

# Securities Regulation

## *Cases and Materials*

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# Preface

When we set out to write a new casebook on securities regulation, we made a number of choices about its content. The first, and no doubt the easiest, was that the book should portray securities regulation as it is in the 1990s. While phenomena such as the penny stock market show us that many of the old problems still persist, so much else has changed recently. For the securities of larger issuers, for instance, the marketplace has become global and highly institutionalized. Here, the teachings of the efficient market hypothesis have had a dramatic impact on the way we think about fundamental issues, which is far different from even 15 or 20 years ago.

This book presents to the student a dynamic, complex world of securities law. We mix doctrine and theory, drawing from the law and economics literature without suggesting that all the answers necessarily lie therein. The cases and materials we have included are mostly from the last decade, although we have kept a fair number of the old chestnuts as well. So much as possible, we discuss significant law review articles of recent vintage, for they are an invaluable source of critical perspectives to help think about where the law might (or should) be headed. And we place considerable emphasis on topics of increasing importance such as internationalization, new financial products, market volatility, enforcement methodology, and the dominance of institutional investors. The capital-raising problems of small business also receive a good deal of attention.

The second important choice that we made followed naturally from the first. Securities regulation today is dynamic and complex; like most legal subjects, its doctrine has a procrustean character that cannot be described or taught in simple terms. And currency should not come at the expense of the fundamentals. We have thus chosen to write a book that is detailed and comprehensive in its coverage of securities law (or

at least as detailed and comprehensive as one volume can hope to be). While this is more daunting an approach than just highlighting the basics or concentrating only on a portion of securities law topics, we firmly believe that it is the only realistic way of imparting to the student the substance and richness of today's law. We begin with an overview designed to emphasize the integrated nature of securities regulation today, followed by two chapters devoted to concepts of overarching conceptual significance: materiality and the definition of a security. Then we turn to the specifics of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940.

Having chosen to be both current and comprehensive (noble goals surely), the dilemma comes in the execution. Like it or not, most law schools offer only one securities regulation course, for three (or sometimes two) credits. Just as in a prospectus or proxy statement, a massive amount of information by itself can easily overwhelm, given the inevitable limits of time and attention. In response, we have tried to do a number of things. First, we have made the book highly modular. There is no need — and we certainly don't expect anyone — to cover every section of every chapter. Instead, the book is carefully crafted to encourage individual professors to pick and choose among topics to cover, without loss of coherence. We believe that this approach is doubly necessary in light of the substantial variations in the content of securities courses around the country, especially given the different overlaps that exist between basic corporations courses and this one. Each of us plans to cover different portions of the book in our basic securities courses, leaving others for advanced courses or seminars (or just for the student's own use when he or she is out in the real world).

Second, we all agreed that the problem method is the most effective and interesting teaching tool in a course like this. Accordingly, we have included more than 200 problems, each of which is designed to reinforce the students' understanding of the preceding material and provide a basis for illuminative class discussion. Finally, we have adapted the form of the material to the topic being covered. In highly doctrinal areas, such as the definition of a security or Rule 10b-5, there is no substitute for reading cases. There, you will find many, followed by notes and questions designed to provide critical perspective. For other topics, such as some of the requirements of Section 5 of the '33 Act, text is a better means of conveying efficiently what is most important. As a result, there is more textual material in this book than in most others. Our text is meant to challenge, not to spoon feed, and although basic material is presented in a straightforward manner, we have tried throughout to raise yet unanswered questions and to provoke thought about why the law is the way it is and how it might be different. We want the problems, cases, and text all to be fruitful sources of classroom discussion.

We hope that we have succeeded, and shall be in touch to elicit

reactions and suggestions from faculty who choose to use the book. Feedback is welcome because we know — for reasons having to do both with the changes that are occurring substantively in the law and our own evolving sense of appropriate pedagogy — that future editions will be quite different from this one.

Our thanks go to the many persons who helped us. David Tegler, Ford Little, and Mary Jane Miller at Vanderbilt; Susan Firtch, Eileen O'Grady, and Jason Wacha at U.C. Davis; and Barbara Mathews, Michael Stern, Mark Redmiles, Miriam Krestul, and Andrea Gansle at Duke gave important research assistance. Nancy Paden, Kathy Huston, Berta Lewin, Tonya Jacobs, and Ginger Mann provided excellent secretarial support. And a special word of thanks to the 16 reviewers selected by Little, Brown to provide us with comments on draft chapters. Although each performed this service under conditions of anonymity, we would like the reviewers to know that their comments were of invaluable assistance and the book is much improved because of their efforts. Finally, we are most grateful to Alistair M. Nevius at Little, Brown for his expert editorial assistance.

Occasional case and statute citations have been omitted from quoted material without indication. Most footnotes have also been omitted from quoted material without indication, but those that remain retain their original numbers. Our footnotes in quoted material are indicated by asterisks and end with the legend “— Eds.”

*James D. Cox*  
*Robert W. Hillman*  
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January 1991

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