

Broker-Dealer Regulation

Broker-Dealer Regulation

Cases and Analysis

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HOWARD UNIVERSITY SCHOOL OF LAW



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Contents

Illustrations and Tables	xxi
Table of Cases	xxv
Preface	xxxv
Editorial Note and Acknowledgments	xxxvii
Chapter 1 · Overview of the Broker-Dealer Industry	3
I. Introduction	3
A. Development of the Broker-Dealer Industry	4
1. Technology and the Broker-Dealer Industry	8
B. National Securities Exchanges and other Trading Facilities in U.S. Securities Markets	9
1. The New York Stock Exchange	10
2. The NASDAQ Stock Market	12
3. Alternative Trading Systems	13
C. Overview of the Broker-Dealer Regulatory Framework	14
1. The Securities and Exchange Commission	14
a. Corporation Finance	15
b. Enforcement	16
c. Economic and Risk Analysis	16
d. Trading and Markets	17
e. Office of Compliance Inspections and Examinations	17
2. The Federal Securities Laws	18
3. The Financial Industry Regulatory Authority, Inc.	21
a. FINRA REG Departments	24
1. Office of Dispute Resolution	24
2. Department of Market Regulation	24
3. Department of Member Regulation	24
4. Office of Fraud Detection and Market Intelligence	25
5. Department of Enforcement	25
b. FINRA's Rulemaking Process	26
The "What to Expect" Webcast Series: Rulemaking Process	26
Hypothetical One	29
Chapter 2 · An Introduction to the Business of Broker-Dealers	31
Motivating Hypothetical	31
I. Introduction	32
II. Broker-Dealer Business Models	32

A. Traditional or Wire House Broker-Dealers	33
B. Independent Broker-Dealers	34
1. The Commission-Only Practice Model	37
2. The Dually-Registered Practice Model	38
3. The Hybrid Practice Model	40
4. The Asset Custody Practice Model	40
Notes and Questions	41
Hypothetical One	42
III. Categories of Broker-Dealers	42
A. Full Service and Discount Broker-Dealers	43
B. Market Focus	45
1. Exchange Member Firms	45
a. NYSE Member firms	45
i. Designated Market Makers (formerly specialists)	45
ii. Floor Brokers	46
iii. Supplemental Liquidity Providers	46
iv. Retail Liquidity Providers	48
b. NASDAQ Member Firms	49
i. NASDAQ Market Makers	49
ii. NASDAQ Order Entry Firm	50
iii. Market Quality Program Market Maker (MQP MM)	50
2. Security-Based Swap Dealer and Major Security-Based Swap Participants	51
3. Municipal Securities Broker-Dealers	52
C. Functional Focus	53
1. Clearing Broker-Dealers	53
2. Prime Brokers	54
3. Primary Dealers	56
4. Introducing Broker-Dealers	57
D. Insurance-Affiliated Broker-Dealers	59
Hypothetical Two	60
IV. Functional Organization of a Broker-Dealer	60
A. Front Office	61
B. Middle Office	65
1. Customer (Investment) Accounting	66
2. Trade Processing	67
3. Compliance	69
4. Risk Management	71
5. Client Services	74
C. Back Office	74
1. Purchase and Sale Department	75
2. Cashier's Department	76
a. The Vault Department	77
b. Segregation	77

c. Bank Loans	78
d. Account Transfers	78
3. Corporate Actions (Reorganization) Department	78
4. Position Management (Stock Record) Department	79
5. Margin Department	80
6. New Accounts Department	81
Notes and Questions	83
Hypothetical Three	83
Glossary	84
Chapter 3 · Broker-Dealer Registration	91
Motivating Hypothetical	91
I. Introduction	92
<i>Roth v. SEC</i>	92
<i>SEC v. Offil</i>	94
II. Who Must Register as a Broker?	100
A. Effecting Transactions in Securities	100
2000 SEC No-Act LEXIS 660	100
<i>SEC v. Margolin</i>	103
B. Engaged in the Business	104
<i>SEC v. Kenton Capital, Ltd.</i>	105
<i>SEC v. Martino</i>	107
<i>S.E.C. v. Kramer</i>	113
Notes and Questions	122
Hypothetical One	122
III. Who Must Register as a Dealer?	123
<i>Eastside Church of Christ v. National Plan, Inc.</i>	123
Notes and Questions	127
IV. Exemptions from Broker-Dealer Registration	128
A. Intrastate Broker-Dealers	128
<i>In the Matter of Capital Funds, Inc.</i>	129
B. Commercial Paper Exemption	131
C. Foreign Broker-Dealer Exemption	132
1. Nondirect Contacts	133
2. Direct Contacts	134
<i>Chase Capital Markets US Milbank, Tweed, Hadley & McCloy</i>	136
Hypothetical Two	141
V. The Registration Process for Broker-Dealers and their Associated Persons	142
<i>In the Matter of Michael W. Crow</i>	143
Notes and Questions	145
A. FINRA Membership	145
1. FINRA Membership Application Process	145
2. Registration of Associated Persons	149

Notes and Questions	152
Hypothetical Three	154
Chapter 4 • Supervisory Responsibilities of Broker-Dealers	155
Motivating Hypothetical	155
Part I: Supervision Under the Federal Securities Laws	156
I. Introduction	156
II. Development of Failure to Supervise	157
<i>In the Matter of Reynolds & Co.</i>	158
<i>Hollinger v. Titan Capital Corp.</i>	165
Notes and Questions	168
Hypothetical One	172
III. Elements of Failure Reasonably to Supervise	172
A. Who Is a Supervisor?	173
1. Line Supervisors	174
a. Branch Managers	174
<i>In the Matter of the Application of Christopher J. Benz</i>	174
Notes and Questions	177
b. Regional Managers	177
<i>In the Matter of George J. Kolar</i>	178
Notes and Questions	188
Hypothetical Two	188
c. Other Line Managers	189
<i>In the Matter of John B. Hoffman and Kevin J. McCaffrey</i>	189
Hypothetical Three	192
d. Senior Management	192
<i>In the Matter of John H. Gutfreund, Thomas W. Strauss,</i>	
<i>and John W. Meriwether</i>	193
Notes and Questions	203
<i>In the Matter of Jack C. Smith, Jr.</i>	204
Hypothetical Four	206
2. Non-Line Supervisors	207
<i>In the Matter of Arthur James Huff</i>	208
Notes and Questions	216
a. Compliance Officers and Legal Counsel	218
<i>In the Matter of First Albany Corporation, John T. Batal</i>	
<i>and Michael R. Lindburg</i>	219
<i>In the Matter of John H. Gutfreund, Thomas W. Strauss,</i>	
<i>John W. Meriwether</i>	223
Notes and Questions	225
<i>In the Matter of Theodore W. Urban</i>	227
Notes and Questions	245
Hypothetical Five	246
b. Delegation of Supervisory Responsibilities	246

c. Policy	247
Notes and Questions	249
C. Reasonable Supervision	249
1. Reasonable Supervisory Procedures	249
<i>In the Matter of TD Ameritrade, Inc.</i>	251
2. Supervisory System	256
<i>In the Matter of Prudential Securities Inc.</i>	258
Notes and Questions	268
3. Reasonable Discharge of Supervisory Duties	269
<i>In the Matter of Raymond James Financial Services, Inc.,</i>	
<i>J. Stephen Putman and David Lee Ullom</i>	270
Notes and Questions	293
Hypothetical Six	293
Part II: Supervision Under FINRA Rules	294
IV. FINRA Supervision	294
A. Introduction to FINRA Supervisory Requirements	295
1. FINRA Review of Supervisory Systems and Written Supervisory Procedures	297
a. New Membership Application Process	297
b. Continuing Member Application Process	297
c. Examinations	297
Notes and Questions	298
B. Elements of Supervision	298
1. Supervisory System	299
a. Written Supervisory Procedures	299
b. Principal Designation Rule and Registered Principal Requirement	299
c. Designation of Office of Supervisory Jurisdiction (OSJ)	300
d. Supervisory Reporting Assignments	300
e. Annual Compliance Interview or Meeting	301
<i>Department of Market Regulation v.</i>	
<i>Yankee Financial Group, Inc.</i>	301
Notes and Questions	312
C. Special Supervisory Procedures	313
1. Deferred Variable Annuities	313
2. 529 College Savings Plans	314
<i>Merrill Lynch, Pierce, Fenner & Smith Inc.</i>	315
3. Heightened Supervisory Procedures	316
a. Complex Products	316
b. Registered Representatives	316
<i>In the Matter of the Association of X as a General Securities</i>	
<i>Representative with the Sponsoring Firm</i>	317
4. Taping Rule	319
<i>Carlton Capital, Inc.</i>	320

