ-
ation, a group formed for the purpose of bringing such an action.

The expert can only investigate one or several specific management deci-
sions. The author notes that the shareholders are not permitted to use the
expert investigation as a means to oversee the mangement.

Finally, the author points out that the most serious obstacle to the expert’s
investigation is that the whole investigation system is not suited to investiga-
tion of company groups in which management decisions have considerable
impact on economic life. The expert can only inquire into those decisions
about which the minority shareholders who invoked article 226 are concerned.
He may not inquire into decisions made by other members of the corporate
group, e.g. parent, subsidiary, etc.

Champaud, Claude, “L’entreprise personnelle à responsabilité limitée: Rapport
du groupe d’étude chargé d’étudier la possibilité d’introduire l’E.P.R.L. dans
le droit français” (“Personally owned limited liability companies: A report
by a study group investigating the possibility of introducing them into
The study group that was formed at the request of the Minister of Justice investigated the possibility of creating under French law a new form of enterprise called the personally owned limited liability company (l'entreprise personnelle à responsabilité limitée, or E.P.R.L.). The study group concluded that the E.P.R.L. would provide the entrepreneur with a minimum of personal protection against unlimited liability. The economic and financial independence of the E.P.R.L. would remain limited because the enterprise would not be completely separate from the individual owner; but while the E.P.R.L. would not have a corporate structure, it would have certain autonomy by virtue of having assets separate from those of the individual owner. The E.P.R.L. could be used for all types of enterprises, whatever their economic activities, i.e. industrial, commercial, agricultural, crafts, etc.

The study group proposed a system which does not result in the creation of a distinct legal entity: the creation of the E.P.R.L. will result in a separation of assets, but this separation will remain fully internal. However, the study group recognized the necessity for a real limitation on the entrepreneur's liability. Therefore, it proposed the creation of a fund (consisting of the entrepreneur's personal assets) which will be immune to all third party commercial claims (indisponibilité commerciale). To compensate the third party commercial claimants, in the event that the funds of the E.P.R.L. are insufficient to cover all claims, the study group recommended creation of a caisse de garantie (legislatively created insurance fund). The caisse de garantie will only cover that part of the claim which exceeds the value of the assets of the E.P.R.L. itself.


It has become customary to include liability clauses (clauses de garantie) in contracts for the transfer of investment holdings. In such clauses, the transferor promises to bear the financial consequences of the discovery of any heretofore unknown (balance sheet) liabilities. These clauses tend to reassure the transferee that the price paid corresponds to the real value of the purchased holdings.

The author describes the various risks that these clauses are supposed to encompass.

The Civil Code, as applicable to the transfer of investment holdings, does not sufficiently protect the transferee because the Code limits the transferor’s guarantee to the existence of his creditor’s rights; it does not guarantee the solvency of the debtor. Consequently, the transferor does not guarantee the solvency of the company, the holdings of which are analyzed in terms of creditors’ rights.

The liability clause guarantees that the financial picture of the company, as
documented at the time of the agreement, conforms to reality. For example, the clause can guarantee that the investment holdings themselves are not encumbered by any pledge, lien, bond, or other commitment. Some clauses specifically ensure the truthfulness of the different elements of the company’s financial statements. Other clauses guarantee that the figures on the assets side of the balance sheet are not encumbered by any license, mortgage, lien or any other right in reality or in easement, except for those specifically indicated. Still other clauses guarantee those investment portfolios, trademarks and patents of which the company is the owner.


This article investigates the following question: Are transfers of controlling stock governed by specific principles or by the principles generally governing transfers of shares? Proponents of the classic doctrine maintain that the transaction must retain a neutral character, i.e. it must be treated as an ordinary transfer. But examination of the rationale behind recent legislation and case law indicates that this doctrine is rejected by both the legislature and the courts.

