REVIEW

Ester Herlin-Karnell and Nicholas Ryder's

MARKET MANIPULATION AND INSIDER TRADING

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The financial crisis of 2007/2008 brought under the spotlight the question of legal regulation of questionable financial market practices and gave rise to amendments to the existing legislation on market abuse globally. The diversity of global responses to market abuse practices in the post-crisis period invited for a comparative analysis of the effectiveness of the regulatory responses, and critical assessment of their substance and impact, especially in jurisdictions with a substantial influence on the health of global financial markets. Professor Ester Herlin-Karnell and Professor Nicholas Ryder contribute to this body of literature through their assessment of legislative, policy and enforcement responses in the European Union and contrast them to the measures adopted by the USA and the UK regulator in the book *Market Manipulation and Insider Trading*, observing the changes in regulatory responses over time while positioning the fight against market abuse in the broader framework of white-collar crime.

The book is divided into seven chapters: Chapter 1 introduces the topic of market manipulation in general and in the framework of financial crisis, providing also an overview of the structure of the following chapters. Chapter 2 situates the market abuse in the EU context, highlighting the importance of 'market confidence' as the goal of EU legislative framework to fight market abuse and providing a brief overview of the criminal liability for legal persons in the EU. In Chapter 3 the authors discuss the regulatory strategies in the light of the chosen sanction, not only in terms of the traditional discussion on the choice between criminal or administrative sanctions, but also a comparative overview of the choice made in the EU, UK and the US. Chapter 4 situates the market abuse in the wider EU fight against financial crimes, i.e. money laundering and fraud, while furthering the scholarly discussion on the subsidiarity issue and the accountability in the EU market abuse regime. It further raises pertinent questions of fundamental rights and data protection in the fight against market abuse, calling for further research on the matter. In chapters 5 and 6 the authors discuss the market abuse regime in the UK and US, respectively. After defining insider dealing and market abuse in the respective jurisdictions and situating them in the post-crisis regulatory changes, the authors present the main enforcement institutions and their practices in the field of market abuse. Chapter 7 concludes.

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The work provides interesting comparative insights into the development of approaches to market abuse. Acknowledging that high financial penalties can represent a strong dissuasive factor in the fight against market abuse, whether imposed in a criminal or administrative procedure, the authors note that the differences in the respective legal cultures and policy choices influence the plausibility and effectiveness of the implementation of such measures. They call for jurisdiction-tailored approaches towards market abuse regulation by establishing legal questions that need to be answered in respective jurisdictions to determine the best approach. The authors present compelling jurisdiction-based standpoints on white-collar crimes in general and the question of market abuse in particular, highlighting the challenging question of EU competences and the creation of EU administrative bodies with extensive powers in the field. They also provide a useful overview of the respective case law and a detailed analysis of shortcomings of applied practices, questioning the effectiveness and the deterring effect of monetary penalties in the respective jurisdictions.

The book successfully opens several questions not only regarding the EU, but also regarding the US and UK approaches to market abuse, leaving them to be addressed by other works or further research. Beyond the comparative analysis of market abuse regulation and practices, *Market Manipulation and Insider Trading* provides a valuable insight into the contemporary issues of market abuse regulation that arose in the EU, US, and the UK, respectively. It reaches beyond a purely academic analysis of a singular issue but rather accentuates the accompanying issues of market abuse regulation in terms of civil law, administrative law, criminal law and even data protection questions that need to be resolved alongside the questions of desirability and efficiency of market abuse regulation. Transparency and level playing field in financial markets for safeguarding market confidence needs to be provided in the existing legal frameworks, respecting limitations imposed by other branches of law, which has proved to be challenging in the three analysed jurisdictions. Defining the spill over effects of market abuse regulation either in the field of administrative, civil, or criminal law, provides a fertile ground for further amelioration of legislation in the field and its efficiency in preventing or minimising further market abuse practices in financial markets.