5. Supervision when Outsourcing	321
<i>Citigroup Global Markets Inc.</i>	323
D. Supervisory Control System and Procedures	328
<i>In the Matter of Lehman Brothers, Inc.</i>	328
Notes and Questions	333
1. Testing and Verification of Supervisory Control Procedures (SCP)	335
2. Rule 3130 CEO Certification	335
E. Internal Inspections	336
Notes and Questions	337
Hypothetical Seven	337
F. Review of Correspondence and Transactions	337
G. Supervisory Responsibilities Relating to the Conduct of Associated Persons	339
1. Outside Business Activities (FINRA Rule 3270)	339
2. Borrowing from or Lending to Customers (FINRA Rule 3240)	340
3. Influencing or Rewarding Employees of Others (Rule 3220)	340
4. Private Securities Transactions (FINRA Rule 3280)	341
Hypothetical Eight	341
Chapter 5 • Broker-Dealers and Public Offerings of Securities	343
Motivating Hypothetical	343
I. Introduction	343
II. Overview of the Public Offering Process and Regulation Basics	344
A. Role of a Broker-Dealer in the Public Offering of Securities	344
B. Overview of the Securities Act and the Registration Process	345
<i>Securities Offering Reform Sec. Act Rel. 8591</i>	346
C. The Broker-Dealer in the Public Underwriting Process	349
1. The Underwriter	349
<i>Special Situations Fund, III, L.P. v. Cocchiola</i>	350
Notes and Questions	358
2. Types of Underwriting Arrangements	359
3. The Underwriting Syndicate	361
<i>United States v. Morgan</i>	362
4. Putting It All Together—the Registration Statement, the Gun-Jumping Rules, and the Underwriter	374
a. The Pre-Filing Period	375
<i>In the Matter of Carl M. Loeb, Rhoades & Co.</i>	377
<i>Securities Act Release No. 3844</i>	379
i. The Registration Statement	384
Notes and Questions	385
Hypothetical One	387
b. The Waiting Period	387
i. Other Communications Allowed during the Waiting Period	389
c. Rule 134 Communications	390
d. Live Roadshows and Other Oral Offers	390

e. Free-Writing Prospectus	391
i. Media Publications or Broadcasts and Issuer Web Sites	393
Hypothetical Two	394
Notes and Questions	394
f. Post-Effective Period	396
i. Prospectus Delivery Requirements	397
ii. Free Writing or Supplemental Sales Literature	399
iii. Confirmations	400
iv. Regulation M	400
v. The Closing	402
Notes and Questions	403
D. FINRA Regulation of Initial Public Offerings	404
Notes and Questions	409
Hypothetical Three	409
Chapter 6 · Broker-Dealer Civil Liability in Public Offerings	411
Motivating Hypothetical	411
I. Introduction	412
II. Section 11	412
A. Standing	413
<i>Hertzberg v. Dignity Partners</i>	413
<i>Krim v. pcOrder.com</i>	416
Notes and Questions	420
Hypothetical One	421
B. Elements of a § 11 Cause of Action	421
<i>In re Ariad Pharms., Inc. Secs. Litig.</i>	422
Notes and Questions	437
Hypothetical Two	437
C. Defenses	438
1. Due Diligence	438
<i>Securities Act of 1933, Release No. 5275</i>	439
<i>Escott v. BarChris Construction Corp.</i>	440
<i>In re Software Toolworks, Inc. Securities Litigation</i>	453
<i>In re Worldcom, Inc. Securities Litigation</i>	456
Notes and Questions	465
Hypothetical Three	466
D. Damages	466
<i>NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.</i>	468
<i>Pinter v. Dahl</i>	472
Notes and Questions	476
B. Section 12(a)(2)	477
<i>In re Sterling Foster and Co., Inc. Securities Litigation</i>	477
<i>Feiner v. SS&C Technologies, Inc.</i>	480
Notes and Questions	483

<i>Sanders v. John Nuveen & Co., Inc.</i>	483
C. Defenses and Damages under § 12(a)(2)	487
Chapter 7 · The Net Capital Rule	489
Motivating Hypothetical	489
I. Introduction	489
II. The Net Capital Rule: 1942–1974	490
<i>Securities and Exchange Commission v. Lawson</i>	491
<i>In the Matter of National Association of Securities Dealers, Inc.</i>	493
Notes and Questions	500
III. Adoption of the Uniform Net Capital Rule	504
IV. The Current Uniform Net Capital Rule	506
A. Computation of Net Capital	507
1. Non-Allowable Assets	508
2. Securities Haircuts	508
3. The Ratio Tests	510
a. Aggregate Indebtedness Standard	510
<i>Mid America Financial Services, Inc.</i>	511
b. The Alternative Standard Ratio	516
4. Minimum Dollar Amounts of Net Capital	517
Hypothetical One	517
5. Subordinated Agreements	517
Notes and Questions	519
B. Financial Responsibility under FINRA Rules	521
1. FINRA Rule 4110. Capital Compliance	522
2. FINRA Rule 4120. Regulatory Notification and	
Business Curtailment	524
3. FINRA Rule 4140. Audit	525
4. FINRA Rule 4160. Verification of Assets	525
5. FINRA Rule 4521. Notifications, Questionnaires, and Reports	525
Notes and Questions	526
C. The Customer Protection Rule	526
1. Meeting the Requirements of Rule 15c3-3	527
a. Step One: Physical Possession or Control	527
b. Step Two: Reserve Accounts	528
i. Special Reserve Account for the Exclusive Benefit	
of Customers	528
ii. Special Reserve Account for Brokers and Dealers	529
2. Reserve Bank Account Computations, Deposits,	
and Withdrawals	531
a. Free credit balances	532
<i>SEC v. Goble</i>	534
Notes and Questions	537
Hypothetical Two	537

Chapter 8 · Margin Regulation	539
Motivating Hypothetical	539
I. Introduction	539
II. The Regulatory Framework for Trading on Margin	542
A. The Purpose of the Regulatory Framework for Trading on Margin	542
<i>Stonehill v. Sec. Nat'l Bank</i>	542
B. The Regulation of Trading on Margin	545
1. Federal Margin Regulation: Initial Margin	546
a. Regulation T	546
2. SRO Regulation: Maintenance Margin	549
a. Portfolio Margin	551
Notes and Questions	553
Hypothetical One	554
3. Hypothecation	555
<i>United States v. Schwartz</i>	556
4. Rehypothecation	562
<i>Capital Management Select Fund Ltd. v. Bennett</i>	563
Notes and Questions	574
Hypothetical Two	574
Chapter 9 · Books, Records, and Reports	577
Motivating Hypothetical	577
I. Introduction	577
II. Financial and Business Records	579
A. Blotters	579
B. Ledgers	580
C. Trial Balance	581
D. Securities Record	582
E. Securities Counts, Verifications, and Comparisons	583
F. Other Financial and Business Records	584
III. Trading Records	588
IV. Customer Records	590
<i>SEC v. Frank DiPascali, Jr.</i>	592
Notes and Questions	598
A. Employee Records	598
V. Risk Assessment	600
A. Electronic Recordkeeping	603
B. Other Reporting Requirements	605
Hypothetical One	605
Notes and Questions	605
Chapter 10 · Broker-Dealer Fraud	609
Motivating Hypothetical	609
I. Introduction	609

