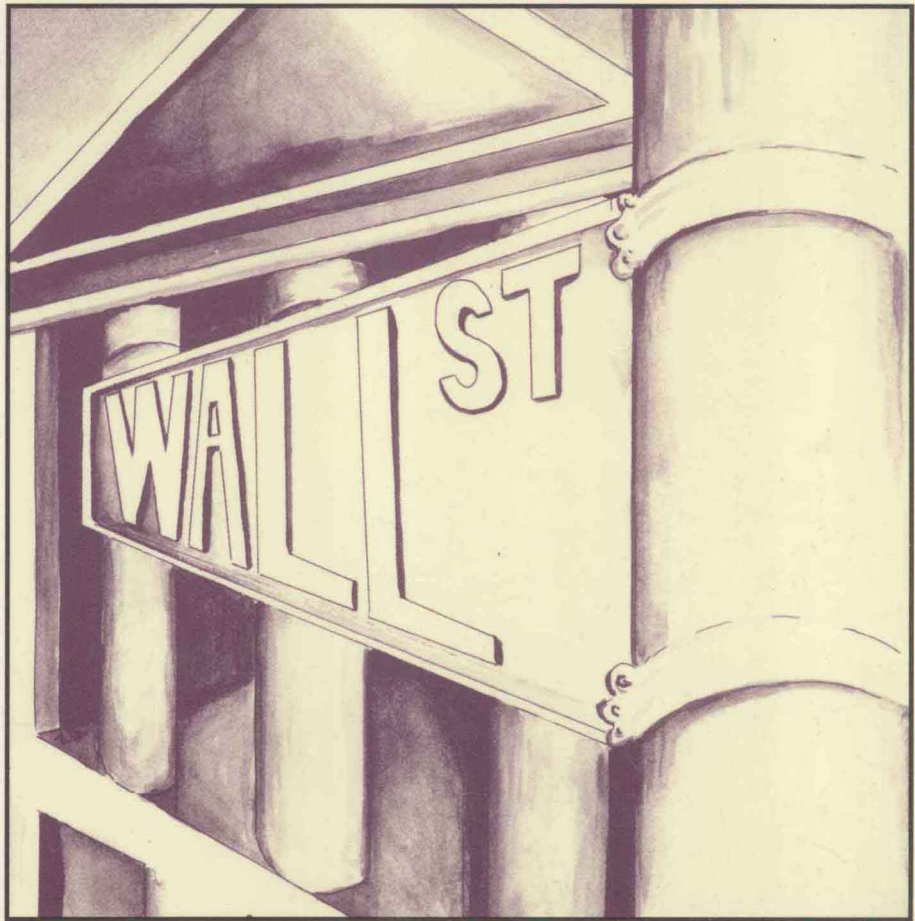


Securities Regulation

Third Edition

Alan R. Palmiter



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EXAMPLES & EXPLANATIONS

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To Fabiola, my companion

Preface

Securities regulation perennially earns the 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 illusionist distortions 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 economics 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 anagrammatic fit between statutory definitions and substantive prohibitions; contemplating the majesty of the judge-made laws regulating securities fraud; and discovering the many levels of private and public 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. After sketching the key concepts in the principal areas of U.S. securities regulation, each chapter 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 solutions as sophisticated securities practitioners.

February 2005

Alan R. Palmiter

Acknowledgments

I appreciate the intellectual curiosity and encouragement from my students in class, 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 Meredith Vivona ('04) for her outstanding research and editorial help on this new edition.

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 2004, 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, compiled at 15 U.S.C. §§77a et seq.
 - Securities Exchange Act of 1934, compiled at 15 U.S.C. §§78a et seq.
 - Investment Company Act of 1940, compiled at 15 U.S.C. §§80a-1 et seq.
 - Investment Advisers Act of 1940, compiled 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 two recent legislative reforms—the Private Securities Litigation Reform Act of 1995 (cited as “PSLRA”) and the Sarbanes-Oxley Act of 2002 (cited as “SOA”).