The author suggests that the most recent case law supports the theory that the right of the shareholder to transfer his shares is not discretionary; that is, he can be prevented from transferring his shares under the abuse of right theory (l’abus de droit). Under certain circumstances the approval by the controlling directors of the transfer of control could be considered to be an abuse of the rights of the majority. One theory suggests that according to the position apparently taken by the Cour de cassation, there is a way by which the courts could review a transfer of controlling shares.


A mutual fund (fond commun de placement) is a co-ownership (having no independent legal status) of transferable securities which are managed by an administrator, the assets of the fund being held by a depositary (dépositaire).

To protect the investors, qualifications for, and the functioning of, administrators and depositaries are strictly regulated. Administrators and depositaries can only be those whose names are included on an official listing (established by decree), and therefore officially approved. This listing is composed mainly of banks, life insurance companies and financial institutions authorized to deal as investment managers. Investors are further protected by the requirement that the administrator of the fund distribute the profits at the end of each
fiscal year; violation of this mandate subjects the administrator to criminal sanctions. Finally, the law makes the fund an open-ended fund by allowing the investor to demand that the depositary buy back the investor's portion of the fund: the redemption price is then calculated "as the next liquidation price", which in turn, is set at least every fortnight.

Strict regulation also reflects the legislative intention to keep mutual funds in their proper place as investment vehicles; that is, to prevent them from being used as instruments of control of commercial and industrial corporations.

Federal Republic of Germany


Originally written as Professor Schwark's "habilitation" or professional thesis in 1977 at Bonn University Law School, this book is the most recent treatment of investor protection in Germany. It begins with a lengthy analysis of the concept of economic law and macroeconomic measures that influence the economic processes of production and distribution. Schwark shows the different possible approaches to legal protection of investors (for example, civil law claims, co-determination of investors by means of special delegates, disclosure, competition, etc.). He feels that despite their merits these approaches do not suffice, but that more state intervention and supervision is needed. According to Schwark, the German Banking Supervisory Agency (Bundesaufsichtsamt für das Kreditwesen) should be transformed to a General Banking and Securities Exchange Supervisory Agency. While these suggestions may not be politically feasible, the book is an interesting and complete compilation of the whole field of investor protection in Germany.


The Advisory Commission to the Federal Ministry of Finance, also known as the Banking Structure Commission, under the leadership of Professor Gessler, has worked four and a half years on this report which is based on a mass of empirical data collected for the purpose by the Commission. After
reviewing the different criticisms leveled against the German universal banking system, the Commission majority denies the need for fundamental reforms, such as introduction of a separate system and increased state participation or influence in the banking sector. Instead, it recommends that bank holdings in non-banking enterprises be restricted to 25% plus one share (with a number of more generous exceptions as, for example, in the case of failing companies). A strong Commission minority recommends a stricter limit of 10%. The Commission also recommends that some minor changes be made in the way in which the bank depository votes the stock. For example, it suggests that in certain cases such as election of bank representatives to the supervisory board of the enterprise, the bank be required to receive specific instructions from the shareholder. Another Commission recommendation is that professional affiliations of supervisory board members be made more transparent. With respect to the securities business, the majority is not convinced that a law prohibiting insider dealings is necessary; however, a strong majority does consider the present voluntary system to be inadequate. Important parts of the report concern the safety of the banks, especially the amount of share capital needed by the bank to run its operations. The majority of the Commission pleads for consolidated participation balances of more than 50%.

Public reaction to the report has been mixed. While some feel that the report is too conservative and does not really tackle the fundamental problems of the credit business and banking law reform, most consider the report to be an excellent work with prudent and practical evaluations and recommendations. It will be most surprising if, in the coming years, the legislature chooses to go much further than this report does in reforming the German system—with one exception. There is a political tendency to cut down bank holdings in non-banking enterprises to 10%; some would even like it to be as low as 5%.


