SECURITIES REGULATION

Syllabus

Fall Semester 2014
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Room 9107; Office Hours – Tuesday & Wednesday, 4:00-5:00

Course Materials

Choi & Pritchard, Securities Regulation: Cases & Analysis (Foundation Press – 3d ed. 2012) (“Casebook”)
Choi & Pritchard, Securities Regulation – Statutory Supplement (Foundation Press 2014 ed.)
Choi & Pritchard, 2014 Supplement (“C&P Supp.”) [available for complimentary download from the Law School’s “Initial Assignments” web site]

All assignments include the statutes and rules referred to in the Casebook and C&P Supp.

Assignment #

CORE CONCEPTS

Chapter 1 – Introduction

#1. Background


Chapter 2 – Materiality

#2. Introduction; Forward-Looking Information – Casebook pp. 48-50; Note on TSC Industries, Inc. v. Northway, Inc. (attached); Casebook pp. 50-58

#3. “Rules of Thumb;” “Total Mix” – Casebook pp. 58-87

#4. Management Integrity – Casebook pp. 87-98
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Chapter 3 – Definition of a Security

5. Investment Contracts
   a. Casebook pp. 99-120
   b. Casebook pp. 120-148


7. Notes – Casebook pp. 154-167

Chapter 4 – Disclosure & Accuracy


9. Disclosure Accuracy; Selective Disclosure – Casebook pp. 188-206

SECURITIES ACT OF 1933 – REGISTRATION & EXEMPTION

Chapter 7 – Public Offerings

10. Overview – Casebook pp. 391-410


14. Trading Practices; Shelf Registration – Casebook pp. 451-466

Chapter 9 – Offering Exemptions

15. Private Offerings – pp. 539-550

16. Reg D
   a. Casebook pp. 550-564; C&P Supp. p. 44
   b. Casebook pp. 564-570; C&P Supp. p. 44; Casebook pp. 570-579


18. Reg A; Intrastate Offerings – Casebook pp. 579-583; C&P Supp. p. 53; Casebook pp. 583-598
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#19. Reg S – Casebook pp. 598-613

Chapter 10 – Secondary Offerings

#20. Statutory Concepts
   a. Statutory Underwriters – Casebook pp. 614-625
   b. Resales by Controlling Persons – Casebook pp. 625-631

#21. Rule 144 – Casebook pp. 631-643

#22. Rule 144A – Casebook pp. 643-651; C&P Supp. p. 54

CIVIL LIABILITY

Chapter 5 – Rule 10b-5 Antifraud

#23. Background – Casebook pp. 207-215


#25. Material Misstatements – Casebook pp. 239-259

#26. Other Elements
   a. Scienter – Casebook pp. 259-272
   b. Reliance – Casebook pp. 272-275; C&P Supp. pp. 8-24; Casebook pp. 281-283
   c. Loss Causation – Casebook pp. 283-289
   d. Damages – Casebook pp. 318-325

#27. Defendants – Casebook pp. 293-318

#28. Transnational Securities Fraud – Casebook pp. 325-335

Chapter 8 – Civil Liability under the 1933 Act

#29. Section 11
   b. Casebook pp. 479-491
   c. Casebook pp. 491-513
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#30. Section 12(a)(1) – Casebook pp. 513-520

#31. Section 12(a)(2) – Casebook pp. 520-538

Chapter 6 – Insider Trading

#32. Common Law – Casebook 336-343

#33. Rule 10b-5 – Classical Insider Trading – Casebook pp. 343-359

#34. Rule 10b-5 – Misappropriation Theory
   d. Casebook pp. 360-379; C&P Supp. p. 25;

#35. Section 16 – Casebook pp. 385-390
NOTE ON TSC INDUSTRIES, INC. v. NORTHWAY, INC.

As the Casebook indicates, the test for materiality under Rule 14a-9 (as well as the other antifraud provisions of the federal securities laws) was established by the Supreme Court in TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976). The case was a challenge to the acquisition of TSC by National Industries, Inc., on the ground that the proxy statement used to solicit shareholder approval of the acquisition was materially misleading. Relying on a statement in the Supreme Court’s earlier opinion in Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970), the Court of Appeals for the Seventh Circuit had held that the appropriate test for materiality was whether reasonable shareholder might consider the facts at issue important. Applying that standard, the Seventh Circuit held that the omitted facts were material as a matter of law.

Rejecting this test as unnecessarily low, the Supreme Court expressed concern that “management’s fear of exposing itself to substantial liability may cause it simply to bury the shareholders in an avalanche of trivial information – a result that is hardly conducive to informed decisionmaking.” In its place, the Court defined the appropriate standard as whether “there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.” It elaborated:

It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the “total mix” of information made available.

426 U.S. at 449.

Prior to the merger that was the basis for the proxy solicitation, National had acquired 34 percent of TSC’s stock, an ownership interest that was fully disclosed in in the proxy statement, along with the fact that no other person held more than 10 percent. The proxy statement also disclosed the five of TSC’s ten directors were National’s nominees, and it identified each’s affiliation with National. Among the omitted facts that the Seventh Circuit had held to be material as a matter of law were (1) that Stanley Yarmuth, National’s president and chief executive officer, was also chairman of the TSC board, and that Charles Simonelli, National’s executive vice president, was chairman of the TSC executive committee; and (2) that in filing reports required by the SEC, both TSC and National had indicated that National “may be deemed to be a ‘parent’ of TSC.” Under the definition of materiality set forth by the Supreme Court, do you believe that these omissions are material?