

WEEK II - MAY 7, 2008

The impact of U.S. federal and EU law. Both respond to lapses in state/country codes.

Impact of U.S. Federal and EU law

Does the federal government in the U.S. and do EU directives ameliorate disadvantages experienced by distant shareholders who are not insiders and do not have access to information?

When, why did these overarching governmental agencies step in?

To remedy what they saw as injustices?

To create a more efficient and confident capital market?

To encourage investment into the U.S. or the EU by increasing transparency?
Have they proposed similar solutions?

If they have proposed similar solutions, are the solutions effective?

U.S. Federal Law (1960s to date)

The Securities and Exchange Commission began playing an active, complementary role only in the 1960s.

- Requires public companies to provide shareholders with pages of relevant information in order to solicit proxies.
- Permits shareholders to put short proposals in the management proxy statement.
- Regulates proxy contests by reviewing and challenging veracity of solicitation materials.
- Regulates shareholder voting on mergers, dissolutions, etc., through disclosure.
- Requires public companies to provide thorough annual reports (10-Ks), quarterly reports (10-Qs) and current reports (8-Ks) that provide near instantaneous public reporting of material developments.
- Requires +5% shareholders to give public notice of their share position and plans.
- Regulates tender offers, requiring offers to be open twenty days, pro rata acceptance in over subscriptions requiring the bidder to make material disclosures about the offer and the target company to state its position on the offer (state law provides a counterpoint by permitting defensive strategies by the boards of target companies).
- Regulates insider trading.

- Regulates how proxies are solicited through financial intermediaries (but does not require that (i) shareholders residing outside a U.S. state have the right to vote by proxy, or (ii) that shareholders have a right to speak at meetings, or (iii) that shareholders can vote electronically.)¹

EU LAW

- Seeks to regulate the right of all shareholders to vote by proxy, speak at meetings, vote electronically, put items on meeting agenda if representing 5%, vote electronically.
- Requires public companies to issue annual financial reports, semi-annual financial reports, notification to issue of shareholdings of +5%, as well as related voting agreements, issuers to notify the public of changes in other share classes or in terms of debt that could affect voting rights of the publicly traded class, provide adequate notice of time and meeting place of shareholder meetings, listed companies to make company information available without charge and without discrimination.²
- Seeks to require public companies to provide essentially the same takeover protections as mandated in the U.S.
- In addition, EU law requires that if an entity or group has acquired control, it must make a bid to the non-minority shareholders at an equitable price and, depending on the jurisdiction, make allowance for employee input.³

How quickly or completely are EU Directives adopted?

What sanctions are there?

Must companies immediately comply with U.S. federal regulations? Do the federal regulations take precedence over state law?

¹ Because in the U.S., state law permits any shareholder to vote via a proxy, requires that meetings cannot be held too soon after a record date or too long after a record date, permits shareholders to speak at meetings and put proposals on the agenda (subject to some significant limitations).

² Directive 2001/34/EC on listing seems to require much more than mere financial information to be lodged with the official stock exchange.

³ Directive 2004/25/EC.