The book is Reuter’s doctoral thesis in business administration at Hamburg University. It reflects the influence of North American capital market theory and shows how German economists see the problems of an efficient stock market and of the market concerning information on shares. After a short introduction on the costs of share transactions and the importance of stock market prices for market allocation and investor protection, Reuter develops the model of an ideal share market in part one of his study. One of the elements of this model is an efficient information system. As a consequence, stock prices always reflect all relevant information. Reuter tests this with reality by using the results of various German empirical studies on the German stock market. He finds that the random walk hypothesis, while being consistent with weekly and monthly developments, does not cover the develop-
ments of stock price variations from day to day. Therefore, in part two of the
book, Reuter discusses the characteristics of a market concerning information
on shares. He distinguishes the more theoretical case of equal access to this
information by all investors (symmetric market condition) and the practical
situation of asymmetric capacities and possibilities of the investors. Finally, he
tries to draw certain cautious conclusions concerning insider information and
transactions. The book provides a good insight into modern German capital
market discussion.

Lutter, Marcus; Stimpel, Walter; und Wiedemann, Herbert, eds., *Festschrift für
Robert Fischer (Contributions in honor of Robert Fischer).* Berlin: Walter de

Robert Fischer became a Federal Court judge in 1950. He presided over its
corporate law division from 1962 until 1968, when he became President of the
Court. When he retired in 1979 a collection of fifty legal essays was written
and published in his honor. Most of these essays treat problems of corporate
and capital market law. Readers may be particularly interested in the following
subjects: the voluntary audit of annual accounts (Goerdeler); the professional
liability of stock market information services, investment advisers and portfolio
trustees (Hopt); investor protection by company law for the “public limited
partnership” (Stimpel); and lawyers’ partnerships (Steindorff).

Baumbach, A.; Duden, K.; and Hopt, K.J. *Handelsgesetzbuch.* Beck’sche

This is the newest edition of the most widely used commentary to the
German Commercial Code and relevant statutes. The book successfully con-
tinues a remarkable tradition of providing quick and precise information
regarding all the major problems encompassed by and arising from Germany’s
commercial laws. Major chapters deal with commercial and limited partner-
ships (including the “public limited partnership”) and the most important
types of banking services and transactions.

Bundesministerium des Justiz, ed., *Bericht über die Verhandlungen der Un-
ternehmensrechtskommission (Report of the Debates of the Enterprise Law
cover. Price DM78.

In 1972, the Federal Minister of Justice appointed a commission of twenty-
seven independent experts, asking them to “study the legal questions resulting
from the necessary development of company law into a comprehensive enter-
prise law”. Seven years later this Enterprise Law Commission presented its final report to the Federal Government. Published in 1980, this report consists of four parts. In Part I (pp. 100–129) the following question is examined: If the application of legal rules depends upon the size of the enterprise, what are the factual attributes by which this size should be determined? The major part of the report, Part II (pp. 130–646), concerns the “constitution of the enterprise”. It is dedicated to the problem of how the interests of employees, and other groups such as consumers, should be represented inside, not only the stock corporation, but also other legal forms like limited companies (GmbH) and limited partnerships. This aspect of the Commission’s work has been by-passed and politically invalidated by the enactment of the Codetermination Act in 1976. Perhaps this explains why, throughout its work, the Commission has restricted its activity to the collecting of mostly controversial arguments instead of developing legislative proposals. Parts III (pp. 647–884) and IV (pp. 885–1035) are dedicated to policy issues concerning combined enterprises (Konzerns) and accounting.


This is the first volume of what is planned to become the most comprehensive presentation of German Company Law. The book is divided into five chapters. Chapter I (pp. 3–140) analyses the notion of company (or corporation); it describes the development and sources of company law as well as the different legal forms of companies and their importance. Chapter II (pp. 143–354) examines the basic structures of companies, the necessary elements of private organizations, the meaning of incorporation and the different factual (e.g. public and closed) types of enterprises. In Chapter III (pp. 357–655) the most important policy considerations shaping modern company law are discussed: they include the protection of individuals, minorities, investors, creditors and employees. Chapter IV (pp. 659–770) describes the influence of antitrust and constitutional law on corporations. In Chapter V (pp. 776–883) the author explains the rules and principles that regulate transnational enterprise organizations.

