

# SECURITIES REGULATION

SIXTH EDITION

LARRY D. SODERQUIST

THERESA A. GABALDON

FOUNDATION PRESS

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# SECURITIES REGULATION

SIXTH EDITION

*by*

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*In Memorium*

*Larry D. Soderquist*

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*For Bob and Will, with thanks.*

*T.A.G.*

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## PREFACE

Each chapter save the first features one or more situations involving a hypothetical client. These situations are designed to place the chapter's materials in a context that students can understand and to stimulate students' thought as they prepare assignments. Teachers who wish to use the situations in class will find they provide substantial raw material for discussion. The book does not force a particular teaching method, however, and the situations can be left to the students' own consideration if a teacher desires.

One basic idea behind the book is that securities law is inextricably bound up with business transactions, making it difficult to learn securities law outside the context of these transactions. For example, to understand the concept of "offer" one must first understand the kinds of activities that issuers, underwriters, and dealers engage in when doing an offering. This may be obvious. Less obvious, but also true, is that unless students are presented with a discrete context, those without a business background are likely to feel undue anxiety about their ability to handle the securities law course. The situations included in the book are designed to provide a sufficient and understandable context that will give students confidence.

A second idea behind the book is that the various areas of securities law tend to be practiced from one of two viewpoints: prospective or retrospective. For example, in the securities registration area, the lawyer usually works as a planner, viewing transactions prospectively. He or she takes the law as a given and structures transactions around it. On the other hand, the liability areas tend to be more the bailiwick of the litigator. Transactions the litigator is concerned with are in the past, so his or her job is to structure the law, by analysis and argument, so as to fit facts that are viewed retrospectively. Depending on which mode the securities lawyer is operating in, he or she will view the law in different ways. For instance, whether a particular statement by a court is dictum may be important to the litigator, but virtually irrelevant to the planner. The litigator does not mind working in the vanguard, but the lawyer operating as planner wishes to take no avoidable chance of running afoul of the law. With these differences in mind, it seems helpful to have students approach various areas of the securities law course from one or the other of these viewpoints. The situations accomplish this by placing students, before they have begun studying a particular area, in the midst of a factual situation that encourages them to approach the area in one or the other of the two modes.

The book is organized in a straightforward way. After a general introductory chapter, the beginning chapters focus on the Securities Act and later chapters on the Exchange Act, with additional chapters on issues in securities law litigation, on the special responsibilities of securities lawyers, on the state regulation of securities, and on international aspects of securities regulation.

Larry Soderquist, the founding author of this book, and I tried to present material in a sequence that has later materials building on earlier. By this sequencing, and by the choice of materials and their editing, we attempted to avoid throwing students in over their heads. Also, we included a fair amount of explanatory material. This material is along the lines of what might be called written tutorials. It is designed to take the students through a particular area, for example Section 5 of the Securities Act, in the same sort of way one might in a tutorial or, for that matter, in the same way an experienced lawyer might in the course of training a new lawyer.

The book includes two appendices. Appendix A provides an overview of source materials that students may find useful in conducting further securities research. Appendix B contains a registration statement, the cover page of a final prospectus, and a set of underwriting agreements used by IDG Books Worldwide, Inc. and its underwriters in a Securities Act registration. These documents should be helpful references, and reflect the "plain English" approach to disclosure documentation.

Citations of authority and references of various sorts, along with footnotes, have been omitted from the readings in the book, except where inclusion, or partial inclusion, has served a specific purpose, and the footnotes that have been included have been renumbered. These deletions, the modification of some descriptive headings of Securities and Exchange Commission releases, the correction of typographical errors, and a few miscellaneous deletions and revisions of a minor nature have not been indicated, but other editorial changes in the readings have been.

Thanks are owed to Elizabeth R. Flint and her firm, Wilson Sonsini Goodrich & Rosati, as well as Morgan Stanley Dean Witter, for providing the documents contained in Appendix B and the tombstone advertisement appearing in Chapter 3. I am grateful also to the various copyright holders who have allowed us to reprint material by other authors. I want to thank the Practising Law Institute for allowing us to use material from Larry Soderquist's book, *Understanding the Securities Laws*, which is published by them. I want to express our appreciation to the many students who in diverse ways provided helpful assistance, including a number of very able research assistants. I also wish to acknowledge and thank Ms. Toni Foncette and Ms. Jameka Roberts for going above and beyond in the preparation of the manuscript.

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Most importantly, I want to express my deep gratitude to Larry Soderquist, who generously involved me in the authorship of this book, and without whose efforts and insights the book would never have existed. Larry's death last summer has left a void that cannot be filled.

THERESA A. GABALDON

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# SECURITIES REGULATION

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