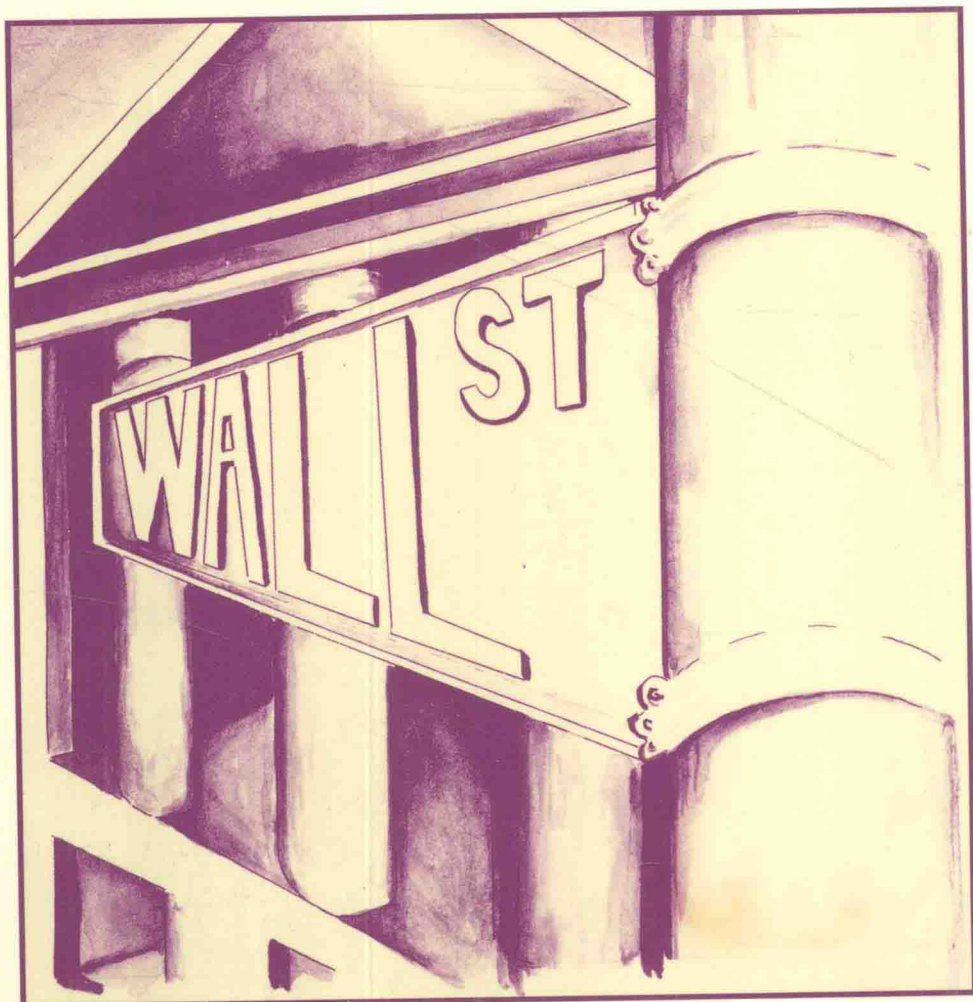


Securities Regulation

Sixth Edition

Alan R. Palmiter



EXAMPLES & EXPLANATIONS



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Securities Regulation

Sixth Edition

Alan R. Palmiter

Howard L. Oleck Professor of Business Law
Wake Forest University



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To Fabiola, my companion

Preface

Securities Regulation earns the perennial accolade of being among the toughest courses in law and business schools. This is not surprising. Its vocabulary is arcane and clubbish, its guiding principles nuanced and even contradictory, its structure convoluted and layered. Like the illusions of an M.C. Escher print, the subject flashes back and forth between two conceptual states—sometimes esoteric and sometimes mundane. The subject also builds on business and financial concepts that are new and mysterious to many students.

But for those who pass through its Byzantine gates, the study of Securities Regulation offers many rewards: solving the anagram of statutory definitions and substantive prohibitions; contemplating the majesty of the judge-made law of securities fraud; and discovering the many levels of public and private securities enforcement.

All these matters and more are within your grasp—with some practice, some trial and error. That is the idea of this “examples and explanations” book. Each chapter, after sketching the key concepts of U.S. securities regulation, offers you a chance to compare your responses to concrete examples with my explanations. You will discover it invigorating (and downright fun) to work through the securities statutes, to analyze the accompanying rules and interpretive case law, and then to arrive at the same answers as sophisticated securities practitioners.

January 2014

Alan R. Palmiter

Acknowledgments

I appreciate the intellectual curiosity and encouragement from my Wake Forest students, as well as students who have used the book in other schools. Their comments, questions, and insights continue to inspire this book.

I give special thanks to Sean Gannaway ('14) for his useful research and editorial help. He reviewed the content of the leading Securities Regulation casebooks and identified current topics and materials for insertion in this new edition. This was particularly challenging given the ongoing de-regulatory changes put into motion by the JOBS Act of 2012.

