Cornell Law Review

Articles

Essay

Notes

Volume 101 - Number 6 - September 2016

INFORMATION-DISSEMINATION LAW: THE REGULATION OF HOW MARKET-MOVING INFORMATION IS REVEALED

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Corporate information that moves stock-market prices sits at the center of modern securities regulation. The Great Depression-era securities laws at the foundation of the field require much mandatory disclosure of this type of information. They also include a strict anti-fraud regime to ensure the credibility of those disclosures of that information. And for a half century now, that regime has been interpreted to prohibit insiders from trading on the same information.

Today, a new body of securities law is emerging on top of this regulatory structure built around corporate information. That body—which we call "information-dissemination law" (IDL)—focuses on how important information is revealed to the market. The current defining feature of IDL is found in requirements that such information must be disseminated to all investors at the same exact time in the name of ordinary-investor fairness. Yet, using a market-microstructure-based understanding of securities markets, our analysis shows that the ordinary-investor benefits of such equal-timing efforts are far from clear. Indeed, it shows that simultaneity is perversely harming the most vulnerable ordinary investors. Accordingly, the Article defines this nascent area of law, subjects its fairness rhetoric to economic realities, and explores ways in which it might be reformed to further its primary stated goal or those of the field more generally—or even better, both.

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INTRODUCTION

Over the past few years, regulators have repeatedly decreed that they would end what was quickly becoming a routine practice: the release of market-moving information to some investors just prior to the time at which it was being made available to the entire public. The most prominent examples of regulatory efforts in the area during this period involved the New York State Attorney General (NYAG) and the University of Michigan. Michigan had been releasing bimonthly revisions to its *Index of Consumer Sentiment* to high-speed traders just seconds before making them widely available. The famous index contains valuable information on consumers' views on the direction of the economy. For that reason, media and information giant Thomson Reuters agreed to pay Michigan over $1 million in return for the right to be the exclusive disseminator of index updates in 2014.[1] Pursuant their contract, Thomson then released index revisions to paying customers before making them widely available to the public. Thus, Thomson was earning revenues in return for providing early access to new market-moving information to those who valued it.

Whether to benefit the robustness of research or that of the football team, there is no doubt that Michigan could have legally traded on its work product two seconds, hours, days, weeks, or months before releasing it to the public. Thomson could have done the same unless the parties' contract provided a basis for concluding otherwise. But these obvious legal conclusions did not stop the top state-level cop of Wall Street from declaring the early-release practice and 1,200 or so similar ones to constitute "Insider Trading 2.0," and putting an end to

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1 *See* Peter Lattman, *Thomson Reuters to Suspend Early Peeks at Key Index*, N.Y. TIMES DEALBOOK (July 7, 2013, 9:06 p.m.), http://dealbook.nytimes.com/2013/07/07/thomson-reuters-to-suspend-early-peeks-at-key-index/ [https://perma.cc/XRZ4-NUVC].