**Should Issuers be on the Hook for Laddering?
An Empirical Analysis of the IPO Market Manipulation Litigation**

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Abstract

Under Section 11 of the Securities Act of 1933, firms making public offerings of securities are strictly liable to investors for any material misstatements in the registration statements that accompany those offers. This strict liability regime is premised on the notion that issuers are best placed to avoid misstatements in the registration statement. Section 11 gives other potential defendants a due diligence defense to reflect their lesser ability to ensure the accuracy of the registration statement. The recent spate of laddering lawsuits alleging manipulation of the aftermarket for certain stocks issued in hot initial public offerings (IPOs) presents a role-reversal in that underwriters, rather than issuers, are alleged to be the principal wrongdoers. This paper compares a randomly selected sample of the defendant-issuers in the IPO laddering lawsuits with a matched sample of IPO firms not included in the laddering litigation. We find few differences between the sued firms and the match firms that would suggest that the issuers are culpable for laddering schemes. These findings call into question - at least under some circumstances - the deterrent value of the strict liability regime of Section 11 for corporate issuers. We propose a due diligence defense for issuers for statements in the registration statement relating to situations in which the primary wrongdoer is not the issuer.

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