I am also grateful to the many colleagues — in law and business schools here and abroad—who have recommended the book to their students. In fact, a business school colleague's suggestion led me to discover the book also can serve as the text for a business school course!

Special Notice

Citation form. To reduce the distraction of citations, this book departs from standard citation form:

1. *Dates.* References to statutory sources and SEC rules are usually undated. All such references are to compilations as of 2013, unless a different date is given.
2. *Federal securities statutes.* The book abbreviates the references to the major federal securities acts by giving the section number of the act, but not the U.S. Code citation:
 - Securities Act of 1933, at 15 U.S.C. §§77a et seq.
 - Securities Exchange Act of 1934, at 15 U.S.C. §§78a et seq.
 - Investment Company Act of 1940, at 15 U.S.C. §§80a-1 et seq.
 - Investment Advisers Act of 1940, at 15 U.S.C. §§80b-1 et seq.

For example, section 15 of the Securities Exchange Act of 1934 is cited as “Exchange Act §15,” without a cross-citation to 15 U.S.C. §78o. In addition, the book refers frequently to three important legislative reforms—the Private Securities Litigation Reform Act of 1995 (cited as “PSLRA”), the Sarbanes-Oxley Act of 2002 (cited as “Sarbanes-Oxley”), the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (cited as “Dodd-Frank”), and the Jumpstart Our Business Startups Act of 2012 (cited as “JOBS Act”).

3. *SEC rules and regulations.* The book abbreviates the references to rules of the Securities and Exchange Commission by giving the rule number, but not the Code of Federal Regulations citation. Rules promulgated under the various federal securities acts can be found as follows:
 - Securities Act of 1933, at 17 C.F.R. Part 230
 - Securities Exchange Act of 1934, at 17 C.F.R. Part 240
 - Investment Company Act of 1940, at 17 C.F.R. Part 270
 - Investment Advisers Act of 1940, at 17 C.F.R. Part 275

The rules promulgated under the Securities Act are numbered sequentially from 100 to 1001, and are divided into various regulations. For example, Regulation D contains Rules 501-508,

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which can be found at 17 C.F.R. §§230.501-230.508. The rules promulgated under the Exchange Act are numbered according to the section of the Act under which they are promulgated. For example, Rule 10b-5 is the fifth rule promulgated pursuant to Exchange Act §10(b), and the rule can be found at 17 C.F.R. §240.10b-5.

4. *SEC regulations.* The book also abbreviates the references to SEC regulations, which can be found as follows:
 - Regulation S-X (Qualifications and Reports of Accountants), at 17 C.F.R. Part 210
 - Regulation Crowdfunding (General Rules and Regulations), at 17 C.F.R. Part 227
 - Regulation S-B (Integrated Disclosure System for Small Business Issuers), at 17 C.F.R. Part 228
 - Regulation S-K (Standard Instructions for Filing Forms), at 17 C.F.R. Part 229
 - Regulation M-A (Mergers and Acquisitions), at 17 C.F.R. §§229.1000 et seq.
 - Regulation S-T (Rules for Electronic Filings), at 17 C.F.R. Part 232
 - Regulation M (Anti-Manipulation Rules), at 17 C.F.R. §§242.100 et seq.
 - Regulation SHO (Short Sales), at 17 C.F.R. §§242.200 et seq.
 - Regulation ATS (Alternative Trading Systems), at 17 C.F.R. §§242.300 et seq.
 - Regulation AC (Analyst Certifications), at 17 C.F.R. §§242.500 et seq.
 - Regulation FD (Selective Disclosure), at 17 C.F.R. Part 243
 - Regulation G (Disclosure of Non-GAAP Financial Measures), at 17 C.F.R. Part 244
 - Regulation BTR (Blackout Trading Restrictions), at 17 C.F.R. Part 245
5. *SEC releases.* The book provides a basic citation (number and year) for SEC releases, which are reprinted in transfer binders of the *Federal Securities Law Reporter* (CCH), as well as on Westlaw and Lexis-Nexis.
6. *Case citations.* For state cases, the book cites only to the West regional reports. The book typically does not indicate subsequent case histories, such as *certiorari denied* or *remanded on other grounds*. For cases decided by the U.S. Supreme Court, the book cites to the “U.S.” reports or, when not yet available, to “Sup. Ct” reporter.

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Internet access. Most of the primary materials referred to in this book are now available online. The federal securities laws and SEC regulations/rules, as well as links to other useful sources, may be found at Securities Lawyer's Deskbook (published by the University of Cincinnati College of Law): taft.law.uc.edu/CCL.

SEC releases may be found on the SEC website: www.sec.gov/rules/final.shtml (final rules); www.sec.gov/rules/interp.shtml (interpretive releases); and www.sec.gov/rules/proposed.shtml (proposed rules).

Supreme Court decisions may be found at Legal Information Institute: www.law.cornell.edu/supremecourt/text/home.

Securities Regulation

EXAMPLES & EXPLANATIONS

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