

SECURITIES LAW

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securities raise capital

start up capital

and

working capital

parties' reasonable expectations

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securities markets require

1. VALUATIONS which are

accurate and

timely

valuations require **INFORMATION** which is

accurate

timely AND

complete

and

2. LIQUIDITY

entry

raise capital

exit

fixed asset to cash

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STATES' REGULATION OF SECURITIES
paternalistic
merit review
common law fraud
now redefined like Federal law

FEDERAL REGULATION OF SECURITIES
concurrent powers
States create the corporations

FULL DISCLOSURE
1933 Securities Act: **ISSUE**
1934 Securities Exchange Act: **TRADING**

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1933 SECURITY ACT: first issue

SECURITY
is an investment of money
in a common enterprise
with a reasonable expectation of profit
with profit derived from the
undeniably significant (sole?) efforts of others.

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FRAUD
distinguish common law
and
security law fraud
objective versus subjective elements

COMMON LAW FRAUD (2 + 3 = lie)

1. intentional
2. knowing
3. misrepresentation of material fact
4. justifiable reliance AND
5. injury

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SECURITY LAW FRAUD

1. **MISREPRESENTATION OR OMISSION OF MATERIAL FACT** and
2. causing **INJURY**

affirmative duty to seek and speak the truth

material = reasonably prudent investor
would wish to know beforehand

compare with contract law
"material" = if had known,
would have changed
the bargain

DISCLOSURE (at time of issue)

registration statement

prospectus

must amend
must give to buyer BEFORE purchase

EXEMPT SECURITIES

exempt from disclosure at time of issue
still securities, so fraud provisions apply

PRIVATE

access AND
sophistication

SMALL

\$1.0 M

INTRASTATE

- A) seller
- B) buyer AND
- C) capital comes to rest

recall constitutional law of federal preemption

1934 SECURITIES EXCHANGE ACT
continuing disclosure during **TRADING**

carry over definitions of
"security" and "fraud"

REGISTRATION for trading under 1934 Act

short form
if registered under 1933

long form
if exempt from 1933 registration

INSIDER INFORMATION: disclose v. not trade

Section 10b
what you know and do: fact, not law

TIPPEE
independent duty to disclose
if
tip via breach of a fiduciary duty

NOT NEGLIGENCE
NEED SCIENTER

INSIDER INFORMATION: disclose v. not trade

Section 16b
status offense: who you are
imputed knowledge and use of knowledge

10% stockholder; director; officer

know because of access; law, not fact

SHORT SWING "PROFITS"

derivative suit
standing to sue

PROXY
disclose if solicit **voting rights**

"materiality" lower than 1933 Act
control of assets owned by investor

TENDER OFFER to buy stock

uncertainty
manipulates the market

"materiality" about 5 % of shares

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**THE MECHANICS OF
MERGER AND CONSOLIDATION**

merger is a combination of two firms
only one survives

consolidation is a combination of two firms
both cease and a new forms

acquisition may or may not result
in either a merger or a consolidation,
both firms may still survive
at the option of purchaser.
assets versus debts

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PURCHASE OF ASSETS
potential Clayton Act section 7 liability

approval required by
selling corporation's Board and shareholders
if
selling all of its assets
or if
substantially changing its business

acquiring corporation's Board

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Procedure for Merger or Consolidation

1. Board of Directors of each corporation
2. Shareholders of each corporation
3. Secretary of State surviving state
4. State issues certificates

Short Form Mergers

without shareholder approval,
if parent-subsiary
and if 90% ownership by parent

Appraisal Rights

dissenting shareholder's right to get out

FEDERAL CONTROL OF CORPORATE TAKEOVERS AND MERGERS

TAKEOVER TACTICS

merger mania of the 1980s tested the limits of the law

Beachhead Acquisition coupled with Proxy fight

proxy = separates right to vote shares
from ownership
rules of solicitation favor management

Buy-Outs: LBOs

take over by management
that takes public corporation to
private ownership via debt.

FINANCIAL CONSIDERATIONS IN TAKEOVERS AND MERGERS

Junk Bonds

very low quality, heavily subordinated debt

disproportionate risk premium due to
investment restrictions on institutional investors
and ignorance of less sophisticated investors

Two-Tier Financing

abusive practice if target firm's shareholders
are stripped of value post-takeover by a
subsequent merger with the aggressor firm

TAKEOVER DEFENSES

Crown Jewel Defense
sell off best asset

Scorched Earth Tactics
sell off best assets or take out loans

Poison Pill Defense
issue redeemable shares

Shark Repellent Defense
change corporate structure

Lobster Trap Defense
limit convertibility of shares if own over 10%

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TAKEOVER DEFENSES

PAC-Man Defense
prey turns on predator

White Knight Defense
find a friendly aggressor

Greenmail Tactics
pay off aggressor

Golden Parachute
abandon ship with big bucks

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Limitations on Takeover Defenses
decisions rests with Board of Directors
subject to fiduciary duty to the shareholders
business judgment rule

Antitrust Law as a Defense
merger violates Clayton Act section 7

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**FEDERAL SECURITIES LAW OF
TAKEOVERS AND MERGERS**

Williams Act of 1970

deals with tender offers
creates a level playing field by
eliminating unfair and deceptive practices
disclosure requirements
report with ten days of obtaining
5% ownership
tender offer must disclose
finances and future intentions

**STATE LAW RESTRICTIONS ON
TAKEOVERS AND MERGERS**

US Constitutional limits on State limits on
takeovers and mergers
(e.g., Commerce Clause, reverse of preemption).

However, States may control the
"internal affairs of the corporations"
which, in effect,
allows States to control mergers.

CONSUMER PROTECTION

"consumer" is a natural person
