man and woman is an essential human right which we can no longer deny."[103] In the face of such determined language and on the basis of the overwhelming evidence, the *American Textile* Court's reasoning that the Secretary is not required to conduct a cost-benefit analysis in setting standards under section 655(b)(5) is sound.

Steven V. Rizzo

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103. H.R. REP. No. 1291, 91st Cong., 2d Sess. 35, *reprinted in* SEN. COMM. ON LABOR AND PUBLIC WELFARE, LEGISLATIVE HISTORY OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970, at 865.

SECURITIES—RULE 10B-5 PERMITS A REBUTTABLE PRESUMPTION OF RELIANCE UNDER THE DOCTRINE OF FRAUD ON THE MARKET, WHERE A PURCHASER OF INDUSTRIAL REVENUE BONDS RELIES SOLELY UPON THE INTEGRITY OF THE MARKET.—*Shores v. Sklar* (5th Cir. 1981).

Clarence Bishop[1] was the purchaser of industrial revenue bonds[2] issued by an industrial development board.[3] The plaintiff purchased the bonds subsequent to consulting his broker.[4] At no time did the plaintiff examine a prospectus, nor did he know one existed.[5] Following default on the bonds,[6] the plaintiff brought an action for security under Rule 10b-5[7] in the United States District Court for the Northern District of Alabama.[8] Plaintiff alleged that but for the intentional or reckless misrepresentation of certain facts known to the defendants, the bonds would never have been marketed.[9]

The defendants[10] moved for summary judgment contending that be-

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1. While Bishop was the purchaser of the bonds, the named plaintiff is James L. Shores, Jr., the executor of Bishop's estate. Shores v. Sklar, 647 F.2d 462, 462 (5th Cir. 1981).

2. The purpose of the bond issue was to raise revenue for the construction of an industrial facility, in this instance a facility for the construction of mobile homes. *Id.* at 465. They were not general obligation bonds of the municipality. *Id.* Alabama law allows for the issuance of such bonds, although they must be secured by a pledge of income from the lease on the property. *Id.*

3. *Id.*

4. *Id.* at 467. Bishop purchased the bonds in January of 1973. *Id.* The broker was not named as a defendant. *Id.* at 462.

5. *Id.* at 467. Neither the broker nor the defendants provided Bishop with a prospectus prior to his purchase. *Id.*

6. Default occurred on April 15, 1974, when the lessee defaulted under the lease. *Id.*

7. 17 C.F.R. § 240.10b-5 (1981) (originally part of the 1934 securities act). Rule 10b-5 states:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,
>
> [1] To employ any device, scheme, or artifice to defraud,
>
> [2] To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> [3] To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Id.

8. 647 F.2d at 462.

9. *Id.* at 464. Misrepresentations made by the defendants included the failure to disclose an SEC investigation and a civil action against the underwriters, and the false representation of the amount of the developer's assets and his expertise in the area of modular homes. *Id.* The drafting attorney also knew that information submitted by the CPA in the preparation of the prospectus was false and misleading. *Id.* at 465-66.

10. The named defendant is Jerald H. Sklar, the attorney for the parties who sought

cause the purchaser did not rely upon the offering circular, he could not maintain a claim based upon Rule 10b-5.[11] Subsequent to the grant of the defendants' motion for summary judgment, the plaintiff appealed the decision to the United States Court of Appeals for the Fifth Circuit.[12] That court reversed and remanded.[13]

On rehearing *en banc*, the Fifth Circuit *held*, vacated and remanded.[14] Even though the plaintiff failed to state a cause of action under 10b-5[2],[15] due to his failure to examine a prospectus, the plaintiff as a purchaser of securities could recover under 10b-5[1][16] and [3][17] where he relied upon the integrity of the marketplace to provide marketable securities, and the securities provided were unmarketable. *Shores v. Sklar*, 647 F.2d 462 (5th Cir. 1981).

