

Foreword

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The articles in this symposium address developments in securities regulation during 1995.¹ The articles were selected after attending the 23rd Annual Securities Regulation Institute in Coronado, California.² Although the focus of this symposium is the Private Securities Litigation Reform Act of 1995 (the "Reform Act"), the symposium addresses three additional areas: (1) developments in disclosure requirements, particularly in regard to public offerings; (2) issues for a seller to consider in drafting combination agreements; and (3) the California case of *People v. Simon* dealing with securities fraud prosecutions.³

THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

The passage of the Reform Act was arguably the most significant development in securities regulation in 1995. The Republican landslide in the November 1994 congressional elections placed securities litigation

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2. The 23rd Annual Securities Regulation Institute took place at the Hotel Del Coronado in Coronado, California on January 24-26, 1996. The Securities Regulation Institute is presented by Northwestern University School of Law in cooperation with the University of California, San Diego.

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3. 9 Cal. 4th 493, 886 P. 2d 1271, 37 Cal. Rptr. 2d 278 (1995).

reform at the top of Congress' agenda.⁴ In 1995, the Republicans delivered. On December 22, 1995, Congress enacted the Reform Act and, over a presidential veto, passed the bill into law. As evident from this symposium, the Reform Act drew praise from some, particularly business executives, and criticism from others.

Soon after the Reform Act was passed, the securities regulation bar gathered for its annual meeting at the 23rd Annual Securities Regulation Institute in Coronado, California (the "Securities Regulation Institute").⁵ Several of the speakers at the Securities Regulation Institute discussed the Reform Act, including Arthur Levitt, the Chairman of the Securities and Exchange Commission. Levitt's speech is the lead piece in this symposium. Levitt discusses the Reform Act and the path it followed through Congress.

Harvey Pitt, the author of the second article in this symposium, also discussed the Reform Act at the Securities Regulation Institute. In his article entitled "Promises Made, Promises Kept: Practical Implications of the Securities Reform Act," Mr. Pitt has compiled and synthesized his thoughts on the Reform Act.

William Lerach is the co-author of the third article in this symposium. Although Mr. Lerach was not a speaker at the Securities Regulation Institute, he was on the minds of many of the speakers and attendees. Mr. Lerach is a well known plaintiff's attorney active in the area of securities class action suits. Mr. Lerach's article, co-written with Eric Issacson, addresses pleading requirements (in particular for the pleading of scienter) under the Securities Exchange Act of 1934 following the passage of the 1995 Reform Act.

The fourth article in the symposium is written by Leonard Simon, a colleague of Mr. Lerach. This article directly attacks the academic underpinnings of the Reform Act. Specifically, Mr. Simon challenges an article by Janet Cooper Alexander entitled "Do the Merits Matter: A Study of Settlements in Securities Class Actions."⁶

PUBLIC OFFERINGS: DEVELOPMENTS IN DISCLOSURE

In addition to addressing the Reform Act, the Securities Regulation Institute provided a forum for discussing several other important developments in securities regulation. One session addressed domestic and international developments in raising capital. Herbert Wander, one of the co-authors of the fifth article, was a panelist for this session. On

4. National Law Journal, February 12, 1996.

5. *Supra* note 3.

6. 43 STAN. L. REV. 497 (1991).

the panel and in his article, Mr. Wander focuses on developments in public offerings, particularly in regard to disclosure issues.

COMBINATION AGREEMENTS

The final session at the Securities Regulation Institute addressed the practical aspects of acquisitions and mergers. Stephen Volk, a panelist at this session, is one of the authors of the sixth article. This article provides some practical guidance to sellers negotiating and drafting combination agreements. The authors present the relevant case law in this area and summarize the guidance provided by such cases with respect to structuring the process of investigation and decision-making by the seller's board. Also, the authors discuss specific deal protection provisions that may be included in a business combination agreement in order to reduce the likelihood of a third party interfering with the contemplated transaction. Finally, the authors discuss provisions of an agreement that raise important issues with respect to risk allocation between the parties.

CALIFORNIA JUDICIAL DEVELOPMENTS

In addition to discussing developments in the civil area of securities regulation, this symposium has included an article addressing an important California judicial decision in the criminal area of securities regulation: *People v. Simon*.⁷ The article was submitted on behalf of the authors by Gary S. Mendoza, Commission of Corporations, Department of Corporations for the State of California—also a scheduled speaker at the Securities Regulation Institute. The article discusses whether securities fraud prosecutions are still viable after the California decision *People v. Simon*.⁸ One of the authors—George Crawford, Senior Trial Counsel, California Department of Corporation—prosecuted the *Simon* case.

The San Diego Law Review hopes that this Symposium leads to additional critical thought regarding the ramifications of the Private Securities Litigation Reform Act of 1995.

7. *Supra* note 4.

8. *Id.*