Professor Wiedemann's work is not intended to be a handbook for the law practitioner. Rather, its purpose is primarily academic in nature; it explains the developing structures and the complicated mechanisms of modern company law in Germany. Therefore, it will be extremely helpful to the student of comparative corporation and enterprise law.
Japan

Books


Useful handbook for practitioners on the issuing procedure of the corporate straight and convertible debentures. It refers to many judicial decisions and administrative releases.


Comparative study of the law of the small, closely-held company.


In-depth analysis of the law of the parent-subsidiary company. This is an edition of the much cited book published in 1968, revised in light of the 1974 amendment of the corporation law.


A collection of eleven articles on worker participation and corporate disclosure.


A concise encyclopedia of the law relating to the management of the company, including the law of labor relations, corporate income tax, and trade regulation.


This is a compilation of lectures delivered at the Japan Seminar for the International Faculty for Corporate and Capital Market Law in July 1978 under the cooperation of the Japan Securities Research Institute. Sixteen out of eighteen topics covered at the seminar are included in this book. They range from an outline of money and capital markets, and selected problems of securities regulation, to corporation and antimonopoly laws. Due to page limitations, detailed descriptions cannot be expected, but the authors, who are first class lawyers, economists, regulators and businessmen, provide the reader with a streamlined sketch of Japanese environments for securities transactions. This is one of a few guides in the English language for Japanese securities regulation.


The author, a member of the International Faculty for Corporate and Capital Market Law, has published a number of articles on securities regulation. This treatise is based upon the long academic career of the author, and this is the most reliable source of knowledge on Japanese securities regulation at this moment. It covers not only the Securities and Exchange Law of 1948, the Securities Investment Trust Law of 1951 and rules thereunder, but also releases issued by the Securities Bureau and self-regulatory rules and circulars. Throughout the book the reader may feel the author’s zeal to improve the
Japanese securities market by means of more rational regulation: most of his arguments derive from his profound understanding of the U.S. counterparts.

**Articles**

“Syokentorihikiho-no-Syomondai” (“Symposium on Securities Regulation”), in *Shoken Kenkyu (Study of Securities)* 57 (1979): 1-266.

A symposium including seven articles on the central depository transfer system for share certificates, proxy regulation and corporate democracy.

**Switzerland**


A basic book on Swiss company law; especially designed for students, it may very well be an excellent introduction to Swiss company law for foreigners. It contains many references to court decisions and literature, updated to May 1980; it gives also indications on new trends in company law in Switzerland and Europe. Easy to use and read, this book may be recommended to anybody interested in company law.


The “Schweizerische Aktiengesellschaft” (SAG, see 1 J. Comp. Corp. L. & Sec. Reg. 290 (1980)) devotes a special issue to accounting problems; it presents different articles not only on Swiss law and practice, but also on foreign legislation, Germany, France, Italy, UK, USA and the Netherlands. Very interesting comparisons may be drawn from these various descriptions.

**United Kingdom**

**Books**


**Articles**


**United States of America**


This is a compilation of eight reports that had been published over a period of years by the several authors. Some of the reports were updated. An introduction and conclusion by Roy A. Schotland, the Chairman of the Steering Committee, have been added. The authors are a mix of academicians and journalists. With one exception, Edward S. Herman, the academicians are professors of law. Professor Herman is a professor of finance at the Wharton School of the University of Pennsylvania. The journalists are all very well known to students of finance.

Most readers should not be surprised about the institutions that were selected for the study. The one possible exception is the non-profit institution, essentially educational endowments and foundations. Since the study was sponsored by a foundation, the omission of a study of non-profit institutions
would have been singularly inappropriate. The difficulty with such institutions is that their benefactors sometimes have difficulty separating their personal business interests from their philanthropic activities. The study was prepared by Chris Welles, a contributing editor to the *Institutional Investor*. The other institutions covered include the commercial bank trust departments (Edward S. Herman), real estate investments trusts (Roy A. Schotland), corporate pension funds (John Brooks), state and local pension funds (Louis M. Kholmeier), union pension funds (Richard Blodgett), investment banking (Nicholas Wolfson), and broker dealers (Martin Mayer).