The purpose of the reliance requirement in a 10b-5 action is to establish whether the conduct of the defendant proximately caused the plaintiff's injury.[18] Beginning with the Second Circuit's decision in *List v. Fashion Park, Inc.*,[19] courts have found reliance to be an essential element of a Rule 10b-5 action.[20] In *List*, a seller of stocks brought suit to recover the increase in the price of the stocks subsequent to the sale of his shares to a director of the company.[21] The seller alleged that the buyer made misrepresentations to him prior to purchasing the stocks.[22] The Second Circuit affirmed the district court's dismissal, holding that the seller would have acted in the same manner had he known of the misrepresentations.[23] The *List* court held that the purpose of Rule 10b-5 was to require full disclosure so that the purchaser of securities could make an informed decision.[24]

The United States Supreme Court in *Affiliated Ute Citizens v. United*

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issuance of the bonds. *Id.* at 465. Also named was the CPA, George C. Rackard; the underwriters: Jackson Municipals, headed by Cecil Lamberson; and the bond trustee, The First Alabama Bank of Phoenix City. *Id.* at 466-67.

11. *Id.* at 464.

12. Shores v. Sklar, 610 F.2d 235 (5th Cir. 1979), *vacated and remanded*, 647 F.2d 462 (5th Cir. 1981).

13. *Id.* at 236.

14. 647 F.2d at 462.

15. *See* note 7 *supra*.

16. *Id.*

17. *Id.*

18. List v. Fashion Park, Inc., 340 F.2d 457, 462 (2d Cir.), *cert. denied*, 382 U.S. 811, *reh'g denied*, 382 U.S. 933 (1965).

19. 340 F.2d 457 (2d Cir.), *cert. denied*, 382 U.S. 811, *reh'g denied*, 382 U.S. 933 (1965).

20. *See, e.g.*, Ernst & Ernst v. Hochfelder, 425 U.S. 185, *reh'g denied*, 425 U.S. 986 (1976); Affiliated Ute Citizens v. United States, 406 U.S. 128 (1972); Rifkin v. Crow, 574 F.2d 256 (5th Cir. 1978); Blackie v. Barrack, 524 F.2d 891 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976).

21. 340 F.2d at 460.

22. *Id.*

23. *Id.* at 465.

24. *Id.* at 462.

States[25] modified this reliance requirement somewhat.[26] Prior to *Affiliated Ute*, courts had held that the plaintiff must prove reliance as a prerequisite to recovery, regardless of whether the defendant failed to disclose or misstated material facts.[27] In *Affiliated Ute*, the defendant buyers omitted certain facts known to them in the face of a duty to disclose.[28] While the Supreme Court has noted that in a misrepresentation case the plaintiff must show that the misrepresentations were material and that he relied on the misrepresentations when making his decision to buy or sell,[29] the Court has also recognized the difficulty of proving reliance on undisclosed facts.[30] In such circumstances where material facts are omitted, the Court has held that the plaintiff possessed a rebuttable presumption of reliance.[31] This presumption could be rebutted in two ways: by disproving the materiality of the facts, or by showing that the plaintiff would have acted in the same manner had he known all the facts.[32] Following the decision in *Affiliated Ute*, Rule 10b-5 actions were typically classified as misrepresentation cases requiring reliance, or as omission cases presuming reliance.[33]

The Supreme Court in *Ernst & Ernst v. Hochfelder*[34] placed a further requirement on 10b-5 actions when they held that a defendant must have acted with scienter in order for an action to lie under Rule 10b-5.[35] In *Ernst & Ernst*, a purchaser of securities sued the accounting firm which audited the company's books for their failure to discover that the company was insolvent.[36] The Court in denying relief, held that in order for an action to lie under Rule 10b-5 the defendant must have acted with an intent to deceive, manipulate or defraud.[37]

The Fifth Circuit in *Simon v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*[38] further defined the reliance requirement, holding that a purchaser of

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25. 406 U.S. 128 (1972).

26. *Id.* at 153.

27. *See* List v. Fashion Park, Inc., 340 F.2d at 462-63.

28. 406 U.S. at 153.

29. *See generally* Vervaecke v. Chiles, Heider & Co., 578 F.2d 713 (8th Cir. 1978); Rifkin v. Crow, 574 F.2d 256 (5th Cir. 1978); Blackie v. Barrack, 524 F.2d 891 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976); List v. Fashion Park, Inc., 340 F.2d 457 (2d Cir.), *cert. denied*, 382 U.S. 811, *reh'g denied*, 382 U.S. 933 (1965).

30. *See, e.g.*, Affiliated Ute Citizens v. United States, 406 U.S. at 152.

31. *See, e.g.*, Rifkin v. Crow, 574 F.2d at 261-62 (construing Affiliated Ute Citizens v. United States, 406 U.S. 128 (1972)).

