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FUNDAMENTALS OF SECURITIES REGULATION

Fifth Edition

2009 Supplement

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Wolters Kluwer
Law & Business

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Fundamentals of Securities Regulation, Fifth Edition

by Louis Loss, Joel Seligman and Troy Paredes

Fundamentals of Securities Regulation is a concise one-volume treatise that provides essential information covering a wide array of topics concerning securities law. This compendium reviews the most significant aspects of securities regulation.

The Fifth Edition of *Fundamentals of Securities Regulation* incorporates the statutory changes provided by the Sarbanes-Oxley Act, officially codified as The Public Company Accounting Reform and Corparate Responsibility, including the creation of the new Public Company Accounting Oversight Board and new Section 15D, which addresses Securities Analysts and Research Reports. The Sarbanes-Oxley Act also has led to substantial changes in the federal securities rules and regulations.

2009 Cumulative Supplement Highlights

New legislative, regulatory, and case law developments are analyzed in the 2009 Cumulative Supplement.

Highlights include:

- SEC's announcement of the creation of a new Office of Interactive Disclosure (Chapter 1, §F.2).

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- SEC's adoption of Form S-11 amendments to permit historical incorporation by reference (Chapter 2, §D.1).
- SEC's adoption of amendments to the eligibility requirements for Forms S-3 and F-3 for private offerings (Chapter 2, §D.1).
- SEC adoption of rule amendments terminating the requirement that foreign private issuers using IFRS as issued by the IASB reconcile their financial statements to U.S. GAAP and the SEC's steps for implementing mutual recognition (Chapter 2, §E.2.a).
- SEC's adoption of new rules permitting termination of a foreign private issuer's registration of a class of securities under §12(g) of the Exchange Act and the duty to file reports under the Exchange Act (Chapter 2, §E.2.b).
- SEC's adoption of a number of regulatory changes intended to relieve the regulatory burden on smaller reporting companies and to afford smaller companies regulatory simplification (Chapter 3, §C.5.a).
- SEC's adoption of amendments in 2008 to require, among other things, the electronic filing of Form D and to amend Form D itself in various respects. (Chapter 3, §C.6.b.(v)).
- SEC's addition of Rules 12h-1(f) and (g) to exempt (1) stock options under written compensation stock option plans that are not required to file periodic reports under the 1934 Act and (2) stock options that are issued under written compensation plans when the issuer has an equity security underlying the stock options that is registered under §15(d) (Chapter 6, §A.4.c).
- SEC's adoption of amendments to Rule 14a-8(i)(8) and future proposals to amend the rule in light of the Second Circuit's decision in *American Fed. of State, County & Mun. Employees v. American Int'l Group, Inc.* (Chapter 6, §C.2.c).

- Adoption of final rules by the SEC and Federal Reserve Board to implement the broker exceptions for banks relating to third-party networking arrangements, trust and fiduciary activities, sweep activities, and custody and safekeeping activities (Chapter 8, §A.3.d).

- An overview of LRN-Rand Center for Corporate Ethics, Law and Governance study, which was published to provide the SEC with a factual description of the current state of the investment advisor and brokerage industries for the SEC's evaluation of the legal and regulatory environment concerning investment professionals (Chapter 8, §C.2.b.(iv)).

- Discussion of the United States Supreme Court decision *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.* (Chapter 11, §C.4.a; §D.1.c).

This cumulative supplement contains an updated Table of Cases.

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PREFACE

Recent publication of a Fourth Edition of *Securities Regulation* began with a new coauthor, Troy Paredes. Troy also will be the coauthor of *Fundamentals of Securities Regulation*, beginning with the 2007 Annual Supplement. For me there is an extraordinary significance to this continuity. Louis Loss started Yale Law School in 1934, the year the Securities and Exchange Commission itself began. He started a 15 year career at the Commission in 1937. His career and scholarship stretch back to the very dawn of modern securities regulation. When I began work with Louis as coauthor in 1984, I was very much his junior and benefited immensely from the chance to learn from the master in the field. He remarked to me more than once that our interest in codification and in treatise scholarship had begun at roughly the same point in our lives. Now, decades later, I am the senior coauthor and joined by an extraordinary new scholar in securities regulation who also started at approximately the same age as I did. Troy Paredes, who graduated from the Yale Law School like Louis, has already begun to make his mark as a securities and corporate scholar with significant articles such as Blinded by the Light: Information Overload and Its Consequences for Securities Regulation, 81 Washington University Law Quarterly 417 (2003); A Systems Approach to Corporate Governance Reform: Why Importing U.S. Corporate Law Isn't the Answer, 45 William & Mary Law Review 1055 (2004); and On the Decision to Regulate Hedge Funds: The SEC's Regulatory Philosophy, Style, and Mission, 2006 University of Illinois Law Review (forthcoming).

In June 2008, Troy Paredes was confirmed as a Commissioner of the Securities and Exchange Commission. This is a richly deserved recognition of his outstanding scholarship. I look forward to working with him after he returns from his service at the SEC. Until then, *Fundamentals* and its Annual Supplements will continue on schedule.

Troy Paredes worked on *Fundamentals* and its Annual Supplements while a Professor of Law at Washington University School of Law before being sworn in and taking office as a Commissioner of the SEC. The views expressed in *Fundamentals* and its Annual Supplements reflect the views of Troy Paredes, Joel Seligman, and the late Louis Loss and do not necessarily reflect those of the SEC or other Commissioners.

Let me acknowledge my gratitude to Lynne Hasman, who is responsible for the typing of this Annual Supplement, and to Beth Cross-Wilhelm for her cite checking.

This Annual Supplement speaks generally as of June 1, 2008, although there are occasional references to later materials.

JS

August 2008

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