II. Elements of § 10(b) and Rule 10b-5	612
A. In Connection with the Purchase or Sale of Any Security	613
<i>SEC v. Zandford</i>	613
<i>Scotttrade, Inc. v. BroCo Investments, Inc.</i>	616
Hypothetical One	622
B. Material Misstatement or Omission or Other Fraudulent Device	622
<i>Santa Fe Industries, Inc. v. Green</i>	623
<i>Basic Inc. v. Levinson</i>	627
<i>SEC v. Hasho</i>	633
<i>Wang v. Bear Stearns Companies, LLC</i>	640
Notes and Questions	645
Hypothetical Two	647
C. Scierter	648
<i>Ernst & Ernst v. Hochfelder</i>	648
<i>Tellabs, Inc. v. Makor Issues & Rights</i>	655
Notes and Questions	660
Hypothetical Three	661
D. Reliance	662
<i>Affiliated Ute Citizens of Utah v. U.S.</i>	662
<i>Halliburton Co. v. Erica P. John Fund, Inc.</i>	667
Notes and Questions	682
E. Loss Causation	683
<i>Dura Pharmaceuticals, Inc. v. Broudo</i>	683
Hypothetical Four	687
F. Damages	688
Notes and Questions	689
Chapter 11 · Broker-Dealer Conduct and the Antifraud Provisions	691
Motivating Hypothetical	691
I. Introduction	692
A. The Broker-Dealer and Fiduciary Duty	692
<i>Leib v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</i>	694
B. Churning	700
<i>Mihara v. Dean Witter</i>	700
1. Excessive Trading	703
<i>In the Matter of Department of Enforcement v.</i>	
<i>Alan Jay Davidofsky</i>	705
2. Control	710
3. Scierter	711
4. Damages	712
C. Unauthorized Trading	714
<i>Pross v. Baird, Patrick & Co., Inc.</i>	715
<i>Cruse v. Equitable Securities of New York Inc.</i>	716
Notes and Questions	720

Hypothetical One	720
D. Suitability	721
<i>O'Connor v. R.F. Lafferty & Co., Inc.</i>	722
<i>Brown v. E.F. Hutton Group, Inc.</i>	726
<i>In the Matter of Steven E. Muth and Richard J. Rouse</i>	732
Notes and Questions	737
1. FINRA Rule 2111. Suitability	737
<i>Michael Frederick Siegel</i>	739
<i>Dept. of Enforcement v. Wall Street Strategies, Inc.</i>	746
Notes and Questions	752
Hypothetical Two	753
E. Market Manipulation	754
<i>Sharette v. Credit Suisse Intern.</i>	755
<i>In the Matter of the Application of Kirlin Securities, Inc.</i>	
<i>Anthony Kirincic and Andrew Israel</i>	770
Notes and Questions	780
Hypothetical Three	781
Chapter 12 · Securities Arbitration	783
Motivating Hypothetical	783
I. Development of Arbitration in the United States	784
A. The Federal Arbitration Act	785
B. Enforceability of Mandatory Arbitration Agreements	785
<i>Wilko v. Swan</i>	786
Notes and Questions	790
C. Toward a National Policy Favoring Arbitration	790
<i>Shearson/American Express Inc. v. McMahon</i>	791
Notes and Questions	797
D. Finality of Arbitration Awards	799
II. FINRA's Arbitration Process	799
A. Initiating and Responding to Claims	800
B. Appointment, Disqualification, and Authority of Arbitrators	801
C. Pre-Hearing Procedures, Discovery, Hearings, and Awards	802
D. Special Procedures	804
1. Simplified Arbitration Procedures	804
2. Voluntary Program for Large Cases	804
3. Expungement	805
4. Investment Advisers	805
E. FINRA's Mediation Process	806
Notes and Questions	806
III. Special Issues in Securities Arbitration	807
A. FINRA Arbitration Forum Eligibility	807
<i>Fleet Boston Robertson Stephens, Inc. v. Innovex, Inc.</i>	808
<i>UBS Financial Services, Inc. v. Carilion Clinic</i>	811

Notes and Questions	816
Hypothetical One	816
B. Statutory Employment Arbitration	817
<i>Gilmer v. Interstate/Johnson Lane Corp.</i>	817
<i>Circuit City Stores v. Adams</i>	821
Notes and Questions	825
Hypothetical Two	826
C. Class Action Waivers	826
<i>Financial Industry Regulatory Authority Before the</i>	
<i>Board of Governors Department of Enforcement v.</i>	
<i>Charles Schwab & Co., Inc.</i>	826
Notes and Questions	835
Hypothetical Three	836
D. Dodd-Frank and the Future of Mandatory Arbitration	836
Chapter 13 · Market Structure Regulation	839
Motivating Hypothetical	839
I. Introduction	840
<i>Senate Report No. 94-75, 94th Congress, 1st Session 1975</i>	840
II. The National Market System	842
A. Linking a Fragmented Market Structure	843
1. Consolidated Disclosure of Market Data	844
a. Early SEC Rulemaking Under the 1975 Amendments	846
2. Facilitating Competition, Efficiency, and Fairness	849
<i>Report Pursuant to Section 21(a) of the</i>	
<i>Securities Exchange Act of 1934 Regarding the</i>	
<i>NASD and the NASDAQ Market</i>	851
B. The Adoption of Regulation National Market System	857
1. Reg NMS Rules 600–609	858
2. Rule 611. Order Protection Rule	862
3. Rule 610. Access to Quotations	863
4. Rule 612. Minimum Pricing Increment (Sub-Penny Rule)	864
5. Amendments to National Market System Plans	864
Notes and Questions	865
Hypothetical One	867
III. Current Regulatory Framework of the National Market System	867
A. Regulation NMS Today	867
1. Rule 613. Consolidated Audit Trail	868
B. FINRA and the National Market System	870
C. The Market Access Rule	871
<i>In the Matter of Wedbush Securities Inc.</i>	875
<i>In the Matter of Knight Capital Americas LLC</i>	889
Notes and Questions	898
Hypothetical Two	899

D. The Over-The-Counter Market	900
1. OTCBB	901
2. OTC Markets	901
<i>General Bond Share Co. v. SEC</i>	902
Notes and Questions	913
Hypothetical Three	914
Chapter 14 · Regulation of Trading Venues	917
Motivating Hypothetical	917
I. Introduction	917
II. Trading Venues	918
A. National Securities Exchanges	918
<i>In the Matter of New York Stock Exchange, Inc.</i>	920
Notes and Questions	930
Hypothetical One	930
B. Alternative Trading Systems	931
<i>In the Matter of Brutt, LLC</i>	934
<i>In the Matter of INET ATS, Inc.</i>	937
1. Dark Pools	940
<i>In the Matter of UBS Securities LLC</i>	941
Notes and Questions	950
Hypothetical Two	950
C. Broker-Dealer Internalization	951
III. Best Execution	952
<i>Newton v. Merrill Lynch Pierce Fenner and Smith, Inc.</i>	953
<i>SEC v. Pasternak</i>	961
Notes and Questions	973
Hypothetical Three	973
IV. Market Stability, Quality, and Fairness	974
A. High-Frequency Trading	974
<i>Trillium Brokerage Services, LLC</i>	975
Notes and Questions	984
V. Clearing and Settlement	985
<i>Bradford Nat. Clearing Corp. v. SEC</i>	986
Notes and Questions	1001
Index	1003

