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Insider Trading: The Laws of Europe, the United States and Japan

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Abstract

Professor Emmanuel Gaillard's recent compilation of foreign and domestic insider trading chapters in his book, *Insider Trading: The Laws of Europe, the United States and Japan*, provides a tremendous service for both international lawyers and United States securities practitioners. The book is a handy reference guide, as its title suggests, to recent statutory provisions passed throughout Europe and Japan, as well as an effective summary of the insider trading laws of the United States.

INSIDER TRADING: THE LAWS OF EUROPE, THE UNITED STATES AND JAPAN. Edited by Emmanuel Gaillard, Kluwer Law and Taxation Publishers, Dordrecht, The Netherlands, 1992. xviii 466 pp. ISBN 90-6544-529-7.

*Reviewed by James D. Yellen**

Insider trading¹ outside the United States has only recently become the subject of regulation. This is so despite the fact that the United States has developed case law on insider trading based on statutes passed approximately sixty years ago.² Professor Emmanuel Gaillard's recent compilation of foreign and domestic insider trading chapters in his book, *Insider Trading: The Laws of Europe, the United States and Japan*, provides a tremendous service for both international lawyers and United States securities practitioners.³

The book is a handy reference guide, as its title suggests, to recent statutory provisions passed throughout Europe and Japan, as well as an effective summary of the insider trading laws of the United States.

The book is efficiently divided into three major sections. Part I includes the international sources of insider trading law throughout Europe.⁴ The book starts with separate chapters treating the EC Directive of 1989 and the Council of Europe's Convention of 1989.⁵ Professor Gaillard stresses the need for closer cooperation among governmental authorities with the responsibility of overseeing national securities markets. Among EC Member States, cooperation is organized by the 1989 EC Directive, which requires each Member State to designate the administrative authorities competent to monitor insider trading of-

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1. The term "insider trading" generally refers to the wrongful use of material, non-public information related to publicly-traded securities.

2. See The Securities Act of 1933, 15 U.S.C. § 77 *et. seq.* (1988); The Securities Exchange Act of 1934 ("the '34 Act"), 17 C.F.R. § 240 *et seq.* (1975). Interestingly, except for section 16 of the '34 Act, even the securities acts do not expressly deal with the subject of insider trading and its consequences.

3. EMMANUEL GAILLARD, *INSIDER TRADING: THE LAWS OF EUROPE, THE UNITED STATES AND JAPAN* (1992) [hereinafter *INSIDER TRADING*].

4. *Id.* at 5-282.

5. *Id.* at 5-21.

fenses and provides for their mutual cooperation. In addition to the 1989 Directive, the book also reviews the Council of Europe's Convention on Insider Trading of April 20, 1989, effective after ratification.⁶ The Convention generally provides for mutual assistance among its members in the exchange of information relating to insider trading.

Additional chapters within Part I then review the individual insider trading laws of each of the European Community nations, plus those of Austria, Finland, Liechtenstein, Norway, Sweden, and Switzerland.⁷ This is the book's strongest point. The authors' analyses of the insider trading laws of these eighteen European countries, most of which were only recently enacted, are quite extensive, spanning nearly 250 pages. Each chapter is written by either a professor of law from the subject country, a practitioner in a leading law firm, or jointly by both.

Each country's chapter includes the following: an overview of the law; the definition of insider trading; a review of the country's control mechanisms for insider trading; the statute's provisions against other stock-related infractions in addition to the prohibition of insider trading; a review of international law situations involving foreign or international elements of insider trading; and other stock-related operations to which the country's insider trading statute might also apply.

Part II of the book provides a thorough summary of the laws of the United States and Japan.⁸ The book's chapter on U.S. law, written by Joseph T. McLaughlin and M.A. Helen Macfarlane, is particularly extensive and detailed. The authors conclude with praise for increased efforts of the SEC and its international counterparts to pursue insider trading offenders beyond U.S. borders, and note the growth of international cooperation for that purpose.

Part III of the book provides the reader with helpful source

6. *Id.* at 23-33. As of the book's publication date, the Convention on Insider Trading, ETS No. 130, had been ratified by three states (Norway, The United Kingdom, and Sweden) and signed by one state (Cyprus). According to the book's chapter on the 1989 Convention, at least six other states had already indicated clear intentions to become parties to the Convention. *Id.* at 23 n.1. The Council of Europe, which opened the Convention for signature, has 26 member States and is the main multilateral treaty-making body in Europe. *Id.*

7. *Id.* at 37-282.

8. *Id.* at 285-342.

materials in the form of annexes that otherwise are difficult to retrieve.⁹ The annexes include the EC Directive, The Council of Europe's Convention, and the actual statutes as passed and amended in each country previously reviewed, including the United States and Japan.

The book's overall strength lies in the comprehensive breadth of its descriptions of the insider trading laws in twenty different countries. Professor Gaillard has ensured that the respective authors use consistent methodologies and approaches in analyzing the insider trading laws of the country at issue. Three reviews in particular, those of the United States, France, and Japan, stand out as excellently presented.

The same compilation format that provides the book's strength also accounts for the book's only notable detractions. The breadth of coverage at times leaves the reader curious for a deeper or more detailed analysis of a given country's laws. Furthermore, because of the strict deadlines necessary to produce a work from twenty separate authors and just as many countries, one wonders whether, and if so for how long, a particular article contains the most recent decisional or statutory authority on the subject of insider trading. For example, the United Kingdom's Criminal Justice Act of 1993, which received Royal Assent on July 27, 1993, contains new legislation on "insider dealing."¹⁰ Although the Act has replaced the Company Securities (Insider Dealing) Act of 1985 and implements the EC Directive on Insider Trading, the book's chapter on the United Kingdom deals with the new Act only sparingly.

Professor Gaillard sets forth in the book's introduction that the goal of his project is "[t]o unite together the studies by professors of law, government officials, and practicing lawyers from around the world in order to comment on the status of insider trading laws in their respective countries."¹¹

Whether that goal is viewed as lofty or plain, Professor Gaillard has attained it. Particularly when considered in light of the increasing globalization or internationalization of the world's se-

9. *Id.* at 345-457.

10. See Peter King, *New Regime for Insider Dealing*, SOLICITORS JOURNAL 1242-44 (Dec. 1993).

11. INSIDER TRADING, *supra* note 3, at vi.

curities markets, this is a compilation that should be on the shelf of both securities lawyers and international practitioners alike.