As the title indicates, the book deals with conflicts of interest. Such conflicts are ubiquitous and people would argue that we should not make fine distinctions between those we try to control and those we do not. In an era of deregulation, the unanimity of the authors brought together between these covers in their endorsement of the regulation of these conflicts is noteworthy.

The Steering Committee was not without its problems in defining conflicts of interest. Most of the problems dealt with concern either self-serving abuse at the expense of one's clients or the problem of discharging an obligation to one fiduciary either in preference to another or at the expense of another. It is, for example, difficult for an investment banker/broker-dealer to serve both client and customer to the best of its ability. In general, the authors have found that the problems are not as serious as they once were, but that many conflicts remain and that the best method for dealing with them is not obvious. In some instances the problem inevitably arises out of the multiplicity of services rendered by a given institution. The apparent solution of separation of functions overlooks the fact that combining the functions may produce economies of scale that more than offset the abuses.

The various contributions are independent of each other and the reader can easily be selective about the chapters he or she wishes to read without being handicapped by failing to read the others. Fortunately, the Steering Committee was thoughtful enough to provide an index.


Although this book covers forward markets, it deals primarily with organized markets and discusses these in terms of liquidity, orderliness, and organization. These are the three factors the author considers relevant to the efficiency of markets. He views the contemporary stance, that efficiency is a matter of adequacy of information dissemination, costs of transactions, and allocational efficiency, as "stationary" and narrow.

He correctly argues that the development of forward, futures, and options markets is a function of the adequacy of the underlying spot markets. The
discussions of the various types of markets are straightforward and clear. They should be helpful to the non-specialist who wishes to understand the nature of the esoteric options and futures markets. The discussion of the benefits from improving market efficiency is fairly standard but the treatment of the non-spot markets is not wholly adequate. The discussion of the regulation of these markets in the U.S. is straightforward but fails to convey the complexities involved. Finally, there is a discussion of public policy. As might be expected in a book sponsored by the American Enterprise Institute, there is approval of those government measures that improve the efficiency of the markets, and disapproval of any attempt to interfere with the pricing mechanism of the market. Since the author views the futures and options markets as enhancing the efficiency of spot markets, it is not surprising that he deplores the hostility of the public to the former two. Indeed, it seems that improving the public's understanding of the futures and options markets in order to reduce this hostility was one of the objectives of writing the book.

Unfortunately, the book leaves certain fundamental questions not only unanswered, but unrecognized. The two major justifications of the futures, options and forward markets advanced are that they facilitate the dissemination of information relevant to the formation of spot prices and facilitate the transference of risk from the more to the less risk averse investors. The received doctrine with respect to commodity and securities spot markets is that they are informationally efficient in the sense that existing prices reflect all relevant available information. If that is the case, how can the non-spot markets bring additional information to bear on pricing in the spot markets? While there are sophisticated replies to that question which the reader may or may not find acceptable and which are too complex to be dealt with here, the problem is not even recognized in the book. Secondly, received doctrine divides risk into diversifiable and non-diversifiable components. It follows that unless the risks being hedged are non-diversifiable, there is no point in corporations incurring expenses to avoid them since the stockholders can avoid such risks by holding properly diversified portfolios. Again, while the reader may or may not find this doctrine plausible, it is not recognized in the book.

Perhaps more important, most hedging is not done to avoid risk but rather because the information on which the hedger acts leads logically to hedging. The hedger hedges because he thinks the future and spot prices are out of line and he expects to make money when the price relationship is corrected. Hedging is thus more of an arbitrage activity than an insurance activity. This too is not recognized in the book. The book nevertheless remains interesting and useful to the layman.

