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# Regulation of Securities, Markets, and Transactions

*A Guide to the New Environment*

Patrick S. Collins

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PATRICK S. COLLINS



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# Preface

The purpose of this book is to provide a very good summary of a large subject. That subject is the regulation of securities, securities markets, and securities transactions. An understanding of that subject may be important if you:

- Are a director of a company that has issued publicly owned securities.
- Are employed in the banking, insurance, or securities industries.
- Provide professional services relating to activities in these industries.
- Are employed by a government agency that regulates these industries.

Securities laws, securities regulations, and the rules of self-regulatory organizations are changed often. Some of these changes are driven by the normal course of competition and innovation between and within markets, by advances in the technologies that support the operations of markets, and by the global integration of markets. Other changes, such as those that followed the banking turmoil of 2007–2008, are a response to the sudden release of pressures accumulated over a period of years.

That background leads to the question: How can such a large and dynamic subject be summarized in any meaningful way? The answer to that question has two parts:

1. By organizing information into the general and the specific. From my experience in the securities industry, particularly as a consultant, I learned that it is essential to separate the concepts from the details. The entanglement of the general and the specific usually leads to misunderstandings that can be fatal to effective communications and productive results.
2. By using language that is not loaded with ambiguities, jargon, and obscure metaphors. The securities industry, like others, has a large vocabulary of archaic and nonsense words. Some people use ambiguities artfully to disguise the fact that they do not understand the subject. These words are repeated as a ritual even when their meaning is not clear. In this book, such words are avoided completely or explained.

Chapter 1 of this book, “Regulation,” is written at the general level. If you read this chapter from beginning to end, without referring to the notes, you should have a basic understanding of regulation. Regulation is a process based on laws. These laws state regulatory objectives in terms of investor protection, fair and orderly markets, competition, and the control of systemic risk. Even at the general level, that process requires some thought. What is a “security”? Should regulation be structured by categories of institutions or by the functions these institutions perform? What is the difference between primary markets and

secondary markets? Do all investors need the same protection? Why are exclusions and exemptions important?

Chapter 2, "Regulation of Nonregistered Entities and Persons," explains how securities laws apply to entities and persons not required to be registered with the Securities and Exchange Commission (SEC), and how non-securities laws apply to the securities industry.

Chapter 3, "Accounting and Auditing," provides a general explanation of why regulation is closely connected with the financial statements prepared by the issuers of securities and by registered entities such as securities broker-dealers.

The pages of Chapter 5, "Notes," are very specific. These notes support Chapters 1, 2, and 3. You probably will read the notes selectively rather than from beginning to end. The substance of the notes is often the actual words of the securities law and regulations or commentaries published by the SEC. Most notes are from a primary source or cite a primary source for further reading. Newspapers and magazines are not primary sources.

Before entering into the notes, you should review Chapter 4, "Introduction to Notes." This chapter explains public laws and codified laws, the titles and sections of regulations, the Federal Register, and public announcements called SEC Releases. That information is the foundation and the point of departure for acquiring an understanding of regulation. The subject of this book is "securities" regulation, but Chapter 4 necessarily includes information relating to some banking laws and regulations.

Thus, the first five chapters taken together are the core of this book.

In addition to the five chapters that are the core, important information is organized in Chapters 6 through 8, which you will find helpful in understanding other dimensions of this subject.

Chapter 6, "Selected Sections of the Financial Regulation Act of 2010," is dedicated to the Financial Regulation Act approved as Public Law 111-203 in July 2010. PL 111-203, also called the Dodd-Frank Act, is about 900 pages in length and comprised of more than 560 sections. Most of these sections will be codified in various titles of the United States Code (USC), including Title 11 (the bankruptcy law), Title 12 (the banking law), and Title 15 (the securities law). The sections codified in the USC after July 2010 will require federal agencies and departments to establish the regulations necessary to implement the law. It may be a number of years before these regulations are final.

Chapter 7, "Sections of Codified Securities Laws," is useful because of peculiarities in the way many people refer to sections of public laws and, separately, to sections of the codified securities law. Books and documents often refer to Sections 108 or 404 of this or that public law, but these section numbers are not part of the codified law. Thus, it may be difficult to find specific information without the guidance provided by this chapter.

Securities, markets, and transactions are regulated as a result of the interaction of official and nonofficial organizations that participate in the formulation of laws and regulations. Chapter 8, "Organizations," identifies some of these organizations and describes what they do.

Appendix A, "References," will be useful as a list of securities-related publications, some of which are cited in the notes, organized by source instead of author. Practically all of these publications (but not books) are available free from the source's Web site.

A significant proportion of this book is information about how to find information. That means finding information that exists now and will exist in the future. For both purposes, this book provides copious references and Web site addresses. Appendix B,

“Web Sites by Name,” and Appendix C, “Web Sites by Function,” are each a collection of addresses from which you can:

- Read the securities laws and regulations cited in Chapters 1 through 7.
- Learn more about the organizations described in Chapter 8.
- Read online or download publications listed in Appendix A .
- Browse for other information relating to the banking, insurance, and securities industries.

The separation of Appendices B and C creates some duplication, which is necessary to enhance a simple listing of names.

The Glossary is a serious matter and should be given serious attention. Books similar to this may be written in part to demonstrate that the author’s vocabulary is on the cutting edge of industry jargon and popular metaphors. That is a waste of your time and, worse, denies you the explanations in plain language that you have a right to expect. When I read that type of book, frequently I write in the margin “WDTM?” (What Does That Mean?) I hope you will not be writing WDTM? on the following pages of this book.

In conclusion, I should tell you what this book is not about:

- It is not about “investments” or “trading.” It does not explain how to make a huge amount of money from buying and selling securities.
- It is not about “comparative” regulation. It is not intended to compare or contrast the securities laws and regulations of the United States with those of other countries or to interpret the meaning of other countries’ laws and regulations.
- It is not about securities “law.” Practicing attorneys will find this book informative; however, they must rely on other sources for authoritative interpretations of securities laws and regulations.

My appreciation to Sheck Cho, executive editor at John Wiley & Sons.

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Patrick S. Collins  
Santa Fe, NM  
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