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*Douglas I. Koff*

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<td>1933 Act</td>
<td>Securities Act of 1933</td>
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<tr>
<td>1934 Act</td>
<td>Securities Exchange Act of 1934</td>
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<tr>
<td>Advisers Act</td>
<td>Investment Advisers Act of 1940</td>
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<tr>
<td>CCO</td>
<td>Chief compliance officer</td>
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<tr>
<td>CD</td>
<td>Certificate of deposit</td>
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<tr>
<td>CDO</td>
<td>Collateralized debt obligation</td>
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<tr>
<td>CDS</td>
<td>Credit default swap</td>
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<tr>
<td>CEO</td>
<td>Chief executive officer</td>
</tr>
<tr>
<td>CFO</td>
<td>Chief financial officer</td>
</tr>
<tr>
<td>CFTC</td>
<td>Commodity Futures Trading Commission</td>
</tr>
<tr>
<td>CIO</td>
<td>Chief investment officer</td>
</tr>
<tr>
<td>Dodd-Frank</td>
<td>Dodd-Frank Wall Street Reform and Consumer Protection Act</td>
</tr>
<tr>
<td>DOJ</td>
<td>Department of Justice</td>
</tr>
<tr>
<td>Enforcement Division</td>
<td>Securities and Exchange Commission Division of Enforcement</td>
</tr>
<tr>
<td>FBI</td>
<td>Federal Bureau of Investigation</td>
</tr>
<tr>
<td>FDA</td>
<td>Food and Drug Administration</td>
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<tr>
<td>FINRA</td>
<td>Financial Industry Regulatory Authority</td>
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<tr>
<td>FIRREA</td>
<td>Financial Institutions Reform, Recovery, and Enforcement Act of 1989</td>
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<tr>
<td>ITSA</td>
<td>Insider Trading Sanctions Act of 1984</td>
</tr>
<tr>
<td>ITSFEA</td>
<td>Insider Trading and Securities Fraud Enforcement Act of 1988</td>
</tr>
<tr>
<td>LLC</td>
<td>Limited liability company</td>
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<tr>
<td>MVRA</td>
<td>Mandatory Victims Restitution Act of 1996</td>
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<td>Abbreviation</td>
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<tr>
<td>NASD</td>
<td>National Association of Securities Dealers</td>
</tr>
<tr>
<td>NASDAQ</td>
<td>National Association of Securities Dealers Automated Quotations</td>
</tr>
<tr>
<td>NRSRO</td>
<td>Nationally recognized statistical rating organizations</td>
</tr>
<tr>
<td>NYAG</td>
<td>New York State Attorney General</td>
</tr>
<tr>
<td>NYSE</td>
<td>New York Stock Exchange</td>
</tr>
<tr>
<td>PIPE</td>
<td>Private investment in public equity</td>
</tr>
<tr>
<td>PPM</td>
<td>Private placement memorandum</td>
</tr>
<tr>
<td>PSLRA</td>
<td>Private Securities Litigation Reform Act of 1995</td>
</tr>
<tr>
<td>QIBs</td>
<td>Qualified institutional buyers</td>
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<tr>
<td>Regulation FD</td>
<td>Regulation Fair Disclosure</td>
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<tr>
<td>SEC</td>
<td>Securities and Exchange Commission</td>
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<tr>
<td>SOX</td>
<td>Sarbanes-Oxley Act of 2002</td>
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<tr>
<td>USAO</td>
<td>United States Attorneys Office</td>
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Introduction

Harry S. Davis

The securities laws prohibit any person (or entity) from trading on the basis of material nonpublic information which has been obtained in breach of a duty of trust or confidence. There are serious penalties—both civil and criminal—for engaging in insider trading, and securities regulators and criminal prosecutors alike view insider trading as a very serious offense. One need do no more than read the daily newspapers or watch the evening newscasts to see that the securities regulators and prosecutors take insider trading seriously, enforce the prohibition vigorously, and will bring their considerable resources to bear on anyone believed to have engaged in insider trading. Not only are the civil and criminal penalties for insider trading severe but the reputational damage associated with even being alleged to have engaged in insider trading can be irreparable.

Insider trading is not just an important legal issue. The subject has become a part of popular culture in America, featured not just in the news but in television shows, movies, books, and other forms of entertainment. In part, that is because the laws prohibiting insider trading are intended to protect the marketplace upon which so much of the U.S. economy depends and because the concept that a corporate insider should not be permitted to profit from corporate information at the expense of “mom and pop” shareholders is easily understood, is grounded in principles of fairness, and is an accepted part of the American way of life.

Because the insider trading laws apply to everyone—not just corporate insiders—a proper understanding of both the basics of insider trading law and some of the complexities and nuances of this important area of the law is important to anyone who invests in the securities markets.

Chapter 1 of this book offers a general overview of the law of insider trading, the policies underlying the law in this sphere, and how the law has developed over time. Subsequent chapters provide a more in-depth treatment of all of the important aspects of insider trading law as well as the application of that law to a number of specific issues, such as tender offers, private investments in public equity securities (PIPEs), and “Big Boy Letters.” Along the way, this book explores the breadth of instruments that fit within the definition of “securities,” what it means for a trade to be “on the basis of” material
nonpublic information, how to determine what information is or is not “material,” how to determine whether or not there has been a breach of a duty of trust or confidence under either the “classical theory” of insider trading or the “misappropriation theory.” The book also answers important questions concerning “tipper” and “tippee” liability, how the insider trading laws are enforced and by whom, what the penalties are for running awry of the law, the application of the insider trading laws in the context of commodity interests, and how the insider trading laws apply in the United Kingdom. Finally, the book considers how to set up effective compliance procedures to protect individuals and firms against insider trading liability, including policies and procedures, testing, oversight, and other compliance issues.

This book is intended for everyone, from lay people who may trade in securities only periodically to corporate insiders, professional traders, investment advisers, broker-dealers, and other financially sophisticated people and firms. Because so much of the evolving law of insider trading is dependent upon the individual facts and circumstances of each specific case, readers are urged to consult with experienced securities law professionals to assist when specific issues arise.
Notes to Introduction

5. E.g., Emily Glazer & Christopher M. Matthews, Mark Cuban Steps Back Into Insider Trading Debate, WALL ST. J.: MONEY BEAT (Feb. 19, 2015), http://blogs.wsj.com/moneybeat/2015/02/19/mark-cuban-steps-back-into-insider-trading-debate/?link=mktw (“The billionaire entrepreneur said in a court filing that he’s speaking out on the issue because of his own insider-trading case, in which he was cleared by a federal jury in 2013, but only after he says he spent millions of dollars and faced reputational damage from a drawn out civil-court battle.”); Andrew Tangel, KPMG Scrambles to Control Damage of Insider-Trading Scandal, L.A. TIMES (Apr. 12, 2013), http://articles.latimes.com/2013/apr/12/business/la-fi-0413-kpmg-london-20130413 (“The prospect of client departures would only add to headaches for KPMG as it endures fallout from London’s insider-trading scheme. The firm faces risks to its


8. WALL STREET (Twentieth Century-Fox Film Corporation 1987); THE BIG CHILL (Carson Productions 1983).


11. Chapter 16.
12. Chapter 17.
15. Chapter 5.
18. Chapters 8 and 9.
24. Chapter 23.