This book, written by a noted critic of SEC disclosure policies, is divided into five parts. The first deals with the goals and effectiveness of SEC-mandated disclosure. With respect to these, Kripke finds the SEC accomplishments wanting. The second part deals with the economics of the securities markets. The thrust of the received doctrine of the economics of securities markets today is that available information is quickly reflected in the prices of securities. By the time information is filed with the SEC it is already reflected in market prices and therefore provides nothing useful to an investor trying to determine whether or not to invest in the securities of the filer. Furthermore, Kripke notes, the kind of information required by the disclosure laws is hardly sufficient to enable an investor to make an investment decision. First, he argues, an investor needs information about the industry and the economy. Secondly, he argues, the investor requires information about what will happen to the firm, not about what has happened to the firm. The same criticism would hold for European disclosure laws which require the disclosure of all the information necessary for decision-making. The firm is not, of course, the best source of the first kind of information. If Kripke really believes the market to be informationally efficient, disclosure of the latter kind of information would be as stale as he alleged is the information the SEC has historically required. As convinced as Kripke is of the existence of informationally efficient markets, in part III he is strongly critical of the SEC's attitudes towards accounting principles. An informationally efficient market is not fooled by variations in accounting. If the market is efficient as Kripke maintains, the imposition by the SEC of the accounting reforms that Kripke recommends would be as pointless as disclosing the information of which Kripke is so critical. In part IV Kripke argues that the SEC has developed a theology of dubious legality that reflects a loss of a sense of relevance and proportion. His conclusions (part V) lay the blame on public accountants, the SEC's examining and interpretative staffs, and the SEC enforcement staff. He reiterates the need to keep in mind the efficient market when determining what information is useful to an investor, and without quite saying so, suggests we ignore it when establishing accounting rules.

Kripke remarks: "I have tried with my classes to see what could be learned about a company from a prospectus which we studied together... I have realized how the SEC's mandated disclosure fails to accomplish its avowed purpose" (p. 274). Compare this with the remark of Whitman and Shubik, the authors of the next book reviewed: "The use of SEC disclosures is the key to our... approach to investment analysis" (p. 79).


In most books on investment the focus is on earnings per share. The focus
of this book is on what the authors call asset-conversion activities: mergers, acquisitions, acquisition or disposition of assets in bulk; financial restructuring; purchase and sale of control; and the creation of tax shelters. The book is not addressed to those interested in short-run trading or short-run profits, but to what they call non-control investors, those who would like to ride the coattails of those who approach businesses as businesses rather than stock market investments, *i.e.* the control investors. These non-control investors might be likened to long-run risk arbitrageurs. Their objective is to find firms whose resources are currently underutilized but will be properly utilized in a reasonable length of time. Since there is no way of hedging this kind of operation directly, Whitman and Shubik suggest hedging (without calling it that) by considering only firms with financial integrity, firms with strong financial positions in the sense that they have or can create liquidity. The consequence of this is that the book is also directed to creditors.

For their analysis, the authors rely heavily on the American disclosure system. In striking contrast to Kripke, they note that neither the accounting profession nor the SEC "seems to realize how well it has performed to date .... The SEC... is ill-advised if it believes that efficient-market economists who are neither practicing analysts nor investment bankers have much, if anything, to contribute to the implementation of a meaningful disclosure system" (p. 15).

After expounding the financial-integrity approach in section one of the book, in section two the authors criticize the market performance orientation in analyzing stock and the modern capital market theory of asset valuation. In many respects this is the least satisfactory part of the book. In section three they discuss what can and cannot be gotten out of disclosure documents and they provide an excellent discussion of financial accounting and generally accepted accounting principles. In section four the authors discuss the factors that tip the return–risk ratio in favor of return. In the vernacular of the street these include tax shelters, other people's money (leverage), accounting fudge factor (the utilization of the flexibility allowed by GAP to create the desired picture), and something off the top (a negative factor such as the milking of a company by a management). The remaining chapters of this section deal with the variables that should be considered in analyzing securities as businesses. In section five one begins to realize that the book is not well organized as it might have been because section five is essentially a continuation of section four. In these chapters the authors look at many of the concepts that analysts traditionally examine, but they are highly critical of the traditional approach to the concepts and suggest alternative approaches. The section closes with a very interesting chapter entitled "A Short Primer on Asset-Conversion Investing".