32. *Id.*

33. For examples of misrepresentation cases see note 29 *supra*. For an example of an omission case, see Affiliated Ute Citizens v. United States, 406 U.S. 128 (1972).

34. 425 U.S. 185, *reh'g denied*, 425 U.S. 985 (1976).

35. *Id.* at 206.

36. *Id.* at 189.

37. *Id.* at 193.

38. 482 F.2d at 880 (5th Cir. 1973).

securities must rely to his detriment.[39] Although the plaintiff in *Simon* consulted a broker prior to purchasing corporate stock,[40] the court denied relief, basing their decision on the fact that the plaintiff purchaser was a knowledgeable investor whose previous experience in the stock market enabled him to be familiar with the type of information necessary for the making of a decision without relying on the broker.[41] The requirement of reliance to one's detriment was lacking where the plaintiff purchaser "made his own investment decision and relied in no way on [the broker's] recommendations."[42]

In *Blackie v. Barrack*,[43] misrepresentations were made in an annual stockholders' report.[44] The Ninth Circuit created a new theory of recovery, "fraud on the market," holding that while an investor in an impersonal market may not have known of the misrepresentations and therefore could not have relied upon them, he may rely on the marketplace to provide validly priced securities.[45] The court in dispensing with "the requirement that plaintiffs prove reliance directly . . . ,"[46] allowed reliance to be shown circumstantially by proof of purchase and materiality of the misrepresentations.[47]

Subsequent to the Ninth Circuit's opinion in *Blackie*, the Fifth Circuit in *Rifkin v. Crow*[48] deferred judgment on the issue of "whether reliance should be presumed in 'fraud on the market' situations."[49] The plaintiff in *Rifkin* brought suit claiming that the purchase price for shares of stock was inflated due to fraudulent reports disseminated by the issuing company.[50] Relying on the fact that the plaintiff purchaser had claimed reliance on both the marketplace and the reports, to insure that a valid price had been set for the stock,[51] the Fifth Circuit deferred judgment on the issue of the availability of the fraud on the market theory, pending further development of the facts.[52]

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39. *Id.* at 884.
40. *Id.* at 882.
41. *Id.* at 884-85.
42. *Id.* at 884.
43. 524 F.2d 891 (9th Cir. 1975).
44. *Id.* at 894.
45. *Id.* at 907.
46. *Id.*
47. *Id.* at 906.
48. 574 F.2d 256 (5th Cir. 1978).
49. *Id.* at 263.
50. *Id.* at 257-58.
51. *Id.* at 259.
52. *Id.* at 263-64. The Fifth Circuit overturned the trial court's entry of summary judgment against the plaintiff, holding that the plaintiff's claim that he relied on reports disseminated by the defendants was "sufficient to create an issue of fact precluding summary judgment on the issue of reliance." *Id.* at 257. The ultimate decision of the Fifth Circuit resulted in a remand of the case to the trial court. *Id.*

The adoption by the Fifth Circuit in *Shores* of the "fraud on the market" theory was premised on the belief that Rule 10b-5 should not be so narrowly construed so as to restrict recovery on matters of misrepresentation or omission solely to an offering circular.[53] The Fifth Circuit's decision modifies the reliance requirement only to the extent that an investor may rely on the integrity of the market to provide marketable secutiries.[54] While the Supreme Court in *Ernst & Ernst* imposed the requirement of scienter upon defendants,[55] it also recognized that the intent of the securities laws was "to protect investors against fraud."[56] The decision in *Shores* is consistent with the ruling in *Ernst & Ernst* insofar as the majority in *Shores* found it necessary to protect investors from the perpetration of large scale fraud.[57] The *Shores* court did not attempt to establish a system of "investors' insurance," for it held that a purchaser must prove that the bonds were not entitled to be marketed, not that they would have been offered at a higher or lower price.[58] In an instance where the securities were indeed marketable, an investor would have had to have read the prospectus in order to maintain a 10b-5 action.[59]