Illustrations and Tables

Figures

Figure 1.1. FINRA Rulemaking	28
Figure 2.1. Commission-Only Practice Model	37
Figure 2.2. Dually Registered Practice Model	38
Figure 2.3. The Hybrid Practice Model	40
Figure 2.4. SLP-Prop Supplemental Liquidity Firms	48
Figure 2.5. MQP Mechanics	51
Figure 2.6. Prime Brokerage Arrangement	56
Figure 2.7. Functional Organization of a Broker-Dealer	60
Figure 2.8. Front Office	61
Figure 2.9. Order Execution	63
Figure 2.10. Middle Office	65
Figure 2.11. Back Office	74
Figure 3.1. Broker Activities to Determine “Effecting Transactions in Securities”	104
Figure 3.2. Factors Establishing Dealer Status Identified by the SEC	127
Figure 3.3. Membership Application Process	146
Figure 3.4. Form NMA Categories	146
Figure 3.5. NASD Rule 1013(a)(1)(E) Document Requirements	147
Figure 3.6. Summary of FINRA’s Standards for Admission	149
Figure 3.7. Categories of Representative Registration	151
Figure 4.1. Duty to Supervise	173
Figure 4.2. FINRA Supervisory Requirements	294
Figure 4.3. Elements of Supervision	298
Figure 4.4. Supervisory Control Procedures	334
Figure 5.1. Gun-Jumping Rules	374
Figure 5.2. The Operation of Section 5 of the Securities Act	375
Figure 5.3. Rule 138 of the Securities Act	381
Figure 5.4. Issuer-Specific Research Reports	382
Figure 5.5. Industry Research Reports. Rule 139	383
Figure 5.6. The Waiting Period	387
Figure 5.7. Communications during the Waiting Period	389
Figure 5.8. Post-Effective Period	396
Figure 5.9. Prospectus Delivery Requirements	399

Figure 6.1. Measure of Damages § 11(e)	467
Figure 7.1. Aggregate Indebtedness	498
Figure 7.2. Total Money Liabilities	499
Figure 7.3. Net Capital	499
Figure 7.4. Minimum Dollar Net Capital Requirement	505
Figure 7.5. Changes to Aggregate Indebtedness	505
Figure 7.6. Required Minimum Net Capital	507
Figure 7.7. Computation of Net Capital	507
Figure 7.8. Allowable Assets	508
Figure 7.9. Classes of Securities	509
Figure 7.10. Aggregate Indebtedness Standard	511
Figure 7.11. Amendments to Reserve Formula Required by Alternative Standard Ratio	516
Figure 8.1. Margin Securities—Reg T 12 C.F.R. § 220.2	547
Figure 8.2. Maintenance Margin Requirements under FINRA Rule 4210	550
Figure 9.1. Cash Receipts and Disbursements Blotter	580
Figure 9.2. Monies Borrowed and Loaned Ledger	581
Figure 9.3. Trial Balance	582
Figure 9.4. Rule 17a-4 Business Records	588
Figure 9.5. Customer Account Records for Natural Persons	590
Figure 9.6. FINRA Rule 4512. Customer Account Information	591
Figure 9.7. Factors to Determine Material Associated Person Status	601
Figure 11.1. Annualized Turnover Ratio (ATR)	704
Figure 11.2. Annualized Cost-to-Equity Ratio	704
Figure 11.3. Customer-Specific Factors	738
Figure 11.4. Types of Deceptive Trading Activity	755
Figure 13.1. Consolidated Tape System	845
Figure 13.2. Rule 604 (The Display Rule)	861

Tables

Table 1.1. FINRA Districts and Regions	23
Table 2.1. Order Types	64
Table 2.2. Success First's Position in EFG Shares	80
Table 4.1. Summary—Supervisory Liability	172
Table 4.2. FINRA Supervision	296
Table 4.3. Rule 3110(c) Internal Inspection Cycles	336
Table 6.1. Broker-Dealer Due Diligence Defense Requirements	439
Table 7.1. Minimum Dollar Amounts of Net Capital Required Under the UNCR	518
Table 10.1. Elements of § 10(b) and Rule 10b-5 Claims	612
Table 13.1. Available Order Audit Systems in 2010	869
Table 13.2. OTCBB Quoting Rules	901
Table 13.3. OTC Markets Group Marketplaces	903

Table 14.1. Regulatory Framework of National Exchanges	919
Table 14.2. Regulatory Framework of ATs	932
Table 14.3. Clearing and Settlement Activities	985
Table 14.4. FINRA Rule 4311(c). Allocation of Responsibilities	1000

Table of Cases

- 16,179 Molso Italian .22 Caliber Winless Derringer Convertible Starter Guns, *United States v.*, 443 F.2d 463 (2 Cir. 1971), cert. denied, 404 U.S. 983, 92 S. Ct. 447, 30 L. Ed. 2d 367 (1971)), 559
- Aaron v. SEC, 446 U.S. 680 (1980), 654
- Activision Sec. Litig., In re, 621 F. Supp. 415 (N.D.Cal.1985), 354, 358
- Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128 (1972), 662
- American Institute Counselors, Inc., SEC v., Fed. Sec. L. Rep. ¶95,388, 1975 WL 440, *17, 127
- Anderson v. Beland, 672 F.3d 113 (2d Cir. 2011), 833
- Arceneaux v. Merrill Lynch Pierce, Fenner & Smith, 767 F.2d 1498 (11th Cir. 1985), 711
- Ariad Pharms., Inc., In re, Secs. Litig. 2015 U.S. Dist. LEXIS 36818, 422
- Armstrong, Jones & Co. v. SEC, 421 F.2d 359 (6th Cir. 1970), 163
- Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), 427
- A.T. Brod Co. v. Perlow, 375 F.2d 393 (2d Cir.1967), 621
- Babbitt v. Sweet Home Chapter of Cmty. for a Great Or., 515 U.S. 687 (1995), 830
- Bache Halsey Stuart Shields, Inc. et al., Exchange Act Rel. No. 19725 (May 3, 1983), 250, 265
- Bache Halsey Stuart Shields, Inc., Exchange Act Release No. 34-18796, 25 SEC Docket 721 (June 8, 1982), 266
- Bache Halsey Stuart Shields, Inc., Exchange Act Release No. 34-19003 [1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶83,249 (August 24, 1982), 266
- Barnes v. Osofsky, 373 F.2d 269 (2d Cir. 1967), 414, 415
- Barnes v. Resource Royalties, Inc., 795 F.2d 1359 (8th Cir. 1986), 411
- Basic Inc. v. Levinson, 485 U.S. 224 (1988), 627
- Baum v. Phillips, Appel & Walden, Inc., 648 F. Supp. 1518 (S.D.N.Y. 1986), 780
- Beard v. Sachnoff & Weaver, Ltd, 941 F.2d 142 (2d Cir. 1991), 661
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), 425, 427
- Birnbaum v. Newport Steel Corp., 193 F.2d 461 (2d Cir.1952), 618
- Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 95 S. Ct. 1917, 44 L. Ed. 2d 539 (1975), 618
- Bradford Nat. Clearing Corp. v. SEC, 590 F.2d 1085 (1978), 986

