

**Are Secondary Actors in Securities Frauds Subject to Section 1
Article 20 of Securities Exchange Act? : A Critical Analysis
Focusing on the Financial Misstatement Cases**

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Abstract

Paragraph 1 of Article 20 in Securities Exchange Act provides that, during the public offering, issuing, private placement, or trading of securities, there shall be no misrepresentations, frauds, or any other acts which are sufficient to mislead other persons. And Paragraph 3 of this Article further stipulates that anyone who violates the provisions of paragraph 1 shall be held liable for damages sustained by bona fide purchasers or sellers of the said securities.

How to identify the “responsible actor” of civil remedies for Article 20 violation is a highly contentious question among practitioners and scholars. Through reviewing the legislative history of Article 20 and juxtaposing Rule 10b-5 and recent development under the U.S. Securities Exchange Act of 1934, this paper suggests that the traditional debate on the “responsible actor” concept is not well-guided, and anyone who was involved in the securities fraud scheme is likely to be held liable for the damages if other elements are met. And each should be held responsible in proportionate to his own participation in the fraud, but not held liable jointly and severally for all the damage caused. Based on the analysis of the relationship between Article 20 and the tort regulation in Civil Law, that the existence of Article 20 should limit the role the tort rules of the Civil Law can play in securities fraud cases, this paper further argues, is a more reasonable deduction under Taiwan’s current regime.

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