Table of Contents

PREFAC	E
Chapt	ter 1. The Basic Coverage of the Securities Laws
_	Overview of the Securities Markets and Their Opera-
	tion
§ 2.	History, Scope, and Coverage of Federal and State Securities Regulatory Schemes
§ 3.	The Securities and Exchange Commission; Structure of the SEC
§ 4.	The SEC's Subject-Matter Jurisdiction
§ 5.	Definition of "Security"
§ 6.	Derivative Investments: Stock Options, Index Options, and Futures
	ter 2. Registration Requirements of the Securi-
	ties Act of 1933
§ 7.	Overview of 1933 Act Registration
§ 8.	The Underwriting Process
§ 9.	The Operation of 1933 Act § 5
	The Pre-Filing Period
	The Waiting Period
3 12.	The Post–Effective Period
	ter 3. The 1933 Act Registration Process and Dis-
	closure
	Preparation of the Registration Statement
§ 15.	Information Required in the Registration Statement
3 10.	and the Statutory Prospectus; Schedule A
§ 16.	Registration Forms and Integrated Disclosure
§ 17.	SEC Statutory Procedures—1933 Act § 8
§ 18.	Processing the Registration Statement After Filing
§ 10.	Frequent Deficiencies in Registration Statements and
o 10.	Other Disclosures; The Plain English Requirement
§ 20.	Common Disclosure Problems—Dilution of the Pub-
0 40.	lic's Investment, Business Risks, Transactions With
	Controlling Persons, and Projections
	0

			Page
§	21.	Delayed and Continuous Offerings—Shelf Registrations	90
	hant	er 4. Exemptions From 1933 Act Registration	92
	-48-	Securities and Transactions Exempt From the 1933 Act's Registration Requirements—1933 Act §§ 3	
0	~ ~	and 4	93
Š	23.	Securities of Governments, Banks, Insurance Companies, and Qualified Pension Plans—1933 Act § 3(a)(2)	95
8	24.	Short Term Commercial Paper—1933 Act § 3(a)(3)	95
0	25.	Securities of Eleemosynary Organizations—1933 Act § 3(a)(4)	95
§	26.	Securities of Building and Loan Associations, Farmers	
		Cooperatives and the Like—1933 Act § 3(a)(5)	96
§	27.	ceivers and Trustees—1933 Act § 3(a)(7)	96
§	28.	Insurance Policies and Annuity Contracts—1933 Act	
-		§ 3(a)(8)	97
§	29.	Securities Exchanged Exclusively With Existing Security Holders—1933 Act § 3(a)(9)	97
§	30.	Securities Issued in Judicially or Administratively Ap-	
§	31.	proved Reorganizations—1933 Act § 3(a)(10)	
2	20	Act § 3(a)(11); 1933 Act Rule 147	98
	32.	Qualified Exemptions for Small Issues; 1933 Act §§ 3(b), 4(6), and 3(c)	102
8	33.	Regulation A—Qualified Exemption for Offerings Up	104
§	34.	to \$5,000,000 Per Year Rule 701—Exemption for Employee Compensation Plans of Issuers Not Subject to Exchange Act Peri-	104
		odic Reporting Requirements	105
§	35.	Exemption for Issuer Transactions Not Involving a Public Offering ("The Private Placement Exemption")—1933 Act § 4(2)	106
8	36.	Regulation D	
•		Transactions by Persons Other Than Issuers, Under-	100
3	01.	writers, and Dealers: 1933 Act § 4(1); Unsolicited	111
2	20	Brokers' Transactions—1933 Act § 4(4)	
200			111
		The Safe Harbor Exemption for Secondary Transactions—1933 Act Rule 144	123
Š	40.	The § "4(1½)" Exemption for Downstream Sales; 1933 Act Rule 144A	126
§	41.	The Exemption for Certain Dealers' Transactions—	100
		1933 Act § 4(3)	140