The Fifth Circuit's decision in *Shores* was premised on the plaintiff's apparent willingness to invest in any marketable risk,[60] and the court's adoption of the "fraud on the market" theory expounded in the Ninth Circuit's holding in *Blackie v. Barrack*.[61] In *Blackie*, the plaintiff sued to recover his loss from the decrease in the price per share of stock following the release of the company's annual report indicating that earlier financial statements may have been misrepresented.[62] The Ninth Circuit[63] held that an investor in such an impersonal securities market may not have known "of a specific false representation, or may not [have] directly rel[ied] on it,"[64] but instead may have relied on the integrity of the marketplace to insure that a valid price had been set, and that it had not been affected by fraud or deceit.[65] Furthermore, the *Blackie* court held that causation could be established by proof of purchase of the seurities and by the materiality of the misrepresentations.[66] The Ninth Circuit realized that to require the plaintiff

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53. Shores v. Sklar, 647 F.2d at 468.
54. *Id.* at 471.
55. Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976).
56. *Id.* at 195.
57. 647 F.2d at 470.
58. *Id.* at 471.
59. *Id.* at 470.
60. *Id.* at 469.
61. *Id.*
62. Blackie v. Barrack, 524 F.2d at 894.
63. Sitting with the Ninth Circuit by designation was Elbert P. Tuttle, Senior Circuit Judge for the Fifth Circuit. *Id.*
64. *Id.* at 907.
65. *Id.*
66. *Id.* at 906.

to prove specific reliance would impose "an unreasonable and irrelevant evidentiary burden . . . ."[67] Such a requirement would also threaten enforcement of the securities laws.[68]

While the requirement of reliance is not specifically imposed by Rule 10b-5,[69] courts have generally held that proof of reliance is necessary in order to show causation.[70] Although the Supreme Court has not been faced with deciding an open market securities fraud action, the Court in *Affiliated Ute*[71] did allow the use of an alternative means of proving causation[72] because of the impracticality of showing reliance under the circumstances.[73] In the impersonal open market transactions that occur daily, it could easily happen that the misrepresentations would never come to the investor's attention.[74] Under such circumstances, it would be meaningless to require reliance since it would encourage disingenuous pleadings.[75] "It would also be unfair, since an investor who trades with reference to market price and conditions may be affected by the misstatement although he never hears it."[76]

The difficulty of proof may be overcome in several ways: By proving reliance indirectly,[77] by relying "on the *relationship* rather than on the specific conduct,"[78] or by presuming reliance from materiality.[79] A presumption of reliance based on the materiality of the misrepresentations "makes sense; once the latter is shown, the reasonably prudent investor would be expected to rely. It is more straightforward than requiring an empty pleading and proof, or playing word games with nondisclosure. The presumption would, of course be, rebuttable by appropriate evidence."[80]

The distinction between *Blackie* and *Shores* is that in the former, the court allowed the plaintiff to prove reliance indirectly;[81] while in the latter the court presumed reliance from a showing of the materiality of the misrepresentations.[82] The *Shores* court held that while causation in fact may be

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67. *Id.* at 907.
68. *Id.* at 908.
69. *See* note 7 *supra.*
70. 3 A. BROMBERG & L. LOWENFELS, SECURITIES FRAUD & COMMODITIES FRAUD § 8.6 (1981) [hereinafter cited as BROMBERG].
71. 406 U.S. 128 (1972).
72. *Id.* at 153-54. *See, generally,* Bromberg, *The Reliance Requirement in Private Actions Under SEC Rule 10b-5,* 88 HARV. L. REV. 584 (1975).
73. 406 U.S. at 153-54.
74. BROMBERG, *supra* note 70, at § 8.6(2).
75. *Id.*
76. *Id.*
77. *Id. See generally* 29 VAND. L. REV. 287 (1976).
78. BROMBERG, *supra* note 70, at § 8.6(2).
79. *Id.*
80. *Id.*
81. 524 F.2d at 906.
82. 647 F.2d at 469.

proven without specific reliance upon a document,[83] the burden was still on the plaintiff to prove that the defendant substantially misrepresented material facts.[84] Because the burden of proof remains on a plaintiff, no new liability is imposed upon a defendant.[85]

The establishment of a causal nexus by proof of the materiality of the misrepresentations does not form a conclusive presumption of reliability.[86] The defendants could rebut such a presumption in at least two ways: by disproving materiality or by showing that a plaintiff would have purchased had he known the facts.[87]

The *Shores* court asserted that its holding was consistent with the intent of the securities acts.[88] The court held that the acts covered large scale fraud as well as small scale misrepresentations or omissions,[89] and that full disclosure was only one means to that end.[90] The importance of examining an offering circular will not be diminished even though the plaintiff may recover under the theory of "fraud on the market."[91] Under the "fraud on the market" theory, as adopted by the Fifth Circuit, the plaintiff will need to prove that the bonds could not have been marketed at any price.[92] If the plaintiff proves only that the bonds should have been sold at a different price, then his failure to examine an offering circular would preclude recovery.[93]

