



SECURITIES REGULATION



REVISED FIFTH EDITION

Marc I. Steinberg



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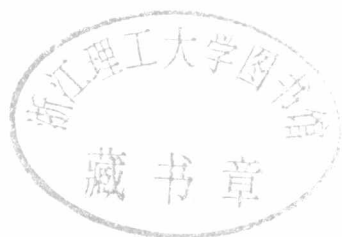
Revised Fifth Edition

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ISBN: 978-1-4224-7047-3

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www.lexisnexis.com

MATTHEW  BENDER

(2008-Pub.648)

Acknowledgments—Fifth Edition

I thank the SMU Dedman School of Law for supporting this project. The Law School graciously provided me with a Summer Research Grant in connection with this Fifth Edition. My gratitude is expressed to Dean John B. Attanasio and my administrative assistant, Ms. Jan Spann. The strong support I receive from this superb law school is truly appreciated by me.

I also thank my good friend Ralph Janvey, a superb securities law practitioner and adjunct professor at the Law School, for his assistance.

I dedicate this Fifth Edition to my terrific Uncle, Irving Steinberg, in honor of his 90th birthday on May 6, 2008. Uncle Irv, the younger brother of my Dad, Gerry Steinberg, honorably served our country as a Major during World War II, being awarded a Bronze Star at the Battle of the Bulge. He and my Dad were “best friends” and business partners for nearly fifty years. Dedicating this Fifth Edition to you, Uncle Irv, is a way for me to say thanks for being a wonderful uncle to our family and personally to me.

Acknowledgments—Fourth Edition

It has been nearly twenty years since the First Edition of this textbook was published. Much has happened in securities regulation, in the world, and in my life—Thank God, mostly for the better.

I thank Dean John B. Attanasio and the SMU Dedman School of Law. The strong support I receive from this superb law school is truly appreciated by me. I wish to extend my gratitude for the Summer Research Grant awarded for this project. I also extend my appreciation to Ms. Jan Spann for her excellent secretarial assistance.

I dedicate the Fourth Edition to my terrific Dad, Gerry Steinberg, in honor of his 90th birthday on March 3, 2004. I am blessed to have such a wonderful, kind, and supportive father. Dad, this is dedicated to you with all my love.

Acknowledgments—Third Edition

I thank the SMU School of Law for supporting this project. The Law School graciously provided me with Summer Research Grants in connection with this Third Edition.

As with the Second Edition, I extend my appreciation to Ms. Kathleen Vaughan for her expert assistance. I also thank my colleagues and good friends on the SMU Law Faculty who have been instrumental in enabling me to enjoy my relationship with this fine school. In particular, I wish to dedicate this book to a few of my very special friends in Dallas who I am lucky to have in my life: Laurie Beth Dodic, Roy Anderson, Alan Bromberg, Tim Davis, Robert Feiger, Chris Hanna, Linda and Jim Hobbs, Ralph Janvey, George Martinez, Joe Norton, Doug Ramsey, Henry Rosen, Wayne Secore, and Bob Wise.

Acknowledgments—Second Edition

I wish to thank the SMU School of Law and its Dean, Paul Rogers, for supporting this project. My gratitude is also extended to Ms. Kathleen Vaughan for her expert assistance as well as to my former research assistants Elizabeth Farrell, Esq. and Daryl Lansdale, Esq. for their help. I also thank Ralph Janvey, Esq. for his input.

It is fitting that I dedicate this Second Edition to one of the individuals for whom the First Edition was dedicated—Judge Stanley N. Barnes (of the U.S. Court of Appeals for the Ninth Circuit) who passed away in 1990. I had the privilege of clerking for Judge Barnes. He was a great man and I am lucky that our paths crossed. Judge Barnes perhaps was the most successful person I have ever known—a fine judge (trial and appellate), an Assistant Attorney General of the United States, a superb trial attorney, a member of the National Collegiate Football Hall of Fame (he was an All-American on the “Cal Wonder Team”), National President of his fraternity, Sigma Chi, an avid traveler with an impressive anthropological mask collection, an active bridge player and stamp collector, a giver of his time to worthwhile causes, including the Los Angeles Orthopaedic Hospital for Children, and a dedicated family man. Judge Barnes taught me that a person can be very successful at his or her career while actively pursuing other objectives and joys. To all this, Judge Barnes would probably say: “My good friend Earl Warren said, ‘compliments to me is like water running down a duck’s back but the duck likes it.’ ”

Acknowledgments—First Edition

I owe many thanks to several individuals for helping to make this project a reality. Foremost, I thank Professor Alan Bromberg, an outstanding academician and individual, who generously supported my proposal when it was in a very formative stage. I also extend my gratitude to Richard Adin, Esq., who expertly served as the Matthew Bender editor for this project. In addition, I particularly thank Professor Mark Sargent for his insightful comments which were of tremendous assistance.

The University of Maryland School of Law deserves my special thanks. I express my deep appreciation to Dean Michael Kelly, one of this country's great law school deans, for his continual strong support. My research assistants, many of whom now are practicing attorneys, performed admirably to ease my task in completing this project. I thank Jennifer Crabb, Esq., Robin Goldman, Esq., Jeff Hines, Esq., Joan Karasinski, Esq., Dawn Lettman, Esq., and Greg Neville, Esq. for their invaluable assistance. I also thank Peter Brennan, Esq., Elizabeth Jacobs, Esq., and Bruce Mendelsohn, Esq. for their help.

