

รายการอ้างอิง

ภาษาไทย

- เกียรติขจร วัจนะสวัสดิ์. คำอธิบายกฎหมายอาญา 1. กรุงเทพมหานคร: โรงพิมพ์มหาวิทยาลัยธรรมศาสตร์. 2531
- คณิต ณ นคร. กฎหมายอาญาภาคความผิด. สำนักพิมพ์มหาวิทยาลัยธรรมศาสตร์. 2535
- จิตติ ติงศักดิ์. คำอธิบายประมวลกฎหมายอาญาภาค 2 ตอนที่ 2 และภาค 3 กรุงเทพมหานคร: แสงทองการพิมพ์. 2513
- ตลาดหลักทรัพย์แห่งประเทศไทย. ตลาดหุ้นในประเทศไทย. กรุงเทพมหานคร: บริษัท ที.พี.พรินท์ จำกัด
- ถนอม พืชราภา. หลักและนโยบายการลงทุน. กรุงเทพมหานคร: บริษัทบพิชการพิมพ์ จำกัด. 2513
- ทวี วิริยะทूरย์. ตลาดหลักทรัพย์และตลาดการเงิน. กรุงเทพมหานคร: บริษัทบพิชการพิมพ์ จำกัด. 2527
- นพพร บุญถนอม. การบังคับใช้กฎหมายป้องกันการฉ้อฉลและสร้างราคาในการซื้อขายหลักทรัพย์ในประเทศไทย. วิทยานิพนธ์ มหาบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย. 2536
- พิเศษ เสตเสถียร. หลักเกณฑ์ของตลาดหลักทรัพย์ Insider Trading วารสารกฎหมาย. ปีที่ 9 ฉบับที่ 3 (กุมภาพันธ์ 2528)
- วสันต์ เทียนหอม. ความผิดอาญาที่เกี่ยวกับหลักทรัพย์ วารสารนิติศาสตร์. ปีที่ 23 ฉบับที่ 3 (กันยายน 2536)
- สุเมธ กำพลรัตน์. การพิสูจน์เจตนาในทางอาญา วิทยานิพนธ์มหาบัณฑิต สาขานิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย. 2526
- สุชาบดี สัตตบุษย์. กฎหมายสำหรับผู้ถือหุ้นและกรรมการบริษัทมหาชน. กรุงเทพฯ: บริษัท 21 เซ็นจูรี จำกัด . 2537
- แสวง บุญเฉลิมวิภาส. ปัญหาเจตนาในกฎหมายอาญา วิทยานิพนธ์ ชั้นปริญญาโท คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์. 2524
- โสภณ รัตนากร. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ ว่าด้วยห้างหุ้นส่วน และบริษัท. กรุงเทพมหานคร: สำนักพิมพ์นิติบรรณการ. 2537

รายงานการประชุม

สภานิติบัญญัติแห่งชาติ บันทึกการประชุมคณะกรรมการวิชาการวิสามัญพิจารณาร่างพระราชบัญญัติหลักทรัพย์และตลาดหลักทรัพย์ พ.ศ..... ร่างพระราชบัญญัติการประกอบธุรกิจเงินทุน ธุรกิจหลักทรัพย์และธุรกิจเครดิตฟองซิเออร์ (ฉบับที่....) พ.ศ..... ร่างพระราชบัญญัติบริษัทมหาชน จำกัด พ.ศ..... และร่างพระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายแพ่งและพาณิชย์ (ฉบับที่....) พ.ศ.....
ครั้งที่ 27 วันที่ 27 มกราคม 2535

ภาษาอังกฤษ

- Brudney, Victor "Insiders, Outsiders, and Informational Advantages under the Federal Securities Laws"
Harvard Law Review 93. (1979)
- Fletcher, C.Edward Material on the Law of Insider Trading
US: Carolina Academic Press, 1991
- Langevoort, Donald C. Insider Trading: Regulation, Enforcement and Prevention. US: Clark Boardman Callaghan 1992
- Loss L. Fundamentals of Securities Regulation US: Little, Brown and Co., 1983
- Ratner, David L. Securities Regulation : In a Nutshell
US: West Puublishing Co. 1992
- The Nasdaq Handbook, The Stock Market For the Next 100 years. Probus Publishing Company Chicago, Illinois
Cambridge. England

ภาคผนวก

SECURITIES ACT OF 1933

Fraudulent, Interstate Transactions

Sec. 17. (a) It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(b) It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) The exemptions provided in section 3 shall not apply to the provisions of this section.

