**6.7 Sections 5 & 5 of the Securities Act of 1933 –**

**15 U.S.C. §§ 77e and 77e – Offer and Sale of**

**Unregistered Securities – SEC Version**

The Securities and Exchange Commission, also known as the SEC, asserts a claim under the Securities Act of 1933, a federal statute regulating the offer and sale of securities.

Sections 5 and 5 of the Securities Act of 1933 require the offer or sale of certain securities to be registered. Registering securities ensures that companies file essential facts with the SEC, which then makes these facts public. It’s unlawful, without an exemption from the Securities Act’s registration requirements, for any person to use an instrumentality of interstate commerce to buy or sell, offer to buy or sell, or transport or deliver after sale, an unregistered security.

To succeed on its claim that [name of defendant] violated Securities Act §§ 5 and 5, the SEC must prove each of the following three elements by a preponderance of the evidence:

First, you must find that [name of defendant] directly or indirectly sold, or offered to sell, securities.

Second, you must find that [name of defendant] used an instrument of transportation or communication in interstate commerce in connection with the offer to sell or sale of securities.

And third, you must find that a registration statement for the securities was not in effect.

A “security” is an investment in a commercial, financial, or other business enterprise with the expectation that profits or other gain will be produced by others. Some common types of securities are [stocks,] [bonds,] [debentures,] [warrants,] [and] [investment contracts]. [The [describe type of security] in this case is a security.]

[If there is a genuine question about whether the case involves a security, additional instructions will be needed here.]

The terms “sale” or “sell” mean the transfer of a security for value. This includes contracts for the sale for value or any other disposition for value of a security or interest in a security. An “offer,” “offer to sell,” or “offer for sale” means attempting to dispose of a security or an interest in a security for value by inviting buyers.

To “directly or indirectly” sell securities means [name of defendant] was a necessary participant, or substantial factor, in the sale or offer to sell that the SEC claims is in violation of Securities Act § 5.

[Name of defendant] may be a “necessary participant” or “substantial factor” in the sale of securities if, for example, [he/she/it] employs or directs others to sell or offer to sell securities, or plans the process by which unregistered securities are offered or sold.

To satisfy this element, the SEC isn’t required to show that [name of defendant] had direct contact with any of the investors who were offered or purchased the securities at issue.

[In this case, the securities weren’t registered.]

“Instrument of transportation or communication in interstate commerce” means the use of the mails, telephone, Internet, or some other form of electronic communication, [or] an interstate delivery system such as Federal Express or UPS [, or an inter-dealer electronic-quotation-and-trading system in the over-the-counter securities market].

[A “facility of a national securities exchange” may include a computer-trading program or an online discount brokerage service.]

A person who sells unregistered securities violates Securities Act § 5 regardless of whether the violation was committed knowingly, intentionally, recklessly, or negligently. [Name of defendant]’s good-faith belief that the sale or offer to sell was legal, and [his/her/its] reliance on the advice of counsel, aren’t defenses to a violation of Securities Act § 5.]

[If you find that the SEC has proved these three elements by a preponderance of the evidence, the burden shifts to [name of defendant] to prove, by a preponderance of the evidence, that the offer to sell or sale of the securities were exempt from the Securities Act’s registration requirements.

[If you find that the SEC has proved one or more of its claims against [name of defendant], I alone will determine the remedy or remedies to impose at a later date.]

**Special Interrogatories to the Jury**

**Do you find from a preponderance of the evidence:**

 That [name of defendant] directly or indirectly sold [or offered to sell] securities?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 That [name of defendant] used an “instrumentality of interstate commerce” in connection with the sale of [or offer to sell] securities?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 That a registration statement for the securities was not in effect?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

[ That [name of defendant] has established that an exemption from registration applied to the sale of [or offer to sell] the securities?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_]

So Say We All.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Foreperson’s Signature

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_