

## 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**

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**DISCLOSURE (at time of issue)**

**registration statement**

**prospectus**  
**must amend**  
**must give to buyer BEFORE purchase**

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**EXEMPT TRANSACTION 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**

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**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

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**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**

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**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

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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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**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

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**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

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**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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**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.

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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

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**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

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**TAKEOVER DEFENSES**

**Crown Jewel Defense**

sell off best asset

**Scorched Earth Tactics**

sell of 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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