

Rethinking the Measure of Damages in Article 20 of Securities and Exchange Law

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Abstract

Except for Article 157-1, it seems that neither the parties nor the judges know how to estimate the actual damages in Article 20 of Securities and Exchange Law. The primary goal of securities regulation is to protect the public interest in the integrity of the securities markets. However, if the methodology of damages in securities litigation brought under Article 20 is uncertain, the goal of securities regulation cannot be achieved. In order to deal with the puzzle, the author proposes the gross income loss method as the optimal measure to calculate damages in Article 20 because it is simple and certain. Part II of this article provides a brief overview of U.S. methodology of calculating damages at trial. Part III explains and evaluates the measure of recovery after the 1995 legislation. Part IV argues that the gross income loss would be the optimal measure to calculate the damages in Article 20. Finally, part V concludes the proposed solution of measuring damages in Article 20.

Keywords: Gross Income Loss, Out-of-Pocket, Market Model, Securities Fraud, Crash Theories, Damages, Event Studies, the Comparable Index