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 federal securities acts can be found as follows:
 - Securities Act of 1933, at 17 C.F.R. §§230._____
 - Securities Exchange Act of 1934, at 17 C.F.R. §§240._____
 - Investment Company Act of 1940, at 17 C.F.R. §§270._____
 - Investment Advisers Act of 1940, at 17 C.F.R. §§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, 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. §§210.__
 - Regulation S-K (Standard Instructions for Filing Forms), at 17 C.F.R. §§229.__
 - Regulation M (Anti-Manipulation Rules), at 17 C.F.R. §§242.100-105
 - Regulation F-D (Selective Disclosure), at 17 C.F.R. §§243.100-103
 - Regulation G (Disclosure of Non-GAAP Financial Measures), at 17 C.F.R. §§244.100-102
 - Regulation ATS (Alternative Trading Systems), at 17 C.F.R. §§244.300-303
 - Regulation AC (Analyst Certifications), at 17 C.F.R. §§244.500-505
 - Regulation BTR (Blackout Trading Restrictions), at 17 C.F.R. §§245.100-104
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 only to the “U.S.” reports.

Online materials. The federal securities statutes, rules, and regulations (as well as many recent SEC releases) are available online at the SEC’s website <www.sec.gov> and on an excellent online resource, the “Securities Lawyer’s Deskbook” published by the University of Cincinnati College of Law <www.law.uc.edu/CCL/index.html>.

Website updates. This book went to press in December 2004. Securities regulation, predictably, will change. To keep up with developments, I plan to post updates at

www.wfu.edu/~palmitar/Books/SRegE&E/

**SECURITIES
REGULATION**

Examples and Explanations

Summary of Contents

<i>Contents</i>	xi
<i>Preface</i>	xix
<i>Acknowledgments</i>	xxi
<i>Special Notice</i>	xxiii
Chapter 1. Introduction to Securities Markets and Regulation	1
Chapter 2. Definition of Security	39
Chapter 3. Materiality	69
Chapter 4. Registration of Securities Offerings	97
Chapter 5. Exemptions from Securities Act Registration	147
Chapter 6. Securities Act Liability	189
Chapter 7. Secondary and Other Postoffering Distributions	231
Chapter 8. Securities Exchange Act of 1934	261
Chapter 9. Rule 10b-5	305
Chapter 10. Insider Trading	357
Chapter 11. Regulation of Securities Industry	401
Chapter 12. Public Enforcement	433
Chapter 13. U.S. Regulation of Cross-Border Securities Transactions	469
 <i>Table of Cases</i>	 509
<i>Index</i>	513

Contents

<i>Preface</i>	xix
<i>Acknowledgments</i>	xxi
<i>Special Notice</i>	xxiii
Chapter 1. Introduction to Securities Markets and Regulation	1
§1.1 Securities Markets and Participants	1
§1.1.1 Primary and Secondary Markets	1
§1.1.2 Functions of Securities Markets	3
§1.1.3 Participants in Securities Markets	4
§1.1.4 Interconnection among Financial Markets	6
§1.1.5 New Technologies	7
Examples and Explanations	8
§1.2 Efficiency of Public Stock Markets	13
Examples and Explanations	15
§1.3 Federal Securities Regulation—Overview	19
§1.3.1 Securities Act of 1933	19
§1.3.2 Securities Exchange Act of 1934	20
§1.3.3 Specialized Securities Laws	22
§1.3.4 Sarbanes-Oxley Act of 2002	23
§1.3.5 Securities and Exchange Commission	28
§1.3.6 Evaluation of Mandatory Disclosure	32
§1.4 State Securities Regulation—State Blue Sky Laws	34
§1.5 SEC Exemptive Power	36
Chapter 2. Definition of Security	39
§2.1 Implications of Definition	40
§2.2 Testing for a “Security”	40
§2.2.1 Investment Contracts—The Howey Test	41
§2.2.2 Risk Capital Test	42
§2.3 “Securities” in Varying Contexts	42
§2.3.1 Real Estate as Securities	43
§2.3.2 Business Interests as Securities	43
§2.3.3 Pension Plans as Securities	45
§2.3.4 Notes as Securities	46

