

ENGLISH SUMMARY

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 seeks to answer a series of important questions. Who are the underwriters and what is their main role in the securities offering? Why there is a need for legal intervention in the underwriting market? What is so special about civil liability as an enforcement tool? How is civil liability used in a real world and does it really reach its goals? Finally, is there a need for a change and, if so, by what means?

Answering these questions is important because nowadays securities underwriters are main and indispensable participants in the process of raising capital *via* public financial markets. They provide important services to the issuer and investors both during the offering process and after the distribution. The analysis of the economic theory shows that the main explanation for such a wide use of underwriters is that they are good in correcting the informational asymmetry between the issuer and outside investors. Economic theory also postulates that underwriters can act as efficient gatekeepers in capital markets – they can monitor the correctness and completeness of issuer's public statements and thus prevent misstatements of the material information. It is socially beneficial that the gatekeeping by the underwriter is accurate and reliable as long as costs of gatekeeping and its enforcement are lower than benefits.

This book acknowledges that there are market incentives, such as reputation, which encourage underwriters to perform their gatekeeping function well. However, alone these market enforcement mechanisms are insufficient to ensure compliance. Therefore, some form of legal intervention is needed. It is analyzed which form of legal intervention fits the underwriting setting best. It is concluded that *ex post* legal intervention is superior to *ex ante* legal intervention. Further, all mechanisms of *ex post* legal intervention – public enforcement by the market supervisor, enforcement by the stock exchange and private enforcement *via* civil litigation, can be effective in providing the underwriter with incentives to monitor. In this setting, civil liability is just one of the types of legal intervention which has its advantages and disadvantages.

The legal analysis of the USA, the EU, the Netherlands and the UK performed in this book shows that there is no uniformity in the use of civil liability as a tool to provide monitoring incentives to underwriters. Civil liability is used quite widely in the USA and in the Netherlands while in the UK underwriters face almost no liability threat. It is also shown that both in the USA and the Netherlands in practice the liability threat is limited because the amount of settlements in these cases is normally rather low and never exceeds the underwriting fee. It is suggested that in these countries the expected liability threat is likely to be insufficient to encourage meaningful compliance by the underwriter and there might be a systematic underenforcement of underwriter gatekeeping function.

The last Part of this book is dedicated to the search of a remedy for the problem of low settlement size in underwriter civil liability cases. As a possible solution it is proposed to switch from the current negligence liability to strict liability. This should be coupled with the positioning of the burden of proof of loss causation on the plaintiff and capping of damages by the amount of the underwriting fee. These measures should, respectively: decrease the uncertainty surrounding the outcome of the case and thus cause higher settlements in cases that are being brought, discourage filing of frivolous suits and contain the costs that strict liability imposes on deals.