The majority in *Shores* held that when the "issue shifts from misrepresentation or omission in a document to fraud on a broader scale, the search for causation must shift also."[94] In keeping with the purpose of reliance in a 10b-5 action,[95] the *Shores* court found that the reliance necessary in the latter case may not be the same as is necessary in the former.[96] If a purchaser of securities could show that the plan to fraudulently market securities was based on more than a document, a sufficient causal nexus would be established by proof that the defendant intended to market the bonds fraudulently and that a purchaser relied on the marketplace to provide se-

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83. *Id.*
84. *Id.* at 470.
85. *Id.* at 471.
86. *Id.* at 468.
87. *Id.*
88. *Id.* at 470.
89. *Id.*
90. *Id.* at 472.
91. *Id.*
92. *Id.*
93. *Id.* Some courts differentiate between "loss-causation" and "transaction-causation." *See* Schlick v. Penn-Dixie Cement Corp., 507 F.2d 374, 380 (2d Cir. 1974), *cert. denied*, 421 U.S. 976 (1975).
94. 647 F.2d at 472.
95. List v. Fashion Park, Inc., 340 F.2d at 462.
96. 647 F.2d at 472.

curities that were marketable.[97]

The crux of the dissent's argument in *Shores* was that by creating an artificial distinction between marketable and non-marketable securities, a scheme of investor's insurance would be manifested, which would defeat the purpose of the securities laws.[98] The dissent also feared that the volume of litigation would be increased by investors who made poor investment decisions and wanted to recover their losses.[99]

While the dissent in *Shores* agreed in principle with the majority that the purpose of the securities laws is to provide for full disclosure so that a purchaser of securities may make an informed decision,[100] it disagreed with the majority's application of Rule 10b-5.[101] In essence, the dissent would prefer to apply the doctrine of *caveat emptor*.[102] If the investor failed to read the material disclosed in an offering circular then he would be precluded from recovery.[103] To read Rule 10b-5 so narrowly would impose "an unreasonable and irrelevant evidentiary burden"[104] upon a plaintiff and may in fact threaten the enforcement of the securities laws.[105] The dissent's interpretation of Rule 10b-5 ignores the problem enunciated by the *Blackie* court, with which the majority in *Shores* agreed.[106] An individual investor who invested in the impersonal securities market, may not have known "of a specific false representation, or may not [have] directly rel[ied] on it,"[107] but may instead have relied upon the integrity of the market to set a valid price that was unaffected by fraud or deceit.[108]

The dissent interpreted the great weight of authority more restrictively than the majority.[109] It also relied on its earlier decision in *Rifkin v. Crow*[110] in concluding that the plaintiff should not have been allowed to recover despite his reliance on the offering circular.[111]

Additionally, the dissent emphasized the holding in *Vervaecke v.*

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97. *Id.* at 469-70.
98. *Id.* at 472-73.
99. *Id.*
100. *Id.* at 474-75. *See* List v. Fashion Park, Inc., 340 F.2d at 462.
101. 647 F.2d at 474.
102. *Id.* at 483.
103. *Id.*
104. Blackie v. Barrack, 524 F.2d at 907.
105. *Id.* at 908.
106. 647 F.2d at 469.
107. 524 F.2d at 907.
108. *Id.*
109. *See* Ernst & Ernst v. Hochfelder, 425 U.S. 185, *reh'g denied*, 425 U.S. 986 (1976); Affiliated Ute Citizens v. United States, 406 U.S. 128 (1972); Rifkin v. Crow, 574 F.2d 256 (5th Cir. 1978); Blackie v. Barrack, 524 F.2d 891 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976); List v. Fashion Park, Inc., 340 F.2d 457 (2d Cir.), *cert. denied*, 382 U.S. 811, *reh'g denied*, 382 U.S. 933 (1965).
110. 574 F.2d 256 (5th Cir. 1978).
111. 647 F.2d at 476-77.