- Brooks, Weinger, Robbins & Leeds, Inc., Exchange Act Rel. No. 2625 (Feb. 9, 1987), 257
- Brown v. E.F. Hutton Group, Inc., 991 F.2d 1020 (2d Cir. 1993), 726
- Brown, James Michael, Exchange Act Release No. 31223, 1992 WL 275520 (Sept. 23, 1992), 203
- Brumberg, Mackey & Wall, P.L.C., SEC No-Action Letter, 2010 WL 1976174 (May 17, 2010), 118
- Byrne v. Faulkner, Dawkins, & Sullivan, 550 F.3d 1303, (2d Cir.1977), 355
- Capital Management Select Fund Ltd. v. Bennett, 680 F.3d 214 (2012), 563
- Capital Mgmt Select Fund Ltd. v. Bennett, No. 07 Civ. 8688, 2007 WL 4837768 (S.D.N.Y. filed Oct. 9, 2007), 563
- Carras v. Burns, 516 F.2d 251 (4th Cir. 1975), 695
- Century Aluminum Co. Sec. Litig., In re, 729 F.3d 1104 (9th Cir. 2013), 427
- Chambers, Gary W., Securities Exchange Act Release No. 27975, 1990 WL 311827 (May 1, 1990), 213
- Chambers v. Time Warner, Inc., 282 F.3d 147 (2d Cir. 2002), 563
- Chase Capital Markets US Milbank, Tweed, Hadley & McCloy, S.E.C. Release No. 91 (Jul. 28, 1987), 136
- Chasins v. Smith, Barney & Co., 438 F.2d 1167 (2d Cir.1970),960
- Check, Robert J., 49 S.E.C. 1004 (1988), 187
- Check, Robert J., Securities Exchange Act Release No. 26367, 1988 WL 902613 (Dec. 16, 1988), 213, 218
- Circuit City Stores v. Adams, 532 U.S. 105 (2001), 820, 821
- Clark v. John Lamula Investors, Inc., 583 F.2d 594 (2d Cir. 1978), 729
- Coates v. SEC, 394 U.S. 976, 89 S. Ct. 1454, 22 L. Ed. 2d 756 (1969), 630
- Cohen v. Citibank, NA, 1997 WL 88378 (1997), 574
- College Bound Consolidated Litigation, In re, Fed. Sec. L. Rep. (CCH) ¶¶98,310 (S.D.N.Y. 1994), 780
- Columbia General Inv. Corp. v. SEC, 265 F.2d 559 (5th Cir. 1959), 415
- Comark, In re, 124 B.R. 806, 809 n. 4 (Bankr. C.D. Cal. 1991), 565
- Competitive Assoc., Inc. v. Int'l Health Sciences, Inc., 1975 U.S. Dist. LEXIS 14230, 452
- Comstock-Dexter Mines, Inc., In re, SEC Release No. 33-2691, 1941 SEC LEXIS 229 (October 23, 1941), 355
- Congregation of the Passion, Holy Cross Province v. Kidder Peabody & Co., 800 F.2d 177, 660
- Connally v. General Construction Co., 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322 (1926), 559
- Cooper v. Union Bank, 354 F. Supp. 669 (C.D. Cal. 1973), 544
- Cornhusker Energy Lexington, LLC v. Prospect St. Ventures, 2006 WL 2620985 (D. Neb. 2006), 117, 118
- Corporate Relations Group, Inc., SEC v., 2003 WL 25570113 (M.D. Fla. 2003), 117
- Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42 (2d Cir.1991), 482, 483
- Craftmatic Securities Litigation, In re, 890 F.2d 628 (3d Cir. 1990), 476
- Crow, Michael W., In the Matter of, S.E.C. Release No. 376 (Apr. 22, 2009), 143, 145
- Cruse v. Equitable Securities of New York Inc., 678 F. Supp. 1023 (S.D.N.Y. 1987), 716
- D'Alessio v N.Y. Stock Exch., Inc. (CA2 N.Y.) 258 F.3d 93, CCH Fed Secur. L. Rep. P. 91523, cert. den.,

- 534 U.S. 1066, 122 S. Ct. 666, 151 L. Ed. 2d 580 (2001), 930
- Dale v. Rosenfeld, 229 F.2d 855 (2d Cir.1956), 353
- Demarco v. Edens, 390 F.2d 836 (2d Cir. 1968), 485
- Department of Market Regulation v. Yankee Financial Group, Inc., No. CMS030182, 2006 NASD Discip. LEXIS 21 (Aug. 4, 2006), 301
- Dept. of Enforcement v. Wall Street Strategies, Inc., Disc. Proceeding No. 2012033508702 (Sept. 15, 2015), 746
- Deutsch, United States v., 451 F.2d 98 (2d Cir. 1971), cert. denied, 404 U.S. 1019, 92 S. Ct. 682, 30 L. Ed. 2d 667 (1972), 559
- Devine, Frank Thomas, 55 S.E.C. 1180 (2002), 780
- Deyon, SEC v., 977 F. Supp. 510 (D. Me. 1997), 107
- DiPascali, Frank Jr., SEC v., Civ. Doc #09-CV-7085 (S.D.N.Y. 2009), 592
- Dirks v. SEC, 463 U.S. 646 (1983), 645
- Dovey v. Cory, App. Cas. 477 (1901), 451
- DuBois, Derek L., Exchange Act Rel. No. 48332, 2003 WL 21946858, 646
- Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336 (2005), 683
- Eastside Church of Christ v. Nat'l Plan, Inc., 391 F.2d 357 (5th Cir. 1968), 97, 98, 99, 123
- ECA & Local 134 IBEW Joint Pension Trust of Chi. v. JP Morgan Chase Co., 553 F.3d 187 (2d Cir. 2009), 569
- E.F. Hutton & Co., Exchange Act Rel. No. 25887, 49 S.E.C. 829, 832 (1988), 955
- Ernst & Ernst v. Hochfelder, 425 U.S. 185, 96 S. Ct. 1375, 47 L. Ed. 2d 668 (1976), 626, 648, 703
- Escott v. BarChris Construction Corp. 283 F. Supp. 643 (S.D.N.Y. 1968), 440
- Feiner v. SS&C Technologies, Inc., 47 F. Supp. 2d 250 (D. Conn. 1999), 480
- Fey v. Walston & Co., Inc., 493 F.2d 1036 (7th Cir. 1974), 713
- Financial Industry Regulatory Authority Letter of Acceptance, Waiver and Consent NO. 20090189070 Merrill Lynch, Pierce, Fenner & Smith Inc. (Nov. 23, 2010), 315
- Finnerty, United States v., 533 F.3d 143 (2d Cir. 2008), 572
- First Colonial Sec. Grp., Inc., Exchange Act Release No. 43349, 2000 WL 1424081 (Sept. 26, 2000), 257
- First Jersey Sec., Inc., SEC v., 101 F.3d 1450 (2d Cir. 1996), 169
- Flecker v. Hollywood Entertainment Corp., 1997 U.S. Dist. LEXIS 5329, 452
- Fleet Boston Robertson Stephens, Inc. v. Innovex, Inc. 264 F.3d 770 (8th Cir. 2001), 808
- Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034 (2012), 830
- Gabelli, SEC v., 653 F.3d 49 (2d Cir. 2011), 645, 646
- General Bond Share Co. v. SEC, 39 F.3d 1451 (10th Cir. 1994), 902
- Geon Industries, Inc., SEC v., 531 F.2d 39 (2d Cir. 1976), 632
- Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991), 817
- Ginsburg, SEC v., 362 F.3d 1292 (11th Cir. 2004), 116
- Global Crossing, Ltd. Securities Litig., In re, 313 F. Supp. 2d 189 (S.D.N.Y. 2003), 352
- Goble, SEC v., 682 F.3d 934 (11th Cir. 2012), 534

