

# THE ELUSIVE CONCEPT OF “MATERIALITY” UNDER U.S. FEDERAL SECURITIES LAWS

YVONNE CHING LING LEE\*

## I. INTRODUCTION

“Materiality” is an essential element to establish liability under U.S. Federal securities laws. These laws include the anti-fraud<sup>1</sup> and proxy solicitation<sup>2</sup> laws and Regulation FD.<sup>3</sup> This Article endeavors to (a) examine the scope and application of “materiality” under U.S. Federal securities laws; (b) examine the concept of “materiality” comprised in similar legislative or regulatory provisions of Australia, the European Community, and Hong Kong; and (c) propose an alternative “model” for the determination of “materiality” in relation to U.S. Federal securities laws.

Part II of this Article examines the scope and application of “materiality” under U.S. Federal securities law. Part III looks at the concept of “materiality” in the respective contexts of market manipulation (e.g. insider trading) and informational disclosure regimes of Australia, the European Community and Hong Kong, and gleans possible lessons that may be drawn from these.

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\* Associate Director (Legal Counsel) of Temasek Holdings (Private) Limited, Advocate & Solicitor of Singapore, LL.M (University of Michigan Law School), LL.B (National University of Singapore).

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1. *E.g.*, Securities Exchange Act of 1934 § 10, 15 U.S.C. § 78j (2003), 17 C.F.R. § 240.10b-5 (2003).
2. Securities Exchange Act of 1934 § 14(h), 15 U.S.C. § 78n (2003).
3. 17 C.F.R. §§ 243.100-.103 (2003).