

Editorial

European securities regulation and corporate governance are test cases for determining whether efficient rules will be obtained by dynamic competitive processes or centralised regulatory action. The 2004 Markets in Financial Instruments Directive (MIFID) belies the diagnosis that Europe may be experiencing 'regulatory fatigue'.¹ On the contrary, an important policy change has been ushered in, as MIFID is intended to shape a pan-European retail culture through law. In this issue, Niamh Moloney undertakes a comprehensive analysis of the Directive, emphasising that the relationship between law and investor activity is still unproven.

Horst Eidenmüller disagrees with the results of centralised European rule-making. He takes issue with the European Insolvency Regulation and argues for a competitive approach that would allow investors to freely choose their forum for bankruptcy. Ari Hyytinen and Tuomas Takalo focus on the situation of an entrepreneur seeking capital to finance a start-up business. They scrutinise the trade-off between mandatory and enabling rules and their effect on market entry and entrepreneurship. In commenting on the *IMS Health* ruling of the European Court of Justice, Joost Houdijk evaluates the shortcomings of a legal monopoly. He assesses the conditions under which an owner of an intellectual property right on software may be required to grant a license in order to escape the verdict of abusing a dominant position.

Rainer Kulms
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¹ Charlie McCreevy, European Commissioner for Internal Market and Services, Address to the Conference of the Committee of the European Securities Regulators, Paris, 6 December 2004, SPEECH/04/515, available at: <<http://www.iasplus.com/europe/0412mccreevy.pdf>>.