			Page
§	42.	Exemption for Certain Offshore Transactions in Secu-	
		rities of United States Issuers—Regulation S	129
8	43.	The SEC's General Exemptive Authority	131
8	44.	Integration of Transactions	131
C	hap	ter 5. The Theory of Sale: Corporate Recapital-	
		izations, Reorganizations and Mergers Under the	
		1933 Act	134
8	45.	1933 Act Application to Unconventional Transac-	
		tions—1933 Act § 2(a)(3)'s Definition of Sale; Gifts,	
		Bonus Plans, and Pledges; Effect of State Law	134
8	46.	1	
		Mergers Under the 1933 Act: Rule 145	137
§	47.	1933 Act § 2(a)(3)'s Definition of Sale: Warrants, Em-	
		ployee Stock Plans, Stock Dividends, and Spin-Offs	
		Under the 1933 Act	139
C	hap	ter 6. IPO Practices: Manipulation, Stabilization	
		and Hot Issues	142
§	48.	Manipulation: An Overview	142
8	49.	Manipulation and Price Stabilization Involving Public	
		Offerings	143
§	50.	Aftermarket Activities, IPO Practices, Hot Issues,	
		Workout Markets, and Controlled Markets	146
Chapter 7. Liability Under the Securities Act of 1933 15			
		Consequences of Deficient Registration Statements—	
		Administrative Action, Criminal Sanctions, SEC In-	
		junctive Relief, and Private Remedies	152
8	52.	Civil Liability for Failure to Comply With 1933 Act	
		§ 5's Requirements—1933 Act § 12(a)(1)'s Private	
		$Remedy {\tt}$	154
§	53.		
		istration Statement—The Private Remedy Under	
e	~ .	§ 11 of the 1933 Act	156
8	54.		100
6	PP	ments or Omissions by Sellers of Securities	
8	55.	The Securities Act's General Prohibition on Material	
2	56	Multiple Defendents and Omissions—1933 Act § 17	109
3	56.	Multiple Defendants—Joint and Several Liability; Liability of Controlling Persons; Aiding and Abetting;	
		Indemnification Agreements	
8	57.	Special Rules and Procedures for Securities Class Ac-	110
ð	01.	tions	173

	-88-	ter 8. State Blue Sky Laws State Blue Sky Laws: Their Origins, Purpose, and	Page 175
Basic Coverage Chapter 9. Securities Exchange Act of 1934—Registration and Reporting Requirements for Publicly			
		Traded Companies	179
§	59.	The Securities Exchange Act of 1934—Overview	179
§	60.	Registration of Securities Under the Securities Exchange Act of 1934	181
§	61.	Annual, Periodic, and Continuous Reporting Requirements for Public Companies	183
8	62.		187
_	63.		
_	64.	Corporate Governance and the Federal Securities Laws; Codes of Ethics, Compensation Limitations,	
		and Listing Standards	195
§	65.	Controls on Attorney Practice	198
	hon	ter 10. Shareholder Suffrage—Proxy Regulation	202
8	00.	The Regulation of Shareholder Suffrage Under the Exchange Act—1934 Act § 14 and the Proxy Rules:	
e	CT	Introduction; Regulation of Voting Rights	
•	67.		200
8	68.	Rule 14a–9 and the Implied Remedy for Material Misstatements and Omissions in Proxy Materials; Standing to Sue; Scienter vs. Negligence; Attorneys'	000
0		Fees	209
8	69.	Security Holders' Access to the Proxy System: Right to Information; Shareholder List	211
	70.	holder Proposals and the Shareholder Proposal Rule	212
§	71.	Disclosure in Lieu of Proxy Solicitation—1934 Act § 14(c)	218
§	72.	Securities Held in Street Name; Broker–Dealers and Federal Proxy Regulation—1934 Act § 14(b)	
	-63-	ter 11. Tender Offer and Takeover Regulation	419
		Federal Control of Tender Offers—The Williams Act; The Terminology of Takeovers	219
Š	74.	Filing Requirements for Acquisition of More Than Five Percent of Equity Securities of an Exchange	
		Act Reporting Company—1934 Act § 13(d)	223
§	75.	Definition of Tender Offer	225
§	76.	Filings, Disclosures and Procedures for Tender Offers—1934 Act § 14(d) and Regulation 14D	228
§	77.	Unlawful Tender Offer Practices—1934 Act § 14(e)	
		and Regulation 14E	234