- Goldman v. Bank of Commonwealth, 467 F.2d 439 (6th Cir. 1972), aff'g 332 F. Supp. 699 (E.D. Mich. 1971), 544
- Gordon Partners v. Blumenthal, No. 02 Civ. 7377, 2007 WL 431864 (S.D.N.Y. Feb. 9, 2007), 621
- Grandon v. Merrill Lynch & Co., Inc., 147 F.3d 184 (2d Cir.1998), 572
- Grove v. First National Bank of Herminie, 352 F. Supp. 1250 (W.D.Pa.1972), aff'd, 489 F.2d 512 (3d Cir. 1973), 544
- Grubman, Jack Benjamin, SEC v., No. 03 Civ. 2938 (WHP) (S.D.N.Y.), 190, 191
- Gustafson v. Alloyd Co., Inc., 513 U.S. 561, 115 S. Ct. 1061, 131 L. Ed. 2d 1 (1995), 427, 477, 479
- Gutfreund, John H., 51 S.E.C. 93 (1992), 186, 188, 191, 217, 242, 243
- Hall v. Paine, 224 Mass. 62, 112 N.E. 153 (1916), 955
- Halliburton Co. v. Erica P. John Fund, Inc., 134 S. Ct. 2398 (2014), 667
- Handley Investment Co. v. S.E.C., 354 F.2d 64 (10th Cir. 1965), 906
- Hansen, SEC v., No. 83 Civ. 3692, 1984 WL 2413 (S.D.N.Y. Apr. 6, 1984), 110, 117
- Harden v. Raffensperger, Hughes & Co., Inc., 65 F.3d 1392 (7th Cir. 1995), 353
- Harding v. Wachovia Capital Markets LLC, 2012 U.S. Dist. LEXIS 141827, 61
- Hart, Stephen V., SEC No-Action Letter, 1980 SEC No-Act LEXIS 3020 (Mar. 6, 1980), 127
- Hasho, SEC v., 784 F. Supp. 1059 (S.D.N.Y. 1992), 633
- Hecht v. Harris, 430 F.2d 1202 (9th Cir. 1970), 697
- Herula, Dennis S., et al., SEC v., C.A. No. 02-154 ML (D.R.I.), 293
- Hoffman, John B. and Kevin J. McCaffrey Administrative Proceeding, In the Matter of, File No. 3-11930 (May 19, 2005), 189
- Hollinger v. Titan Capital Corp., 914 F.2d 1564 (9th Cir. 1990), 34, 165, 169
- Holschuh, SEC v., 694 F.2d 130 (7th Cir.1982), 354
- Howe Barnes Inv. Inc., Exchange Act Rel. No. 37,707 (Sept. 23, 1996), 250
- Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79 (2002), 833
- Huff, Arthur J., 50 S.E.C. 524 (1991), 186, 310
- Huff, Arthur James, In the Matter of, Exchange Act Release No. 29017, 1991 WL 296561 (Mar. 28, 1991), 177, 208, 217, 224
- In re, See Name of Party**
- Ingenito v. Bermec Corp., 441 F. Supp. 525 (S.D.N.Y.1977), 353
- Intern'l Chem. Dev. Corp., SEC v., 469 F.2d 20 (10th Cir.1972), 353, 354
- Jett, Orlando Joseph, In re, Initial Decisions Release No. 127, 1998 SEC LEXIS 1501, (July 21, 1998), 646
- Jett, SEC v., 514 F. Supp. 2d 532 (2007), 646
- John Nuveen & Co. v. Sanders, 450 U.S. 1005 (1981), 488
- Joseph McCulley Sales, SEC No-Action Letter, 1972 SEC No-Act. LEXIS 3229, 128
- Kenton Capital, Ltd., SEC v., 69 F. Supp. 2d 1 (D.D.C. 1998), 97, 105
- Kettler, Paul C., 51 S.E.C. 30 (1992), 753

- Kirlin Securities, Inc., Anthony Kirincic and Andrew Israel, In the Matter of Application of, Exchange Act Rel. 34-61135 (Dec. 10, 2009), 770
- Klein Co. Futures, Inc. v. Board of Trade of the City of New York, 464 F.3d 255 (2d Cir. 2006), 619
- Knapp, Kirk A., Exchange Act Release No. 30391, 1992 WL 40436 (Feb. 21, 1992), 203
- Knight Capital Americas LLC, In the Matter of, Securities and Exchange Commission, Admin. Proc. File No. 3-15570 (Oct. 16, 2013), 889
- Koppers Company, Inc. v. American Express Co., 689 F. Supp. 1413 (W.D. Pa. 1988), 171
- Kramer, SEC v., 778 F. Supp. 2d 1320 (M.D. Fla. 2011), 113
- Krim v. pcOrder.com, 402 F.3d 489 (5th Cir. 2005), 416
- Lawson, SEC v., 24 F. Supp. 360 (D. Md. 1938), 491
- Lehman Brothers, Inc., Respondent, In the Matter of, Release No. 34-48336/August 14, 2003, Administrative Proceeding File No. 3-11217, 328
- Leib v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 461 F. Supp. 951 (E.D. Mich. 1978), 694
- Leighton, John Patrick, and Kenneth D. Pasternak, Decision No. CLG050021, 2010 FINRA 2010 WL 781457, 70, 71, 72
- Lentil v. Merrill Lynch & Co., 396 F.3d 161 (2d Cir. 2005), 689
- Levitin v. PaineWebber, Inc., 159 F.3d 698 (2d Cir.1998), 564, 574
- Litwin v. Allen, 25 N.Y.S.2d 667 (Sup. Ct. 1940), 450, 451
- Loeb, Carl M., Rhoades & Co., In the Matter of, 38 S.E.C. 843 (1959), 377
- Logay, Sandra, In the Matter of, Exchange Act Release No. 159, 2000 WL 95098 (Jan. 28, 2000), 177
- Lowe v. Salomon Smith Barney, Inc., 206 F. Supp. 2d 442 (W.D.N.Y. 2002), 61
- Lysiak, Conrad C., 47 F.3d 1175 (9th Cir. 1995), 176
- Lysiak, Conrad C., 51 S.E.C. 841, 844 (1993), 176
- M & A West, Inc., SEC v., 2005 WL 1514101 (N.D. Cal. 2005), 114, 117
- M & B Contracting Corp. v. Dale, 601 F. Supp. 1106 (E.D. Mich. 1984), 710
- Manufacturers Hanover Trust Co. v. Smith Barney, Harris Upham Co., Inc., 770 F. Supp. 176 (S.D.N.Y.1991), 619, 620
- Marbury Mgmt., Inc. v. Kohn, 629 F.2d 705 (2d Cir. 1980), 165, 169
- Margolin, SEC v., 1992 U.S. Dist. LEXIS 14872, 1992 WL 279735 (S.D.N.Y. 1992), 107, 117
- Markets, Ltd. Brokerage Customer Sec. Litig., 586 F. Supp. 2d 172 (S.D.N.Y. 2008), 618, 619, 621
- Martino, SEC v., 255 F. Supp. 2d 268 (S.D.N.Y. 2003), 107
- Mass. Fin. Servs. Inc., v. Sec. Investor Prot. Corp., 411 F. Supp. 411 (D. Mass. 1976), 97
- Massachusetts Fin. Services, Inc. v. Securities Investor Protection Corp., 545 F.2d 754 (1st Cir. 1976), 110
- Matter of, See Name of Party**
- McFarland v. Memorex Corp., 493 F. Supp. 631 (N.D.Cal.1980), 354
- McMahan & Co. v. Warehouse Entertainment, Inc., 65 F.3d 1044 (2d Cir. 1995), 469

