

**SECURITIES
REGULATION
CASES AND ANALYSIS**

FOURTH EDITION

**STEPHEN J. CHOI
A.C. PRITCHARD**

UNIVERSITY CASEBOOK SERIES®

SECURITIES REGULATION

CASES AND ANALYSIS

FOURTH EDITION

by

STEPHEN J. CHOI

Murray and Kathleen Bring Professor of Law
New York University School of Law

A.C. PRITCHARD

Frances and George Skestos Professor of Law
University of Michigan Law School

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To Un Kyung, Una, Sehan, and Sejin

Adam Pritchard
To Joan, Liza, and Ben

PREFACE

The United States enjoys the largest and best policed capital markets in the world. Since the Great Depression, the Securities and Exchange Commission ("SEC") has overseen the regulation of much of the securities markets, enforcing and interpreting the federal securities laws. Over this time period, the securities markets have seen great technological changes. And with these changes have come corresponding additions, reforms, and only rarely, subtractions, from the securities laws.

In revising for the fourth edition of *Securities Regulation: Cases and Analysis*, we have kept in mind the features that made the first two editions a success. We provide enough material for a three or four credit hour basic class in securities regulation offered at virtually every law school. The book is specifically not intended for more advanced classes in securities regulation. We have included only the topics covered in most basic classes, such as materiality, the definition of a security, public offerings, etc. Accordingly, some topics covered in other books, such as broker-dealer regulation and investment companies, are omitted. This allows us to produce a much shorter book than the average for the field without sacrificing depth of coverage for the topics that are included. Professors will find additional material relating to the book at our website, <http://www.choipritchard.com>.

Because securities regulation is constantly evolving, we start with the underlying business problem facing companies and investors. Each chapter begins with a brief essay laying out the economics of the subject of the chapter. Securities markets are all about money, so understanding the economic incentives of the various actors is essential to understanding the effects of the regulatory regime (and efforts to reform the regime). We have tried to present the economics in a way that appeals to common sense and intuition; we have scrupulously avoided bogging the book down with mathematical models and references to studies in finance journals. We also include in these discussions, and at various points throughout the book, insights from the field of behavioral law and economics.

The common sense approach is reinforced by organizing each chapter around a single "Motivating Hypothetical." The Motivating Hypothetical introduces a business, its principal officers, and a business problem or need. The scenario is chosen to be a typical situation that the students are likely to see in practice. We then present hypotheticals throughout the chapter that build on the Motivating Hypothetical. By relying on the Motivating Hypothetical throughout the chapter we avoid having to introduce a new set of facts for each of the hypotheticals. The hypotheticals challenge the students to apply the legal rules presented in the cases and materials and allow the professor to spend class time on a real-world problem, rather than simply going over the cases and statutes.

We also include questions in the introductory paragraphs that precede each of the cases. These questions are designed to focus the students on the main issue addressed by the case. We then include a series of questions after each of the cases to push the students to see the practical implications of the court's holding and reasoning. If you

can answer the questions and hypotheticals, you are doing a good job with your reading. In addition to the hypotheticals and questions, we also include Notes that cover topics not found in the cases and other primary materials. Interspersing the Notes with the primary materials allows us to present important points in a logical order and a concise fashion.

We make extensive use of charts and tables to present the material in away that crystallizes the most important points. Many areas in the securities laws, such as public offerings and resales, involve a number of statutes and regulations intersecting to create the operative legal regime. It is easy for students to get lost in the dense language of the statutes and regulations; it only becomes worse when the need arises to understand how the rules and regulations interact. Our graphic presentations help focus students on those interactions. The PowerPoint slides available to accompany the materials offer even more graphics to help students understand this sometimes daunting field.

Finally, we present the material in a different order than is used in most books. Most books, after some introductory material, present the securities laws in their historical sequence, i.e., first covering the Securities Act of 1933 and then turning to the Exchange Act of 1934. We have reversed the usual order, presenting the Exchange Act first, and leaving the Securities Act for later in the book. Our rationale for presenting the Exchange Act first is that the law is more inclusive. The Exchange Act applies to all public companies (indeed, it defines what a public company is) and its antifraud provisions apply to all disclosures made by those companies and their affiliates. The individual chapters generally stand on their own, however, so professors who prefer the more traditional order can easily adapt the book to their needs.

STEPHEN J. CHOI
A.C. PRITCHARD

February 2015

EDITORIAL NOTE AND ACKNOWLEDGMENTS

As with other casebooks, in our editing of the cases, we omit most footnotes and case and statute citations without indication. Footnote numbers in cases are as in the original, with no renumbering to take account of omitted footnotes.

We have many people to thank for helping with this book at various stages. We are particularly grateful to the many law professors and students who have made suggestions and pointed out errors. We also thank Dexter Eng, Meg Holzer, Alice Kim, Mario Mendolaro, Serena Palumbo, Elgun Pashazade, Braden Robinson, and Yaman Shukairy for their invaluable research and editorial assistance. Three others deserve special thanks for contributions above and beyond the call of duty. Sahar Kianfar was our tech wizard, designing both our PowerPoint slides and our website. Janis Horning showed remarkable patience in word processing through multiple revisions. Un Kyung Park provided constant editorial revisions (particularly to Choi's sometimes uneven prose). Finally, Pritchard acknowledges the generous support of the Elkes Fund for Faculty Excellence in the Law, which allowed him the release time to complete this book.

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We are lucky enough to have made it to a fourth edition of this book; we plan to do a fifth. We would be delighted to hear from our fellow securities regulation professors with any criticisms or suggestions. We will do our best to make the fifth edition better for both students and professors. We hope you enjoy the book.

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