This collection of essays has been compiled in honour of Professor Eddy Wymeersch on the occasion of his retirement as professor at Ghent University. His main international academic peers explore developments on the crossroads of company law and financial regulation in Europe and the United States, providing a unique view on the dynamics of regulatory competition in an era of economic globalization, whether in the fields of rule making, organizing the mobility of capital or the enforcement of rules. The deepening of European financial integration and the transatlantic regulatory dialogue has generated new paradigms of rule setting in a multinational framework and reinforced the need to develop adequate instruments for cooperation between regulators. Regulators increasingly use concepts such as equivalence or mutual recognition to regulate cross-border relations.

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Recent years have seen an upsurge of change and reform in corporate law and financial market regulation internationally as the corporate and institutional investor sector increasingly turns to the international financial markets. This follows large-scale institutional and regulatory reform after a series of international corporate governance and financial disclosure scandals exemplified by the collapse of Enron in the United States. There is now a great demand for analysis in this area from the academic, practitioner, regulatory and policy sectors.

The *International Corporate Law and Financial Market Regulation* series will respond to that demand by creating a critical mass of titles which will address the need for information and high-quality analysis in this fast-developing area.

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PERSPECTIVES IN COMPANY LAW AND FINANCIAL REGULATION

Essays in Honour of Eddy Wymeersch

EDITED BY

MICHEL TISON, HANS DE WULF, CHRISTOPH VAN DER ELST AND REINHARD STEENNOT
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FOREWORD

The wide-ranging content of this book can be seen as a reflection of the academic career of the person it is dedicated to, Eddy Wymeersch. After receiving a Law degree at Ghent University in Belgium and a Master of Laws degree at Harvard Law School in the USA, Eddy Wymeersch ventured into academia as an assistant to Professor Jean Limpens at Ghent University. He briefly worked for the Belgian banking supervisor, then called Banking Commission, but soon left, only to return as the chair of its executive committee in 2001. In 1972 he was appointed professor at the newly established University of Antwerp. In 1984 he returned to his alma mater, Ghent University, to remain there until his retirement in 2008. At Ghent University, Wymeersch and his colleague Guy Schrans founded the Financial Law Institute in 1990, as a research center but also as a forum where (Belgian) academics and practitioners can meet to discuss new developments in company and financial law. Professor Wymeersch is still a source of inspiration to all members of the Institute and we all hope he will continue to stimulate younger members with his direct and critical but always constructive comments.

Speaking and/or reading Dutch, English, French, German and Italian and, being from little, outward-looking Belgium, Wymeersch has always closely monitored legal developments internationally, both in Europe and the USA, at a time when many were only interested in the technical intricacies of their national legal systems. This partly explains his exceptionally good nose for what would become the topics of future legal research in European company and financial law. He was a pioneer in many fields related to securities, corporate and banking law. In the 1970s the European Commission charged him with a seminal study on “The Control of the Securities Markets in the European Community” (published in 1978). Hardly anything had been written on the topic at that time, but Eddy Wymeersch revealed a wealth of important issues, many of which were only dealt with in European regulation at the start of the twenty-first century, by which time he had become the chairman
of the Committee of European Securities Regulators (CESR). He established contact with Klaus Hopt and together they would embark on a series of groundbreaking conferences, which were always accompanied by important and widely consulted conference volumes and which brought together many of the leading, internationally minded scholars in areas such as banking, securities and corporate law from across Europe and the USA. The first two such conferences dealt with Insider dealing and takeover bids in Europe. Later Guido Ferrarini would transform the couple into a triumvirate of close friends. They would continue to meet each other in various fora and locations. The award of the prestigious Max Planck Research Prize in 1998 enabled Eddy Wymeersch to fund some of the later conferences. Other fora, such as the International Faculty for Corporate Law and Securities Regulation, or the Forum Europaeum, which worked on principles of group law, were equally productive in terms of academic output.

In 1992 Eddy Wymeersch spoke about corporate governance at Cambridge, at a (still just pre-Cadbury) time when hardly any scholar, board member or institutional investor on the Continent had heard about the concept. He would soon start spreading the gospel, leading to him more or less single-handedly writing the Belgian Corporate Governance Act of 2002, being involved in the drafting of every official Belgian corporate governance Code for listed companies and being chosen as a member of the European Corporate Governance Forum. At that time he already had years of consulting for, among others, the IMF and World Bank behind him, which had given him the opportunity to advise several eastern European states on the introduction of stock exchange regulation and other aspects of what was for these countries, in the immediate aftermath of the fall of the Berlin Wall, the new capitalist system of funding companies. Eddy Wymeersch also chaired the European SLIM-working group (which stands for Simpler Legislation for the Internal Market) that had a significant impact on the modernization and simplification of the First and Second Company Law Directives related to legal capital and disclosure.