8	78.	Arrangements Affecting Director Turnover in Connec-
		tion With a Tender Offer—1934 Act § 14(f)
S	79.	Issuer Purchases of Its Own Stock—1934 Act § 13(e)
U		and the Going Private Rule; Issuer Self-Tender
		Offers
8	80.	Private Remedies Under the Williams Act—Remedies
U		for Violations of 1934 Act §§ 13(d), 13(e), 14(d),
		14(e)
8	81.	Responses to Tender Offers: Anti-Takeover Moves and
U		Defensive Tactics
8	82.	State Regulation of Tender Offers
J		
C	hap	ter 12. Manipulation and Fraud—Civil Liability;
		Implied Private Remedies; SEC Rule 10b-5;
		Fraud in Connection With the Purchase or Sale
		of Securities; Improper Trading on Nonpublic
		Material Information
§	83.	Market Manipulation and Deceptive Practices—1934
		Act §§ 9, 10, 14(e), 15(c)
§	84.	Implied Remedies in the Federal Courts
8	85.	Section 10(b) and the Evolution of the Implied Reme-
		dy Under 1934 Act Rule 10b-5
8	86.	Rule 10b-5 Overview; Summary of the Principal Ele-
		ments
S	87.	"In Connection With" the Purchase or Sale of Any
		Security
8	88.	"Purchase or Sale"—Identifying Purchases and Sales
	89.	Standing to Sue
	90.	The Scienter Requirement; 1933 Act § 17(a) and 1934
		Act Rule 14a–9 Compared
8	91.	Materiality
_	92.	Reliance; Fraud on the Market
0		Causation
		The Measure of Damages
		Securities Class Actions; Litigation Reform
		Insider Trading
		Liability for Material Misstatements and Omissions of
3	01.	Fact in Documents Filed With the SEC—1934 Act
		§ 18(a)
8	98.	
3	30.	
2	00	Corporate Migmonogement Pulo 10h 5 and the Do
3	99.	Corporate Mismanagement, Rule 10b-5 and the De-
2	100	ception Requirement
8	TUU.	The Effect of Plaintiff's Conduct on Implied Civil
		Liability; Due Diligence; In Pari Delicto

			Page
§	101.	Waiver of Claims; Voiding of Contracts in Violation of the Securities Laws	299
§	102.	Multiple Defendants: Controlling Person Liability; Aiding and Abetting; Joint Liability	
C	-85-	er 13. Insider Reporting, Short-Swing Trading,	
		and False SEC Filings	305
		Reporting Requirements for Insiders and Their Transactions in Shares—1934 Act § 16(a)	305
Ş	104.	Disgorgement of Insider Short-Swing Profits—1934 Act § 16(b)	309
§	105.	Who Is Subject to 1934 Act §§ 16(a) and (b)? When Does Insider Status Attach?	315
§	106.	The Definition of "Purchase" and "Sale" and the Pragmatic Approach Under 1934 Act § 16(b)	319
§	107.	Prohibitions Against Short Sales by Insiders—1934 Act § 16(c)	
	hant	er 14. Market Regulation; Broker-Dealers	323
	-	Market Regulation—An Overview	
		Self Regulation	324
		Antitrust Laws and Market Regulation	0
10.50			000
8	LLL.	State Regulation of Broker-Dealers—Limited Preemp-	331
2	110	Proken Declar Poristration: Definitions	001
		Broker-Dealer Registration; Definitions	OOT
8	110.	ry Duties	332
8	111	Municipal Securities Dealers	
		Regulation of Government Securities Dealers	
		Broker-Dealer Net Capital and Reserve Requirements	
		The Margin Rules and Extension of Credit for Securi-	บบบ
		ties Transactions	337
§	118.	Market Makers in the Over-the-Counter Markets	343
§	119.	Trading on Stock Exchanges; The Specialist System	347
§	120.	Execution of Customer Orders	350
§	121.	Brokerage Commissions—Disclosure, Payment for Order Flow, Excessive Mark-Ups	352
§	122.	Broker-Dealers and Fiduciary Obligations; The Shin-	
		gle Theory	355
§	123.	A Broker's Obligation to Customers With Regard to	
		Recommendations: The Know Your Security, Suita-	
		bility, and Know Your Customer Obligations; Scalping	357
Ş	124.	High Pressure Sales Tactics: Boiler Room Operations;	
		Penny Stock Regulation; Microcap Fraud	361
Ş	125.	Excessive Trading in Securities—Churning	
		Unauthorized Trading	