- McNeal v. Paine, Webber, Jackson & Curtis, Inc., 598 F.2d 894 (5th Cir. 1979), 713
- McPherson v. Barnes, 493 U.S. 1077 (1990), 411
- Medeck, Department of Enforcement v., Complaint No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, 711
- Metge v. Baehler, 762 F.2d 621 (8th Cir. 1985), 168
- Michael E. Tennenbaum, Securities Exchange Act Release No. 18429, 1982 WL 31984, 213, 217
- Mid America Financial Services, Inc. 1982 SEC No-Act LEXIS 2979 (Nov. 8, 1982), 511
- Mihara v. Dean Witter, 619 F.2d 814 (9th Cir. 1980), 700
- Miley v. Oppenheimer & Co., 637 F.2d 318 (5th Cir. 1981), 712
- Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 469 U.S. 916 (1985), 791, 798
- Morgan, United States v., 118 F. Supp. 621 (S.D.N.Y. 1953), 362
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1 (1983), 791, 797
- Mulheren, United States v. 938 F.2d 364 (2d. Cir. 1991), 780
- N. Am. Research and Dev. Corp., SEC v., 280 F. Supp. 106 (S.D.N.Y. 1968), 354
- National Association of Securities Dealers, Inc., 5 S.E.C. 627 (1939), 495, 500
- National Association of Securities Dealers, Inc., In the Matter of, Release No. 34-3322 (Oct. 28, 1942), 493, 500
- National Association of Securities Dealers, United States v., 422 U.S. 694, 95 S. Ct. 2427, 45 L. Ed. 2d 486 (1975), 910, 911
- National Executive Planners, LTD., SEC v., 503 F. Supp. 1066 (M.D.N.C. 1980), 107
- NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co., 693 F.3d 145 (2d Cir. 2012), 468
- Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 135 F.3d 266 (3d Cir.), cert. denied sub nom. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Kravitz, 525 U.S. 811 (1998), 660
- O'Connor v. R.F. Lafferty & Co., Inc., 965 F.2d 893 (10th Cir. 1992), 722
- Offil, SEC v., 2012 U.S. Dist. LEXIS 9369, Fed. Sec. L. Rep. (CCH) P96,723 (N.D. Tex. 2012), 94
- O'Hagan, United States v. 521 U.S. 642, 117 S. Ct. 2199, 138 L. Ed. 2d 724 (1997), 615
- Opper v. Hancock Securities Corp., 250 F. Supp. 668 (S.D.N.Y.) aff'd, 367 F.2d 157 (2d Cir. 1966), 955, 960
- Order Execution Obligations, Exchange Act Release No. 37619A, 1996 WL 506154 (Sept. 6, 1996), 43
- Pasternak and Leighton, SEC v., 561 F. Supp. 2d 459 (D.N.J. 2008), 170
- Patrick v. SEC, 19 F.3d 66 (2d Cir. 1994), 187, 204
- Patten Securities Corporation v. Diamond Greyhound & Genetics, Inc., 819 F.2d 400 (3d Cir. 1987), 810
- Paul F. Newton & Co. v. Tex. Commerce Bank, 630 F.2d 1111 (5th Cir. 1980), 165, 169, 170
- Petersen, United States v. 98 F.3d 502 (9th Cir.1996), 617
- Petrillo, United States v., 332 U.S. 1, 67 S. Ct. 1538, 91 L. Ed. 1877 (1947), 559
- Phillips v. Kidder, Peabody & Co., 933 F. Supp. 303 (S.D.N.Y. 1996), 661

- Pinter v. Dahl, 486 U.S. 622 (1988), 472,
- Prager, Robert J., 2005 SEC LEXIS 1558 (2005), 311
- Pross v. Baird, Patrick & Co., Inc., 585 F. Supp. 1456 (S.D.N.Y. 1984), 715,
- Prudential-Bache Sec. Inc., Exchange Act Rel. No. 22,755 (Jan. 2, 1986), 257
- Prudential-Bache Securities, Inc., 48 SEC 372 (1986), 259
- Prudential-Bache Securities, Inc., Exchange Act Release No. 34-20380 [1983-1984 Transfer Binder] [Fed.Sec.L.Rep. (CCH) ¶ 83,455 (November 17, 1983), 265
- Prudential Securities Inc., In the Matter of, Exchange Act Release No. 33,082 (Oct. 21, 1993), 258
- Rabinovich & Assocs., LP, SEC v., 2008 U.S. Dist. LEXIS 93595, 2008 WL 4937360 (S.D.N.Y. Nov. 18, 2008), 97
- Randall v. Loftsgaarden, 478 U.S. 647 (1986), 688
- Raymond James Financial Services, Inc., J. Stephen Putman and David Lee Ullom, In the Matter of, Initial Decision Release No. 296 (Sept. 15, 2005), 270
- Refco Capital Markets, Ltd. Brokerage Customer Sec. Litig., In re, 586 F. Supp. 2d 172 (S.D.N.Y. 2008), 618, 619, 621
- Refkin, Alan Charles, David Barry Harberson and Scott Michael Flanagan, Exchange Act Rel. No. 26,312 (Nov. 25, 1988), 256
- Registration Requirements for Foreign Broker-Dealers, 54 FR 30013 (Rel. No. 34-27017) (Jul. 18, 1989), 132
- Remar v. Clayton Securities Corp., 81 F. Supp. 1014 (D. Mass. 1949), 544
- Reynolds & Co., In the Matter of, 39 S.E.C. 902 (1960), 158, 211
- Ridenour, SEC v., 913 F.2d 515 (8th Cir. 1990), 94, 127
- Rodriguez de Quijas v. Shearson/American Express Inc., 490 U.S. 477 (1989), 798
- Rolf v. Blyth, Eastman, Dillon & Co., Inc., 570 F.2d 38 (2d Cir. 1978), 714
- Rosenberg v. Gould, 554 F.3d 962 (11th Cir. 2009), 654
- Roth v. SEC 22 F.3d 1108 (D.C. Cir. 1994), 92
- Royal American Managers, Inc. v. IRC Holding Corp., 885 F.2d 1011 (2d Cir. 1989), 476
- Rubel v Pfizer Inc., 276 F. Supp. 2d 904 (N.D. Ill. 2003), 930
- Rubin v. United States, 449 U.S. 424 (1981), 473
- Salamon v. CirTran Corp., 2005 WL 3132343 (D. Utah 2005), 118
- Salamon v. Teleplus Enterprises, Inc., 2008 WL 2277094 (D.N.J. 2008), 118
- Sanders v. John Nuveen & Co., Inc., 619 F.2d 1222 (7th Cir. 1980), 483
- Santa Fe Industries, Inc. v. Green, 430 U.S. 462, 97 S. Ct. 1292, 51 L. Ed. 2d 480 (1977), 623, 719
- Schidlowski, Juan C., 48 S.E.C. 507 (1986), 310
- Schlifke v. Seafirst Corp., 866 F.2d 935 (7th Cir. 1989), 476
- Schwartz, United States v., 464 F.2d 499 (2d Cir. 1972), 556
- Scientific Control Corp. Sec. Lit., In re, 71 F.R.D. 491 (S.D.N.Y. 1976), 716
- Scottrade, Inc. v. BroCo Investments, Inc., 774 F. Supp. 2d 573 (S.D.N.Y. 2011), 616
- SEC v., See Name of Defendant**

