



Civil Liability of Securities Underwriters: Enforcing the Gatekeeping Function (European Studies in Law and Economics)

Olia Skripova

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This book is dedicated to the Law and Economics analysis of civil liability of securities underwriters, for the damage caused by material misstatements of corporate information by securities issuers. It starts by looking at securities underwriters from a practical and business perspective, asserting that they are undeniably indispensable and central figures in the process of securities offering. From the economics point of view, their main value comes from their ability to monitor the issuer's disclosure during the distribution of securities, to ensure that such disclosure does not contain materially misleading statements or omissions and to take preventive action if needed. This is known as the gatekeeping function of securities underwriters. Further, it is investigated whether there is a need for additional incentives for securities underwriters in order to make them perform the gatekeeping function well, as different market-based and legal enforcement mechanisms already exist. To determine the expected civil liability, the book considers five main components of liability regimes in the US, the EU, the Netherlands, and the UK - potential parties to a dispute, the liability standard, the measure of damages, the procedural rules, and the nature of the liability rules. This analysis leads to the conclusion that, in all of these countries, the expected civil liability threat is likely to be insufficient to encourage meaningful compliance by securities underwriters, and there might be a systematic under-enforcement of the underwriter's gatekeeping function. As a possible solution to the drawbacks of existing underwriter civil liability systems in each of the countries analyzed, it is suggested there should be a switch from the current negligence liability to strict liability. This should be coupled with placing the burden of proof of loss causation on the plaintiff and capping damages by the amount of the underwriting fee. (Series: European Studies in Law and Economics - Vol. 16) [Subject: Law and Economics, Corporate Law, Comparative Law]

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