			Daga
c	107	Dogalotion of "Short Solog"	Page
0		Regulation of "Short Sales"	
C		Parking	000
8	129.	Broker-Dealer Bankruptcy—The Securities Investor	260
0	100		368
U	2	Private Remedies	369
8	131.	Arbitration of Disputes Involving Broker–Dealers	371
C	hant	er 15. Debt Securities and Protection of Bond-	
		nolders—The Trust Indenture Act of 1939	372
8		Trust Indenture Act of 1939; Overview; Exemptions	
_		Qualification Under the Trust Indenture Act	
_		Duties of Trustee When the Issuer Defaults	
		Enforcement; Remedies for Trustees' Breaches of	
2	TOO.	Duties	
		Duucs	010
\mathbb{C}	hapt	er 16. Federal Regulation of Investment Compa-	
	1	nies—The Investment Company Act of 1940	378
8	136.	The Investment Company Act of 1940: Background	
		and Scope	378
8	137.	The Relationship Between Investment Companies, In-	
0		vestment Advisers, and Underwriters	381
8	138.	The Definition of "Investment Company"; The Prob-	
U	9	lem of the Inadvertent Investment Company	382
8	139	Companies Covered by the Investment Company Act—	
O	100.	Statutory Definitions, Exemptions and Classification	383
8	140	Regulating the Distribution and Pricing of Investment	000
2	ITU.	Company Shares	384
8	1/1	Fiduciary Duties; Independent Investment Company	004
2	TTI.	Directors	300
2	119		000
3	144.	Transactions Between an Investment Company and	201
2	1 10	Affiliated Persons	394
8	145.	Registration and Disclosure Requirements; Civil Lia-	205
c	1 1 1	\mathcal{J}	395
8	144.	Limitations on Advisory Fees; Transfers of Control—	
		The "Sale" of Investment Advisory Contracts	397
C	hant	er 17. Investment Advisers Act of 1940	400
		Regulation of Investment Advisers; Terms and Condi-	100
3	110.	tions in Advisory Contracts	400
8	116	Who Is Subject to the Advisers Act—Definitions, Ex-	TUU
3	TTU.	clusions, and Exemptions	101
8	117	Investment Adviser Registration and Reporting Re-	TUI
3	141.		106
2	1/0	quirements	
3	140.	Prohibited Practices	400
C	hant	er 18. Related Laws	411
		Related Laws—Overview	

	Page		
§ 150. The Foreign Corrupt Practices Act	414		
§ 151. Securities Fraud and the Racketeer Influenced	and		
Corrupt Organizations Act (RICO)	415		
§ 152. The Intertwining of Financial Services: Commer	cial		
Banks, Investment Banking, and Investment S	Ser-		
vices	416		
§ 153. Derivatives Regulation Under the Commodity	Ex-		
change Act	416		
Appendix	422		
Table of Cases			
INDEX			