

Materiality Guidance in the Context of Insider Trading: A Call to Action, 52 Am. U.L. Rev. 1131 (2003).

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In this article, Professor Heminway reflects upon certain negative effects associated with the ambiguity of the current legal standard for materiality in the insider trading context and suggests and demonstrates an approach to mitigating these negative effects. Specifically, after describing and illustrating the concept of materiality and its application in the insider trading context, this article identifies and assesses applicable regulatory policies, showing that these policies do not dictate an imprecise definition of materiality. Next, the article explains certain negative impacts on stockholder value emanating from the lack of predictability and certainty in interpreting and applying the existing materiality standard, including negative impacts created by continued speculative and abusive class action litigation. The article then suggests and illustrates an approach for fashioning materiality guidance, consistent with applicable policy and existing regulatory principles. The suggested approach is designed to enhance predictability and certainty in interpreting and applying the concept of materiality in insider trading regulation.