For European legal academics under 45 years old who write in English – still a small but rapidly expanding minority – some knowledge of basic law and economics concepts is self-evident. This was certainly not always the case, and Wymeersch was an early, although always cautious enthusiast of the movement and even more of purely economic literature and attention to empirical data. For Professor Wymeersch, multidisciplinarity is essential for the legal scholar: legal research must be open to
other disciplines like economics and even politics. But one should avoid meta-analysis of rules without first familiarizing oneself with their often important technical details, and think twice about developing grand theoretical schemes that stand no chance whatsoever of being applied to real world situations. He also force-fed the Financial Times, the Economist and Harvard Business Review to anyone who wanted to write a doctoral thesis under his guidance – and being prepared to write a PhD was a requirement if you wanted to become a full-time researcher at the Financial Law Institute. Another requirement was learning enough German to understand the German literature that is often two or three years ahead of the rest of Europe. Not a year went by in which Eddy Wymeersch did not visit at least two or three German universities and academic conferences and from the beginning of the 1990s onwards he published more in German and other foreign journals than in Belgian ones, turning him into one of the most downloaded European authors on SSRN and making some junior Belgian colleagues wonder whether he was actually truly Belgian. Anyone familiar with Eddy Wymeersch knew, though, that for him an international outlook had never been incompatible with an interest in local developments. On the contrary, awareness of what was going on elsewhere seemed to him to be essential if one wanted to intervene in a useful way in national debates. In his farewell speech at the academic session organized to mark his official retirement as a professor at Ghent Law School in October 2008, he expressed his worries about the decline of the knowledge of French among Flemish professionals, including academics. It would prevent them, he warned, from performing the bridge function his generation had tried to play between the “Germanic” and “Latin” worlds of northern and southern Europe – worlds that meet in places like Brussels, 50 kilometers from Ghent.

While his roots and interests are certainly in the academic sphere, Eddy Wymeersch never limited his academic research to a purely dogmatic, positivist dissection of texts, as is still rather common in Europe. After he had given a solid foundation to his academic career, Wymeersch placed his knowledge and insights at the disposal of practice and policy: to name only a few of them, he was appointed to the Belgian Council of State (which vets Bills before they are introduced into Parliament); became a member of the board of Governors of the National Bank of Belgium; chairman of the board of BIAC, the national airport company; chairman of the executive committee of the Belgian banking and securities supervisor, which he transformed into the Belgian Banking,
Finance and Insurance Commission (CBFA) by incorporating the previously independent insurance supervisor; followed by the chairmanship of the supervisory board of this CBFA. In 2007 he was elected as chairman of the Committee of Securities Regulators (CESR).

This book is dedicated to Eddy Wymeersch. It was accompanied by an international conference, ‘Perspectives in Company Law and Financial Regulation’, held in December 2008 in Ghent in honour of Eddy Wymeersch. This conference was an attempt by Eddy Wymeersch’s successors at Ghent Law School to emulate the success of the Siena and Syracuse conferences and to fruitfully combine intellectual work and food for thought in an atmosphere of friendship.

This collection of essays is the result of the collective effort of Eddy Wymeersch’s main academic peers and friends worldwide. We are extremely grateful to every one of the contributors for having freed scarce time to participate in this tribute to Eddy Wymeersch. Eilis Ferran, Howell Jackson and Niamh Moloney kindly hosted the collection of essays in the International Corporate Law and Financial Market Regulation series they edit at Cambridge University Press. We are also grateful to the publishers at Cambridge University Press, notably Kim Hughes and Richard Woodham, and to Jamie Hood at Out of House Publishing Solutions for their relentless efforts and patience through all the productions stages of this volume. Finally, the assistance of the researchers at the Financial Law Institute (Filip Bogaert, Diederik Bruloot, Isabel Coppens, Wendy Dammans, Sarah De Geyter, Delphine Goens, Evelyne Hellebuyck, Kristof Maresceau, Sara Pauwels, Fran Ravelingien and Lientje Van Den Steen), and of its secretariat (Nicolle Kransfeld and Annelies Rademaker) in the editing and proof-reading of the manuscripts was critical in meeting the production deadlines.

The more than 30 contributions in this volume highlight a wide range of current issues in company law and financial regulation in various jurisdictions, both in Europe, the USA and Japan. Most contributions were finalized during Spring 2008, and could not, therefore, incorporate the most recent market and regulatory developments that have characterized the current financial crisis since the second semester of 2008. We hope this volume will provide some more inspiration for future research to Eddy’s no doubt already overflowing list of things to do once CESR and officialdom give him back some time – although we will not stop him if he prefers to take his cue from Voltaire and dedicate himself to the most civilized of all tasks, tending his magnificent garden – where
he also produces some of the most red and fleshy tomatoes north of the Alps.

We wish Eddy Wymeersch all the luck for his future activities and other new inspiring challenges and ventures. We also hope and are convinced he will continue to spend some of his valuable time to share his views, ideas and inspiration with the Financial Law Institute at Ghent.

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