

## Contents

<i>List of Figures and Tables</i>	<i>page</i> x
<i>Foreword by Richard A. Posner</i>	xi
<i>Acknowledgments</i>	xiii
<b>1 Introduction: Real Markets and Financial Markets</b>	<b>1</b>
A. Differences between Financial and Real Markets	1
B. The Structure of Stock Markets	8
C. The Interdependence of the Real with the Financial Sector	14
<b>PART I DEFINITION OF A SECURITY: WHEN TO LEAVE BUYER BEWARE FOR SELLER DISCLOSE</b>	<b>17</b>
<b>2 Toward Defining a Security</b>	<b>19</b>
<b>3 The Vacuous Definition of a Security</b>	<b>21</b>
A. The Investment Contract Foundation: <i>Howey</i> and <i>Forman</i>	23
B. How Motivations Unravel the Definition	24
<b>4 The Function of Investment Contract</b>	<b>25</b>
A. Evaluation Difficulty at Time of Offer	27
B. Lack of Future Control	28
C. Seller Disclose and Buyer Beware	28
<b>5 Pricing Mechanisms</b>	<b>29</b>
A. Supply-Demand	29
B. The Capital Asset Pricing Model	31
C. Goods Subject to Each Pricing Mechanism	41
<b>6 From the Sale-of-Business Doctrine to <i>Gustafson</i></b>	<b>43</b>
A. Registration Process Primer	45
B. <i>Gustafson</i> as Earthquake	49

viii	<i>Contents</i>	
	C. No Rubble after <i>Gustafson</i>	50
	D. <i>Gustafson</i> Contained?	52
7	<b><i>Gustafson</i> Works!</b>	53
	A. Repealing Rescission beyond Control Transactions Was Correct	55
	B. Fraud Protection Is Not Excessive	56
8	<b>Definition Conclusion</b>	58
	<b>PART II DISCLOSURE: WHY SUBSIDIZE INFORMED TRADERS?</b>	59
9	<b>Introduction</b>	61
10	<b>An Overview of Disclosure Theories</b>	63
	A. Fraud Prevention	63
	B. Collective Action	64
	C. Accurate Pricing	65
	D. Evidence of Efficiency, Inefficiency, and Irrationalities	67
	E. Disclosure Subsidizes Informed Trading	69
11	<b>Failure of the Corporate Disclosure Decision</b>	71
	A. Disclosure Policy and Holding Periods	71
	B. Holding Period Drift	74
	C. Conclusion: Disclosure Reveals Securities Regulation as the Congruent Law of Liquidity	75
	<b>PART III DETERRENCE OF SECURITIES FRAUD</b>	77
12	<b>Introduction to Deterrence Intensity</b>	79
13	<b>Comparing the Economic Function of Deceit to That of Securities Fraud</b>	82
	A. Price Formation	82
	B. Differences in the Incentive to Verify	84
14	<b>Reliance in Deceit and Securities Fraud</b>	96
	A. Justifiable Reliance in Common-Law Deceit	96
	B. Securities Fraud Reliance: Fraud-on-the-Market Presumption	98
15	<b>Conclusion of Deterrence Intensity</b>	110
	<b>PART IV INSIDER TRADING</b>	113
16	<b>Introduction to Insider Trading</b>	115

## Contents

ix

17	<b>Insider Trading Law</b>	120
	A. Direct Prohibitions	120
	B. Antifraud Foundations	121
18	<b>Defining Insiders</b>	126
	A. The Transaction Cost Generated by Informed Trading	126
	B. Monopolistic and Competitive Informed Trading: The Prohibition of Insider Trading as a Reduction of Informed Profits	129
19	<b>Concluding the Insider Trading Analysis</b>	139
	<b>PART V THE VIRTUOUS CYCLE OF LIQUID MARKETS, ACCURATE PRICES, AND CHEAP TRADING</b>	141
20	<b>The Virtuous Cycle</b>	143
	A. The Cycle	143
	B. Liquidity as a Public Good	146
21	<b>Closing Note: Financial Crises and Securities Law</b>	149
	A. The Transmission of Financial Crises to the Real Sector	151
	B. The 2008 Crisis as an Illustration	154
	C. The Effective Antieuphoria Components	162
	D. The Lead Culprit and Proposed Countermeasures	167
	E. Conclusion: Securities Law in the Somber Unavoidability of Euphorias	177
	<i>Appendix: Informed Trading Optimization and Proof</i>	179
	A. Example of Informed Trading over Many Trades	179
	B. The Optimal Trading Strategy	181
	<i>Authorities and Bibliography</i>	185
	<i>Index</i>	199