Exposing the shortcomings of market abuse regulation in the EU, the US and the UK, it confirms the authors' thesis that despite the heightened regulatory activity the efficient approach towards market abuse regulation is yet to be determined according to the cultural and policy considerations of the respective jurisdiction. While the authors aim to focus predominantly on post-crisis EU developments, the book extensively covers also the developments in the USA and the UK as well as the pre-crisis regulation of white-collar crimes. This is both a strength and a weakness of this book as the broad scope is at times diluting the main message of the present work, which is the impact of

the financial crisis on market abuse regulation in terms of the legislative, policy and enforcement responses in the EU. The multijurisdictional approach to the analysis of market abuse practices exposes the different underlying cultural and policy-based considerations in the field, which at times weakens and conceals the authors' main focus, especially when discussing market abuse in the broader framework of white-collar crime and through the repetitive use of EU examples in the field.

Regarding the choice of the jurisdictions as a focus of the work, the authors expose their arguments for their choice at the end of the introduction, namely discussing market abuse in the EU due to the existence of interested regulatory questions in the field, the US as the common jurisdiction of provenance of white-collar crimes and the UK as a combined jurisdiction, sharing a common law culture with the US and the legislative framework with the EU (for the time being). The analysis of market abuse in particular and white-collar crimes in general in subsequent chapters brings about a diversity of research angles, which sometimes diluted the primary question of whether legal regulation of market abuse is necessary in the first place. By way of example, the discussion of the regulatory strategies in Chapter 3 brings about an interesting discussion on the use of criminal, administrative and/or civil law sanctions in the field of market abuse and their deterring effect, setting to a large extent aside the question on the need to regulate market abuse and the justification of heightened interest in such regulation after the financial crisis in the years 2007/2008.

The book usefully clarifies the distinction between the notions of market abuse and market manipulation, also by providing different definitions of the phenomena in the respective jurisdictions, setting the basis for further analysis of the jurisdiction-based regulatory approach of the field and its success. The authors note the emergence of 'competence creep' not only in the EU, but also in the UK, whereby imposing administrative sanctions carries some characteristics of criminal sanctions without the accompanying criminal law safeguards such as the right to be heard and the application of the principle ne bis in idem. The competence creep in the EU occurred through *de facto* harmonisation of national criminal law provisions under the Market Abuse EU legislation in the field of administrative law even in the absence of EU competences regarding criminal law. Such competence creep is furthermore pointed out by the authors in the EU context regarding the question of criminal liability of legal persons, with a special emphasis on the question of EU competence for requiring such liability at the national level under its Market Abuse legal framework. Both topics – i.e. competence creep and criminal law safeguards in the field of market abuse regulation – are highly contentious and would merit further scholarly attention. The work further exposes the regulation of market abuse practices in the EU as a data protection issue under the contentious EU reporting obligations on market abuse, meriting further regulatory scrutiny.

A detailed account of market abuse enforcement procedures across the analysed jurisdictions as a hands-on approach to defining market manipulation and insider dealing allows for an additional insight into the actual procedures in the field of market abuse, informing about the different aspects of the procedure and the penalties imposed and providing a judgment about the limited deterrence effect of the penalties imposed. The lack of discussion on the amounts gained by the practices of market abuse would have benefited the argument of insufficient deterrent effect. This prevents the reader from forming their own judgment on the deterring effect of the imposed sanctions as leaves them unaware of the extent of damage to the financial markets by engaging in insider trading or market manipulation practices.

All in all, the depth and breadth of the work adds to the existing literature in the field, shying away from a singular point of view towards a fundamental discussion on the need for regulation in the field and its form, considering the culture and the regulatory strategies available in the respective jurisdiction. It provides interesting avenues for future work on the dissuasive effect of monetary and criminal penalties, the possibility of criminal sanctions at the EU supranational and national level as well as the use of market manipulation provisions in the field of sustainable corporate practices, e.g. including the so-called 'greenwashing' practices of reporting unsustainable practices as sustainable in the definition of market manipulation. Thorough and detailed, incorporating fundamental questions of white-collar crimes, *Market Manipulation and Insider Trading* is a value-adding piece of work in the field of multijurisdictional literature on market abuse.