§2.3.5	Bank Instruments as Securities	49
§2.3.6	“Stock” as Security	51
	Examples and Explanations	52
Chapter 3.	Materiality	69
§3.1	Definition of Materiality	69
§3.1.1	“Substantial Likelihood” Test	70
§3.1.2	Who Is a Reasonable Investor?	70
§3.1.3	Relationship of Materiality and Duty to Disclose	71
§3.2	Materiality—Types of Information	72
§3.2.1	Historic Information	72
§3.2.2	Speculative Information	73
§3.2.3	“Soft Information”	74
§3.2.4	Information About Management Integrity	77
§3.2.5	Environmental Disclosure	78
§3.3	Materiality in Context: “Total Mix” of Information	79
§3.3.1	“Total Mix” Test	79
§3.3.2	Safe Harbors for Forward-Looking Statements	80
	Examples and Explanations	84
Chapter 4.	Registration of Securities Offerings	97
§4.1	Distribution of Securities to Public Investors	97
§4.1.1	Types of Public Offerings	97
§4.1.2	Pricing and Commissions in a Public Offering	99
§4.1.3	Documentation in a Public Offering	102
	Examples and Explanations	103
§4.2	Registration of Public Offerings	108
§4.2.1	Section 5: The Heart of the Securities Act	109
§4.2.2	Contents of Registration Statement	110
§4.2.3	Preparation of Registration Statement	111
§4.2.4	SEC Review and Effectiveness of the Registration Statement	112
§4.2.5	Purchases during Registration	114
§4.2.6	State Regulation of Public Offerings	115
	Examples and Explanations	118
§4.3	Managed Disclosure during Registration — “Gun-Jumping”	125
§4.3.1	Prefiling Period	127
§4.3.2	Waiting Period	129
§4.3.3	Posteffective Period	132
	Examples and Explanations	135
Chapter 5.	Exemptions from Securities Act Registration	147
§5.1	Exempt Securities	148
§5.2	Transaction Exemptions	149

§5.2.1	Intrastate Offerings	151
§5.2.2	Private Placements	153
§5.2.3	Small Offerings	155
§5.2.4	Regulation D	157
§5.2.5	Issuer Exchanges	162
§5.3	State Blue Sky Exemptions	162
	Examples and Explanations	165
Chapter 6.	Securities Act Liability	189
§6.1	Common Law of Misrepresentation	190
§6.1.1	Common Law Deceit	190
§6.1.2	Equitable Rescission	191
§6.2	Section 12(a)(1): Violations of §5	192
§6.2.1	Strict Liability	192
§6.2.2	“Statutory Sellers”	193
§6.2.3	Limitations Period	194
§6.3	Section 11: Misrepresentations in Registration Statement	194
§6.3.1	Section 11 Plaintiffs	194
§6.3.2	Section 11 Defendants	195
§6.3.3	Material Misinformation in Registration Statement	196
§6.3.4	Culpability—Defenses and Limitations on Liability	196
§6.3.5	Reliance	201
§6.3.6	Loss Causation	201
§6.3.7	Damages	202
§6.3.8	Periods of Limitations and Repose	202
§6.4	Section 12(a)(2): Misrepresentations in “Public” Offerings	203
§6.4.1	Coverage	203
§6.4.2	Section 12(a)(2) Defendants	205
§6.4.3	Elements of §12(a)(2) Rescission Action	205
§6.4.4	Periods of Limitations and Repose	207
§6.5	Section 15: Liability of Control Persons	207
§6.6	Fraud Liability under State Blue Sky Laws	207
	Examples and Explanations	210
Chapter 7.	Secondary and Other Postoffering Distributions	231
§7.1	The §4(1) Exemption: Transactions by Issuers, Underwriters, and Dealers	233
§7.1.1	Agent “for Issuer”	235
§7.1.2	Purchaser from Issuer “with a View” to Distribute	236
§7.1.3	Underwriter for “Control Person”	237
§7.2	Exemptions: Transactions Not Involving an “Issuer, Underwriter, or Dealer”	238

