

I. GOING PUBLIC - WHAT IS A SECURITY?

A. SECURITIES ACT OF 1933 → STOCK CAN ONLY BE SOLD OR OFFERED FOR SALE IF THE ISSUER HAS FILED A REGISTRATION STATEMENT WITH THE SEC, UNLESS AN EXEMPTION APPLIES.

1. PURPOSE OF THE ACT: PROMOTE DISCLOSURE
2. IF THE OFFERER FAILS TO REGISTER, THE BUYER HAS A FREE PUT TO GIVE THEM BACK AND HAVE HIS MONEY RETURNED.
 - a) EXAMPLE: SMITH V. GROSS, THE WORM CASE, HELD: WORMS ARE A SECURITY.
3. "EFFORTS SOLELY FROM THE ACTS OF OTHERS"
4. FRANCHISES
 - a) WHEN YOU SIGN UP, YOU HAVE TO BUY STUFF, GO TO THEIR TRAINING PROGRAMS, ETC.
 - b) GOVERNED BY A SEPARATE REGULATORY FRAMEWORK.
5. DID CONGRESS REALLY INTEND FOR THE ACT OF '33 TO BE USED TO PROVIDE CONFIDENCE IN PARTICULAR MARKET?
6. COOP'S → IN NY, A CORP. OWNS THE BUILDING AND YOU BUY SHARES THAT INCLUDE THE RIGHT TO OCCUPY UNIT #11. IS THIS A SECURITY?
 - a) US SUPREME COURT: THIS IS A FORM OF HOLDING REAL ESTATE, EVEN IF IT SAYS "SECURITY"
7. SALE OF A PRIVATELY HELD COMPANY
 - a) IF IT IS AN ASSET SALE, THE SECURITY DEFINITION IS NOT MET.
 - b) THE SUPREME COURT HELD THE STOCK OF THE PRIVATELY HELD COMPANY IS A SECURITY
8. FRAMEWORK
 - a) IS THERE A SECURITY? IF NOT, THE '33 ACT DOES NOT APPLY
 - b) WAS THE SECURITY REGISTERED?
 1. IF NOT, DOES AN EXEMPTION APPLY?
 - a) 4(2) PRIVATE PLACEMENT → 35 ACCREDITED PEOPLE IS SUFFICIENT
 - b) 4(1) NO UNDERWRITER
 - c) RULE 701 → EMPLOYEE STOCK OPTIONS
 2. IF THERE IS AN EXEMPTION, WAS THERE DISCLOSURE?
9. LETTER OF INTENT
 - a) UNDERWRITER'S OFFER ON A 'FIRM COMMITMENT' BASIS → THEY BUY THE SHARES AND THEN SELL THEM TO THE PUBLIC.
 - b) PRIMARY OFFERING → SECONDARY OFFERING MAY BE UP TO ABOUT 20% OF THE IPO; OTHERWISE IT SIGNALS THAT INSIDERS ARE LIQUIDATING THEIR SHARES.
10. NOTE: DON'T FORGET TO MIND THE STORE WHILE YOU'RE PLANNING THE IPO.
11. EFFECTIVE → YOU CAN'T SELL STOCK UNTIL THE SEC HAS DECLARED THE REGISTRATION STATEMENT EFFECTIVE.
12. PRICING → DETERMINED AT THE LAST MINUTE. IPO'S GET SUCKED UP BY INSTITUTIONS.
13. IF REGISTERED, WAS THERE PROPER DISCLOSURE? IF NOT, THE PURCHASER CAN ELECT TO RECEIVE THE RETURN OF INVESTED CAPITAL.
 - a) REMEMBER, THERE CAN BE JAIL TIME, THIS IS A CRIMINAL STATUTE.
14. OVER ALLOTMENT → UNDERWRITER'S OPTION TO SELL ADDITIONAL SHARES.
15. LOCK UP → INSIDERS AGREE NOT TO SELL THEIR SHARES FOR A PERIOD OF TIME.
16. INDEMNIFICATION → THE CO. INDEMNIFIES THE UNDERWRITERS.