SECURITIES EXCHANGE ACT OF 1934

Sec 10. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange.

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

GENERAL RULES AND REGULATION UNDER
THE SECURITIES EXCHANGE ACT OF 1934

Rule 10b-5. employment of Manipulative and
Deceptive Devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

(1) to employ any device, scheme, or artifice to defraud,

(2) to make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

SECURITIES EXCHANGE ACT OF 1934

Directors, Officers, and Principal Stockholders

Sec. 16. (a) Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 12 of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 12(g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange) a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

(b) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six

months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulation may exempt as not comprehended within the purpose of this subsection.

(c) It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer (other than an exempted security), if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to make such

delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

**Insider Trading and Securities Fraud
Enforcement Act of 1988
(ITSFEA)**



CIVIL PENALTIES

SEC. 21A. (a) AUTHORITY TO IMPOSE CIVIL PENALTIES.-

(1) JUDICIAL ACTIONS BY COMMISSION AUTHORIZED.

When ever it shall appear to the commission that any person has violated any provision of this title or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information in, or has violated any such provision by communicating such information in connection with, a transaction on or through the facilities of a national securities exchange or from or through a broker or dealer, and which is not part of a public offering by an issuer of securities other than standardized options, the Commission

(A) may bring action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by the person who committed such violation; and

(B) may, subject to subsection (b)(1), bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by a person who, at the time of the violation, directly or indirectly controlled the person who committed such violation.

(2) AMOUNT OF PENALTY FOR PERSON WHO COMMITTED VIOLATION. The amount of the penalty which may be imposed on the person who committed such violation shall be determined by the court in light of the facts and circumstances, but shall not exceed three times the profit gained or loss avoided as a result of such unlawful purchase, sale, or communication.

(3) AMOUNT OF PENALTY FOR CONTROLLING PERSON. The amount of the penalty which may be imposed on any person who, at the time of the violation, directly or indirectly controlled the person who committed such violation, shall be determined by the court in light of the facts and circumstances, but shall not exceed the greater of \$1,000,000 , or three times the amount of the profit gained or loss avoided as a result of such controlled person's violation. If such controlled person's violation was a violation by communication, the profit gained or loss avoided as a result of the violation shall, for purposes of this paragraph only, be deemed to be limited to the profit gained or loss avoided by such person or persons to whom the controlled person directed such communication.

(b) LIMITATIONS ON LIABILITY.-

(1) LIABILITY OF CONTROLLING PERSONS. No controlling person shall be subject to a penalty under subsection (a)(1)(B) unless the Commission establishes that

(A) such controlling person knew or recklessly disregarded the fact that such controlled person was likely to engage in the act or acts constituting the violation

and failed to take appropriate steps to prevent such act or acts before they occurred; or

(B) such controlling person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under section 15(f) of this title or section 204A of the Investment Advisers Act of 1940 and such failure substantially contributed to or permitted the occurrence of the act or acts constituting the violation.

(2) ADDITIONAL RESTRICTIONS ON LIABILITY. No person shall be subject to a penalty under subsection (a) solely by reason of employing another person who is subject to a penalty under such subsection, unless such employing person is liable as a controlling person under paragraph(1) of this subsection. Section 20(a) of this title shall not apply to actions under subsection(a) of this section.

(c) AUTHORITY OF COMMISSION.- The Commission, by such rules, regulations, and orders as it considers necessary or appropriate in the public interest or for the for the protection of investors, may exempt, in whole or in part, either unconditionally or upon specific terms and condition, any person or transaction or class of persons or transactions from this section.

(d) PROCEDURES FOR COLLECTION.-

(1) PAYMENT OF PENALTY TO TREASURY.- A penalty imposed under this section shall (subject to subsection (e)) be payable into the Treasury of the United States.