In many respects the heart of the book lies in the first two appendices. These are case studies showing the use of the recommended type of approach. The first is a study of the F. & M. Schaefer Corporation's use of creative finance to benefit the controlling stockholders. The second shows how the
Leasco Data Processing Company was able to acquire control over the Reliance Insurance Company by obtaining the right to acquire key blocks of Reliance equity securities without committing any funds to the purchase of that stock unless Leasco in fact obtained control of Reliance (p. 264). Both cases involved complex market bailout transactions. In these exercises Whitman and Shubik provide the non-active investor with the kind of analysis that Graham and Dodd provided for the market-oriented investors. In the two final appendices the authors provide first a guide to SEC corporate filings, and then specific evidence from public documents that a security may or may not be attractive from the point of view of their approach. Both Kripke's and Whitman and Shubik's books should be of considerable interest to non-Americans who are groping for an optimal disclosure system and look to the U.S. experience for guidance.

Other legal writing on corporate and securities matters in the United States has concentrated chiefly on practical manuals. Listed below is a selection of the best among them. Two outstanding exceptions are the *Federal Securities Code Annotated* and *The Regulation of Money Managers: The Investment Company Act and the Investment Advisers Act*. Each of these has permanent value.


This book is an analysis of investment regulation in the United States by a committee of sophisticated American practitioners, chaired by Kenneth J. Bialkin. The arrangement is by kind of investment or transaction and the discussion explores and attempts to resolve the maze of legal problems arising in each transaction: Highly recommended.


This handy compilation contains the most up-to-date version of the basic text of the Model Act together with the Professional Corporation Supplement.
to the Act and occasional comments by the Committee on Corporate Laws of the Section. It is carefully indexed. This book should be used in conjunction with the annotated version now in its second edition and last supplemented in 1977.


This massive work, primarily the product of Professor Louis Loss with the assistance of some thirty securities specialists, is the most authoritative published statement of United States securities law both as it is (the annotations cite some 700 cases) and as it may become if Congress enacts this proposed Code. Professor Loss has written an introduction that serves as a detailed guide to the Code and even as a substitute for a new edition of *Loss on Securities Regulation*. This work is indispensable to United States securities practice.


The issues revolve around (1) the composition and activities of corporate boards of directors, (2) disclosure requirements of the FTC and SEC, and (3) questionable corporate practices, particularly those involving "sensitive" payments abroad and internal accounting practices relating to them. The contributors include Bayless Manning, Ted J. Fiflis, Donald E. Schwartz, A.A. Sommer and Richard W. Duesenberg.


This is a comprehensive and exhaustively annotated analysis of Investment Company Act and Advisers Act of 1940 matters, with a foreword by Louis Loss. Indispensable for lawyers in money management practice.


This is strictly a form book and transaction guide to the drafting and presentation of opinion letters. The author is an experienced securities practitioner who has organized the manual around sixteen basic clauses found in
typical securities opinion letters. Although the explanatory notes cover statutory requirements, the book has no references to cases, SEC interpretive or other releases and "No action" letters. Accordingly, the careful opinion writer will use this guide simply as the framework for an opinion letter. The basic legal research must still be performed.


This is a dual work that analyzes the requirements of disclosure and the restraints on insider trading (1) as held by the United States courts through 1978 and (2) as they are treated under the proposed Federal Securities Code.


This is a well annotated survey of legal and business problems of investment in the United States. It covers alien land ownership, mineral resources, labor and taxation.