§7.2.1	Rule 144: Secondary Distributions in Public Markets	239
§7.2.2	Exemptions for Secondary Private Placements	241
§7.3	Corporate Reorganizations and Recapitalizations	243
§7.3.1	Issuer Exchanges	243
§7.3.2	Fundamental Corporate Transactions—Rule 145	243
§7.3.3	Downstream Sales and Spinoffs	244
§7.3.4	Warrants, Options, and Conversion Privileges	245
§7.4	Resales under Blue Sky Laws	245
	Examples and Explanations	247
Chapter 8.	Securities Exchange Act of 1934	261
§8.1	Regulation of Securities Trading Markets	263
§8.1.1	Regulation of Stock Exchanges	263
§8.1.2	Regulation of Over-the-Counter Market	265
§8.1.3	Regulation of Collateral Market Participants	266
§8.2	Regulation of Abusive Market Practices	266
§8.2.1	Market Manipulation	266
§8.2.2	Short Selling	268
§8.2.3	Purchasing Securities on Margin	270
§8.3	Regulation of Public Companies	270
§8.3.1	Registration with the SEC	271
§8.3.2	Periodic Disclosure	272
§8.3.3	False or Misleading SEC Filings	276
§8.3.4	Oversight of Corporate Misconduct	276
§8.3.5	Solicitation of Proxies (a Summary)	282
§8.3.6	Tender Offers and Control Changes (a Summary)	284
	Examples and Explanations	287
Chapter 9.	Rule 10b-5	305
§9.1	Rule 10b-5 Overview	305
§9.1.1	History of Rule 10b-5	305
§9.1.2	Some Essential 10b-5 Pointers	306
§9.1.3	Private 10b-5 Actions and SEC Enforcement	308
§9.1.4	Typical 10b-5 Cases	309
§9.2	Scope of Private 10b-5 Action	310
§9.2.1	Purchasers and Sellers: 10b-5 Standing	311
§9.2.2	Primary Violators: 10b-5 Defendants	312
§9.2.3	Fraud “in Connection with” Securities Transactions	314

§9.3	Fraud Elements of Private 10b-5 Action	316
§9.3.1	Material Deception	316
§9.3.2	Scienter — “Manipulative or Deceptive Device or Contrivance”	320
§9.3.3	Reliance and Causation	323
§9.3.4	Damages	325
§9.3.5	Nature of 10b-5 Liability	329
§9.4	Defenses in Private 10b-5 Action	330
§9.4.1	Limitations and Repose Periods	330
§9.4.2	In Pari Delicto Defense	331
§9.4.3	Contribution and Indemnification	332
§9.4.4	Contract Defenses	333
§9.5	Comparison to Other Securities Fraud Remedies	334
§9.5.1	Express Federal Remedies for Securities Fraud	334
§9.5.2	State Law Remedies	336
§9.5.3	Racketeer Influenced and Corrupt Organizations Act (Private RICO)	337
§9.5.4	Arbitration and Private Ordering	340
	Examples and Explanations	341
Chapter 10.	Insider Trading	357
§10.1	Introduction to Insider Trading	358
§10.1.1	Classic Insider Trading	358
§10.1.2	Misappropriation of Information—Outsider Trading	358
§10.1.3	Theories for Regulation of Insider Trading	358
§10.2	Rule 10b-5 and Insider Trading	360
§10.2.1	Duty to “Abstain or Disclose”	360
§10.2.2	Insider Trading Rules	364
§10.2.3	Outsider Trading—Misappropriation Liability	365
§10.2.4	Remedies for Insider Trading	369
§10.2.5	Regulation FD and Selective Disclosure	371
	Examples and Explanations	373
§10.3	Short-Swing Insider Profits: Disclosure and Disgorgement	383
§10.3.1	Coverage of §16	383
§10.3.2	Disgorging Short-Swing Profits—Mechanical Test	384
§10.3.3	Special Interpretive Issues	386
§10.3.4	Section 16(b) Litigation	389
§10.4	Sarbanes-Oxley Regulation of Insider Trading	390
§10.4.1	Insider Trading during Pension Plan Trading Blackout	390