Chiles, Heider & Co.,[112] a recent Eighth Circuit decision.[113] The *Vervaecke* case involved misrepresentations made in the offering circular, which the plaintiff failed to read.[114] Following a loss in the value of the securities,[115] the purchaser, Vervaecke, sued claiming nondisclosure of material facts.[116] The Eighth Circuit ruled that it was an instance of misrepresentation rather than non-disclosure and granted summary judgment for the defendants based upon the plaintiff's failure to read the prospectus.[117] The court never discussed the "fraud on the market" theory, yet the factual situation in *Vervaecke* is such that recovery should have been allowed under that theory.

Traditionally courts have been concerned with misrepresentations or omissions made in an offering prospectus.[118] Yet in *Shores*, the plan to issue the bonds was permeated with an intent, bordering on recklessness, to defraud investors from the beginning.[119] The prospectus was just a small part of the vast scheme.[120] Everyone involved in the creation of the bonds, from the organizers to the underwriters, intended to deceive not only investors, but also the authorities whose duty it was to assure compliance with federal and state securities law.[121] While the dissent's fear of increased litigation in this area is well-founded, the benefits of allowing investors to recover in situations where an obvious wrong has been perpetrated by those seeking to take advantage of investors in an impersonal market would far outweigh the burden of additional cases that could presumably be disposed of at the pleadings stage.

The Supreme Court has also been concerned with the problem of vexatious litigation in the Rule 10b-5 area, and has dismissed several suits for fear of expanding the coverage of Rule 10b-5.[122] In *Blue Chip Stamps v. Manor Drug Stores*,[123] the plaintiff declined an offer to buy shares of stock.[124] In his suit he alleged that the defendant corporation had made misrepresentations to him and that he relied on those statements in deciding not to purchase.[125] The Supreme Court denied the plaintiff standing to bring the suit, claiming that in order to have standing, a plaintiff must have

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112. 578 F.2d 713 (8th Cir. 1978).
113. 647 F.2d at 477.
114. 578 F.2d at 718.
115. *Id.* at 715.
116. *Id.*
117. *Id.* at 719.
118. *See* note 109 *supra.*
119. 647 F.2d at 464.
120. *Id.* at 468.
121. *Id.* at 464.
122. *See* text accompanying notes 123-29 *infra.*
123. 421 U.S. 723 (1975).
124. *Id.* at 725.
125. *Id.*

been an actual purchaser.[126] Similarly, in *Chiarella v. United States*,[127] a printer of corporate take-over bids deduced which companies were to be taken over and purchased stock in those companies.[128] The Court held that because the sellers had not placed their trust or confidence in the defendant there were no prior dealings, the defendant was not an agent or fiduciary, and, consequently, the defendant had no duty to disclose.[129]

Both *Chiarella* and *Blue Chip Stamps* can be easily distinguished from *Shores*. In *Chiarella*, the defendant was so far removed from the corporation that he could not be considered an insider.[130] In *Shores*, by comparison, the defendants were insiders.[131] The plaintiff in *Blue Chip Stamps* was not a purchaser of securities,[132] while in *Shores* the plaintiff not only purchased the bonds, but he also suffered a loss.[133]

The majority in *Shores* did not eliminate any of the elements for a cause of action under Rule 10b-5, nor did they expand the coverage of the Rule.[134] Rather, the court recognized that in the impersonal setting of an open market transaction, the requisite reliance necessarily shifts from that of reliance on a specific document to reliance "on the integrity of the market to the extent that the securities it offers . . . for purchase are entitled to be in the marketplace."[135]

The *Shores* opinion does not do away with any of the elements of a Rule 10b-5 action.[136] Rather, realizing the inherent impracticality of requiring reliance in transactions conducted on an open market, the majority held that the plaintiff possesses a rebuttable presumption of reliance once he establishes proof of the materiality of the misrepresentations.[137] The purpose of reliance, whether actual or presumed, remains the same: To establish if the conduct of the defendant proximately caused the plaintiff's injury.[138]

Robert P. Pilmer

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126. *Id.* at 733.
127. 445 U.S. 222 (1980).
128. *Id.* at 224.
129. *Id.* at 231-35.
130. *See id.*
131. Shores v. Sklar, 647 F.2d at 465-67.
132. 421 U.S. at 725.
133. 647 F.2d at 467.
134. *See* note 7 *supra*.
135. 647 F.2d at 471.
136. *Id.* at 469.
137. *Id.*
138. List v. Fashion Park, Inc., 340 F.2d at 462.