

OPERATING AS A PUBLIC CO.

- I. WHY GO PUBLIC? (A) RAISE CAPITAL; (B) LIQUIDITY; (C) COST OF CAPITAL MAY BE LESS; (D) HAVE STOCK TO USE AS ACQUISITION CURRENCY; (E) SUPPLIER AND CUSTOMER RESPECT
- II. SECURITIES ACT OF 1933 (A) REGULATES STOCK EXCHANGES AND BROKER/DEALERS; (B) CREATES A SELF-REGULATORY ORGANIZATION (NASD); (C) REGULATES MARGIN - GIVES AUTHORITY TO REGULATE TO FEDERAL RESERVE; (D) COMPANY REQUIREMENTS - PROXY GUIDELINES (THE '33 ACT REGULATES PROXY SOLICITATIONS) (E) TENDER OFFERS → NEVER DEFINED BY SEC; (F) REPORTING OBLIGATIONS IF YOUR GROUP OWNS 5% OR MORE OF A PUBLIC COMPANY; 10-K'S AND 10-Q'S. MATERIAL MATTERS MUST BE DISCLOSED, BUT YOU CAN REDACT CONFIDENTIAL INFO.
- III. INVESTMENT CO. ACT OF 1934 → REGULATES MUTUAL FUND COMPANIES.
- IV. RULE 10b-5 → PROHIBITS FRAUD OR MISLEADING STATEMENTS REGARDING SALE OF STOCK.
- A. HYPOTHETICAL: CO. TESTS TO DETERMINE IF COMMERCIAL PRODUCTION OF INSECTS IS POSSIBLE IN THE EVERGLADES, AND ONE EXECUTIVE BUYS OR EXERCISES SOME STOCK OPTIONS AND ANOTHER PURCHASES AN OPTION ON SOME LAND. PROBLEMS?
- B. MATERIALITY REQUIREMENT → IS IT SOMETHING THAT A REASONABLE INVESTOR WOULD WANT TO KNOW IN MAKING AN INVESTMENT DECISION? IF SO, IT IS MATERIAL.
- C. RULE: DISCLOSE, OR DON'T TRADE
- D. BUYING OR TAKING AN OPTION ON LAND IS NOT A SECURITY. NOTE: ALTHOUGH IT HAS NOTHING TO DO WITH THIS CLASS, THE EXECUTIVE MAY BE USURPING A CORP. OPPORTUNITY IN BREACH OF HIS FIDUCIARY DUTY TO THE COMPANY.
- E. EFFICIENT MARKET ARGUMENT → INSIDER TRADING ALLOWS THE STOCK PRICE TO MORE QUICKLY ASSIMILATE INFORMATION INTO THE MARKET PRICE OF THE STOCK. THIS ARGUMENT HAS LARGELY FAILED BECAUSE IT JUST SEEMS UNFAIR TO ALLOW PEOPLE TO TRADE WITH AN ADVANTAGE TO THE MARKET.
- F. NEXT HYPO: BANKER MONITORS EXECUTIVES' TRAVEL SCHEDULE OF ACQUIRER'S CEO AND SEES HE HAS BEEN FLYING TO TARGET'S HEADQUARTERS, AND BUYS TARGETS STOCK. THIS IS NO PROBLEM, IT IS PUBLIC INFO. YOU CAN CALL CUSTOMERS, ETC.
1. THE BANKER OBTAINS INFO UNDER FALSE PRETENSES → THIS IS A POTENTIAL PROBLEM.
 2. WHAT IS THE COMPANY'S DUTY TO DISCLOSE?
 - a) YOU HAVE A DUTY TO DISCLOSE, TO CORRECT PRIOR MISINFORMATION, STATEMENTS THAT HAVE BECOME MISLEADING OVER TIME.