§10.4.2	Incentive Pay and Insider Trading While Financials Misstated	391
	Examples and Explanations	393
Chapter 11.	Regulation of Securities Industry	401
§11.1	Capacities of Securities Professionals	402
§11.2	Broker-Dealer Regulation	402
§11.2.1	SEC and NASD Supervision	403
§11.2.2	Regulation in Public Offerings	404
§11.2.3	Disclosure Responsibilities	406
§11.2.4	Standards of Conduct	407
§11.2.5	Enforcement of Customer Rights	415
§11.2.6	Insurance of Customer Accounts	417
§11.2.7	State Blue Sky Regulation	417
§11.3	Investment Adviser Regulation	418
§11.3.1	Definition of Investment Adviser	418
§11.3.2	Federal Regulation of Investment Advisers	418
§11.3.3	State Blue Sky Regulation	420
	Examples and Explanations	420
Chapter 12.	Public Enforcement	433
§12.1	SEC Investigations	433
§12.1.1	Investigations: Formal and Informal	434
§12.1.2	Investigative Powers	435
§12.2	SEC Administrative Enforcement	436
§12.2.1	SEC Administrative Enforcement Powers	437
§12.2.2	SEC Disciplinary Powers	438
§12.2.3	SEC Settlements and Consent Decrees	439
§12.3	Judicial Enforcement: Injunctions and Other Remedies	440
§12.3.1	Standard for Relief	440
§12.3.2	Types of Relief	441
§12.3.3	Effect of Injunction	442
§12.3.4	Modification or Dissolution of SEC Injunctions	443
§12.3.5	Statute of Limitations	443
§12.4	Enforcement against Securities Professionals	444
§12.4.1	SEC Rules of Practice	444
§12.4.2	Accountant Discipline	445
§12.4.3	Lawyer Discipline	447
§12.4.4	Reporting "Up the Ladder"	448
§12.5	Criminal Enforcement	451
§12.5.1	Use of Criminal Law in Securities Enforcement	451
§12.5.2	Criminal Violations of Federal Securities Law	452

§12.5.3	Securities Activities Creating Criminal Liability	452
§12.5.4	Non-securities Criminal Law Applied to Securities Activities	455
§12.5.5	Sentencing of Individual and Corporate Offenders	457
§12.5.6	Parallel Enforcement	459
§12.6	State Enforcement	461
§12.6.1	New York's Martin Act	461
§12.6.2	Enforcement Actions against Securities Firms	462
	Examples and Explanations	463
Chapter 13.	U.S. Regulation of Cross-Border Securities Transactions	469
§13.1	Offshore Offerings by U.S. Issuers (and Foreign Issuers)	469
§13.1.1	A Regulatory Dilemma	470
§13.1.2	SEC Safe Harbors—Regulation S	470
	Examples and Explanations	476
§13.2	Foreign Securities in the United States	484
§13.2.1	Public Offerings of Foreign Securities	485
§13.2.2	American Depositary Receipts (ADRs)	486
§13.2.3	Private Placements and Rule 144A	488
§13.2.4	Disclosure Requirements for Foreign Issuers	489
	Examples and Explanations	491
§13.3	Extraterritorial Reach of U.S. Securities Laws	496
§13.3.1	Securities Fraud Litigation	497
§13.3.2	SEC Enforcement	499
	Examples and Explanations	502
	<i>Table of Cases</i>	509
	<i>Index</i>	513