(2) COLLECTION OF PENALTIES.- If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's

order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(3) REMEDY NOT EXCLUSIVE.- The actions authorized by this section may be brought in addition to any other actions that the Commission or the Attorney General are entitled to bring.

(4) JURISDICTION AND VENUE.- For purposes of section 27 of this title, actions under this section shall be actions to enforce a liability or a duty created by this title.

(5) STATUTE OF LIMITATION .- No action may be brought under this section more than 5 years after the date of the purchase or sale. This section shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this title, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties, imposed in an action commenced within 5 years of such transaction.

(e) AUTHORITY TO AWARD BOUNTIES TO INFORMANTS.- Notwithstanding the provisions of subsection(d)(1), there shall be paid from amounts imposed as a penalty under this section and recovered by the Commission or the Attorney General, such sums, not to exceed 10 percent of such amounts, as the Commission deems appropriate, to the person or persons who provide information leading to the imposition of such penalty. Any determinations under this subsection, including whether, to whom, or in what amount to make payments, shall be in the sole discretion of the

Commission, except that no such payment shall be made to any member, officer, or employee of any appropriate regulatory agency, the Department of Justice, or a self-regulatory organization. Any such determination shall be final and not subject to judicial review.

(f) DEFINITION.- For purposes of this section, "profit gained" or "loss avoided" is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information."

**Insider Trading and Securities Fraud
Enforcement Act of 1988
(ITSFEA)**

**Liability to Contemporaneous Traders
for Insider Trading**

Sec. 20A. (a) Private Rights of Action Based on Contemporaneous Trading Any person who violates any provision of this title or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information shall be liable in an action in any court of competent jurisdiction to any person who, contemporaneously with the purchase or sale of securities that is the subject of such violation, has purchased (where such violation is based on a sale of securities) or sold (where such violation is based on a purchase of securities) securities of the same class.

(b) Limitations on Liability.-

(1) Contemporaneous Trading Actions Limited to Profit Gained or Loss Avoided- The total amount of damages imposed under subsection (a) shall not exceed the profit gained or loss avoided in the transaction or transactions that are the subject of the violation.

(2) Offsetting Disgorgements Against Liability- The total amount of damages imposed against any person under subsection (a) shall be diminished by the amount, if any, that such person may be required to disgorge, pursuant to a court order obtained at the instance of the Commission, in a proceeding brought under section 21(d) of this title relating to the same transaction or transactions.

(3) Controlling Person Liability- No person shall be liable under this section solely by reason of employing another person who is liable under this section, but the liability of a controlling person under this section shall be subject to section 20(a) of this title.

(4) Statute of Limitation- No action may be brought under this section more than 5 years after the date of the last transaction that is the subject of the violation.

(c) Joint and Several Liability for Communicating- Any person who violates any provision of this title or the rules or regulations thereunder by communicating material, nonpublic information shall be jointly and severally liable under subsection (a) with, and to the same extent as, any person or persons liable under subsection (a) to whom the communication was directed.

(d) Authority Not to Restrict Other Express or Implied Rights of Action- Nothing in this section shall be construed to limit or condition the right of any person to bring an action to enforce a requirement of this title or the availability of any cause of action implied from a provision of this title.

(e) Provisions Not to Affect Public Prosecutions- This section shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this title, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties.



ประวัติผู้เขียน

พ.ต.ท.สุรเชษฐ ชีรวินิจ เกิดเมื่อวันที่ 1 กันยายน 2491 ที่ อำเภอพนมพิณ จังหวัดสุราษฎร์ธานี สำเร็จการศึกษาระดับปริญญาตรีนิติศาสตรบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย ในปีการศึกษา 2515 และเข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต สาขากฎหมายธุรกิจที่บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย เมื่อ พ.ศ. 2534 ปัจจุบันรับราชการตำรวจ ดำรงตำแหน่ง สารวัตรงาน 3 กองกำกับการ 2 กองบังคับการสืบสวนสอบสวนคดีเศรษฐกิจ