I also benefitted from receiving excellent typing and other technological assistance. I especially thank Ms. Lu Ann Marshall for her expert typing of the great bulk of the manuscript. My thanks also to Mrs. Ann Garrett, Mrs. Laura Mrozek, Mrs. Helen Ramia, and Mrs. Frieda Whitney for their help. Also, I thank Dean Linda McDonnell for her assistance throughout this project.

I dedicate this book to certain individuals who have been generous to me in their encouragement, support, and guidance. In particular, I dedicate this book: To my parents, Gerald and Phyllis Steinberg; my sister and brother-in-law, Nancy and Bob Gossman; my grandmothers, Anne Marblestone and Belle Steinberg; and my cousin, David Steinberg, for their love and constant support; to Judge Stanley N. Barnes and Judge Anthony J. Celebrezze who provided me with the opportunity to serve as one of their law clerks; to Senator Robert P. Griffin who offered me perhaps the most exciting job a young lawyer could have, being legislative counsel to a U.S. Senator; to Judge Stanley Sporkin, who was kind enough to hire me as an enforcement attorney at the Securities and Exchange Commission; to Ralph C. Ferrara, Esq., former SEC General Counsel, with whom I had the pleasure of working at the SEC; to Dean Jerome Barron who offered me my first full-time teaching job; to Dean Michael Kelly who helps make my being at the Maryland Law School a pleasure; to Deans Murray Schwartz, William Warren, and Susan Westerberg Prager, and the faculty of the UCLA Law School for their support throughout the years; to Professors Ted Fiflis, Bill Reynolds, Stan Siegel, Lew Solomon, and Greg Young for their wise counsel; and to some very good friends, Howard Bartnick, Peter Brennan, Sam Gruenbaum, Fred Jacobs, Jeff and Judy Karr, John Koneck, Cliff Losh, Barry Quinn, Ben Rosenberg, Jerry Rosen and Liz Hardy, Jim Singer, Richard Starr, Richard Wasserstrom, and Lloyd and Kris Zemmol, for being good friends.

Foreword

The developments in securities regulation during the past several years have been multifaceted. A text for a course on this subject should therefore not only present the basic theories and principles but also should: (1) present the material in a manner that reflects the current trends and developments; (2) encompass timely additional material, including law review commentary and SEC releases; and (3) make the material as interesting as possible, given that the class will be comprised of upper-level students who are anxious for creative and practical “lawyering.” With these thoughts in focus, the text is organized and directed towards a number of different perspectives. For example:

(1) The Securities and Exchange Commission, through rulemaking, has integrated the Securities Act of 1933 with the Securities Exchange Act of 1934. From the standpoint of applicable disclosure obligations, both in the primary and secondary markets, the integration concept has a tremendous impact. Moreover, grave liability concerns are raised in this context.

(2) The Supreme Court and the lower federal courts have been extremely active in the securities law area. Supreme Court decisions during this era generally reflect a trend towards restricting the scope of the securities laws. The lower federal courts, however, have not necessarily followed the High Court’s restrictive approach.

(3) The Private Securities Litigation Reform Act, enacted by Congress in 1995, reflects a trend towards facilitating capital formation and the conducting of business, with private litigation viewed frequently as an undue impediment.

(4) The SEC continues to facilitate capital formation through its rulemaking process in both the private and public offering settings, including major revisions in 2005, 2007, and 2008.

(5) The Sarbanes-Oxley Act of 2002 federalizes key aspects of corporate governance and sets forth new obligations for corporate insiders as well as professionals, including accountants and legal counsel.

(6) There is the role of counsel as adviser and planner which is the principal function of the securities lawyer. In connection therewith, the attorney and his or her client may have conflict-of-interest dilemmas, disclosure duties, and the apprehension of SEC enforcement action. This apprehension is magnified in view of the Sarbanes-Oxley Act.

(7) During the past several years, there have surfaced a number of intriguing issues, some of which directly impact on traditional securities regulation. For example, we have seen courts seeking to distinguish primary from secondary liability and a renewed interest in state securities regulation.

The coverage of the text is designed for both the basic securities regulation course and advanced seminars. The text covers the traditional issues as well as the developing areas. Subjects that receive extensive treatment include: definition of a security, exemptions from registration, the registration process, Sarbanes-Oxley, the policy debate underlying disclosure, resales (including SEC Rule 144), due diligence (including the integrated disclosure framework), disclosure obligations in a myriad of contexts, regulation of the securities markets, international securities developments including global offerings, remedies and liabilities under both federal and state securities law, broker-dealer regulation, corporate control transactions and contests, attorney professional responsibility, SEC enforcement, and “Blue Sky” regulation.

Foreword

The objective of the text is to treat the above subjects in a comprehensive, understandable, yet intellectually-challenging manner, seeking to combine both the theoretical and practical in this complex subject area. While the case method is employed, it is by no means exclusive. In addition to case law, the text includes other relevant material such as SEC releases and scholarly commentary. Moreover, the problem method is extensively used. This method is particularly suitable for a “practical” course where upper level students are seeking to do some “lawyering.” Thus, it is hoped that the text will stimulate intellectual discussion, and, at the same time, provide students who await either a sophisticated securities or, alternatively, a general business practice with much needed practical analyses and skills.

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