



Ad-hoc disclosure - A law and economics approach

Veronika Fischer

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Diploma Thesis from the year 2006 in the subject Law - Comparative Legal Systems, Comparative Law, grade: 1,3, University of Augsburg (Prof. Dr. Möllers), course: Diplomarbeit, language: English, abstract: The economic analysis of the duty of ad-hoc disclosure and related issues in this paper led to the following conclusions: Due to information asymmetries between issuers and investors, a regulation of the rules of disclosure is necessary, which reduces the incentive for individual investors to costly gather information, and transfer this information process onto issuers. The legislator's goal for such reason can be found in the safeguarding of capital market efficiency as to both correct pricing and liquidity (or sufficient investor participation). The duty of ad-hoc disclosure should fully be transferred to the issuer, as it is the cheapest cost avoider and has sufficient own interests to provide correct and timely information. Nevertheless, legislation must avoid that the issuer can be held liable for information as if it was advice by detailing which information has to be given in which form. Furthermore, it must be ensured that investors are not flooded with information, but that only a sensible amount of pertinent information as opposed to advertising information is published. For the lesion of this duty of disclosure, not only the issuer as an entity, but as well the board members should be held liable, as this introduces additional incentives for compliance and adds liable capital for possible damaged parties. Nevertheless, both legislator and jurisdiction will have to limit the risk of abusive investor claims, which are likely to occur in such a constellation. If liability for defective ad-hoc disclosure can be established, the awarded damage should be out-of-pocket measure, as it limits liability to the actual amount of damage and does not transfer the risk of an investment in a way inconsistent with the general principles of the capital market. Furthermore, it provides advantages in processing multiple claims and can be unequivocally determined by a finance-mathematical method based on the Capital Asset Pricing Model.

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