- Sec. Am. Corp. Sec. Litig, In re, No. 81 C 3910, 1985 WL 2266, 355
- SECO Sec., Inc., 49 S.E.C. 873 (1988), 186
- Securities and Exchange Commission (S.E.C.) In the Matter of Capital Funds, Inc. File No. 8-10968. Promulgated August 20, 1964, 129
- Securities and Exchange Commission (S.E.C.) In the Matter of New York Stock Exchange, Inc., Respondent Administrative Proceeding File No. 3-11892 (Apr. 12, 2005), 920, 930
- Serzysko v. Chase Manhattan Bank, 409 F.2d 1360 (2d Cir.), cert. denied, 396 U.S. 904, 90 S.Ct. 218, 24 L.Ed.2d 180 (1969), 543
- Sharette v. Credit Suisse Intern. ___ F. Supp. 3d ___ (S.D.N.Y. 2015), 755
- Shaw v. Digital Equip. Corp., 82 F.3d 1194 (1st Cir. 1996), 430
- Shearson/American Express v. McMahon, 482 U.S. 220 (1987), 692, 721, 791
- Sheldon v. SEC, 45 F.3d 1515 (2d Cir. 1995), 204
- Sheldon, Donald T., In the Matter of, 52 S.E.C. Docket 2496 (Nov. 18, 1992), 574
- Siegel, Michael Frederick, Exchange Act Rel. No. 58737, 2008 SEC LEXIS 2459 (Oct. 6, 2008), 739
- Signal Sec. Inc., Exchange Act Release No. 43350, 2000 WL 1423891 (Sept. 26, 2000), 204
- Smith, Jack C. Jr., Administrative Proceeding, In the Matter of, File No. 3-14229, Exchange Act Release No. 34-63834 (Feb. 3, 2011), 204
- Software Toolworks, Inc. Securities Litigation, In re, 38 F.3d 1078 (9th Cir. 1994), 453
- Sorrell v. SEC, 679 F.2d 1323 (9th Cir. 1982), 902
- Southland Corp. v. Keating, 465 U.S. 1 (1984), 797
- Special Situations Fund, III, L.P. v. Cocchiola Fed. Sec. L. Rep. P 94,459 (D.N.J. 2007), 350
- St. Petersburg v. Wachovia, 2010 WL 2991431 (M.D. Fla. July 27, 2010), 574
- Staehr v. Hartford Fin. Servs. Group, 547 F.3d 406 (2d Cir. 2008), 563
- Stephen v. Hart, 1980 SEC No-Act LEXIS 3020 (Mar. 6, 1980), 127
- Sterling Foster and Co., Inc. Securities Litigation, In re, 222 F. Supp. 2d 216 (E.D.N.Y. 2002), 477
- Steven E. Muth and Richard J. Rouse, In the Matter of, Exchange Act Rel. No. 52551 86 S.E.C. Docket 956 (Oct. 3, 2005), 732
- Stevens v. Abbott, Proctor and Paine, 288 F. Supp. 836 (E.D. Va. 1968), 696
- Stonehill v. Sec. Nat'l Bank, 68 F.R.D. 24 (S.D.N.Y. 1975), 542
- Supervisory Responsibilities of a Broker-Dealer Manager, Exchange Act Release No. 34- 8404, 1968 WL 87260 (Sept. 11, 1968), 156
- Surgilight, Inc., SEC v., 2002 WL 31619081 (M.D. Fla. 2002), 114
- Synder v. Newhard, Cook & Co., Inc., 764 F. Supp. 612 (D. Colo. 1991), 156
- TD Ameritrade, Inc., In the Matter of, Exchange Act Release No. 63,829 (Feb. 3, 2011), 251
- Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308 (2007), 425, 655
- Texas Gulf Sulphur Co., SEC v., 401 F.2d 833 (CA2 1968) (en banc), cert. denied sub nom. Coates v. SEC, 394 U.S. 976, 89 S. Ct. 1454, 22 L. Ed. 2d 756 (1969), 630, 632
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Preface

This book is designed for a stand-alone course on the regulatory framework of broker-dealers and does not require any prerequisite courses. All materials in the book are presented from the perspective of the broker-dealer and encourage active learning by allowing students to grapple with real-world, context-based problem solving through the use of hypotheticals. Each chapter contains hypotheticals designed to contextualize the various regulatory issues pertinent to broker-dealers in many instances simulating the attorney-client relationship. Each chapter also includes notes that cover topics not found in the cases. Part I of the textbook is designed to provide an overview of the regulatory framework for the broker-dealer industry along with the various business models used by broker-dealers to conduct their securities businesses. Students should gain an understanding of the various business models and the basic functional organization (front, middle, and back offices) of a typical broker-dealer. In addition, Chapter 2 contains a glossary of frequently used terms in the broker-dealer industry and is designed to serve as a reference tool in understanding the materials in the chapters that follow. Part II focuses on broker-dealer self-regulation with an emphasis on registration and supervisory responsibilities. Part III analyzes the regulatory framework governing broker-dealer participation in public offerings of securities. Part IV considers the rules and regulations designed to ensure broker-dealer financial responsibility. Part V examines broker-dealer fraud prosecuted under § 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 and identifies specific types of broker-dealer fraud typically alleged in disputes between broker-dealers and their customers. Part VI includes an analysis of the use of securities arbitration in resolving disputes among broker-dealers and between broker-dealers and their customers. Finally, Part VII explores the regulatory framework of the market structure of the U.S. securities markets including trading venues.

The book is not only appropriate for law school courses but the author has used similar materials to teach law students and graduate business students (M.B.A. with a finance concentration) in the same classroom. In fact, many of the topics covered coincide with regulatory topics tested in the Series 7 Examination, which is the basic examination required to enter the securities industry. In addition, the book is ideally suited for securities arbitration clinics representing individual investors in disputes with their broker-dealers. In particular, the book covers many of the legal and business skills required to resolve small investor claims. Chapter 11 focuses specifically on the types of fraudulent broker-dealer conduct perpetrated against individual investors that can only be resolved through securities arbitration.

The book also embodies a multi-disciplinary approach to learning through its Master Project—the Broker-Dealer Mock Registration Project available on the book’s website. The Master Project requires students to act as consultants to a broker-dealer seeking to register with the Securities and Exchange Commission and to become a member of FINRA. This is a real-world project in which students must use legal and business-related knowledge to complete successfully. For example, in the context of providing legal advice to a broker-dealer seeking to register with the Securities and Exchange Commission, the attorney must identify and analyze applicable federal securities laws and evaluate the broker-dealer’s business plan for compliance with applicable FINRA rules. Specifically, the Master Project aids students’ understanding of the economic incentives of the business of being a broker-dealer and the effects of the broker-dealer regulatory framework on profitability.

The book’s website contains additional materials, including a user-friendly teacher’s manual designed for both professors experienced and new to the laws governing broker-dealers. The website also contains a library of materials (some of which did not make it into the book) organized by chapter and topic along with PowerPoint slides for many of the chapters. Please regularly check the website for updated materials.

Finally, it is my intention to include two additional topics in the broker-dealer regulatory framework—advertising regulation and anti-money laundering. I would greatly appreciate any suggestions for incorporation in future editions.

Editorial Note and Acknowledgments

As with other casebooks, my editing of the cases has omitted most footnotes and case and statute citations without indication. Footnote numbers in cases are as in the original with no renumbering to account for omitted footnotes.

I have many people to thank for helping with this book at various stages. I am particularly grateful to my research assistants Bria Adams, Nnaemeka K. Anyanwu, Jimmie Covington, Brandon J. Smith, Manonh Soumahoro, and Brittany Williams for their invaluable research and editorial assistance. I would also like to thank Barry Summer, Bruce Sanders, W. Sherman Rogers, Kurt L. Schmoke, Neal A. Seiden, and Rochelle McAllister for their editorial assistance and support. Two of my very dear friends deserve special recognition for contributions above and beyond the call of duty—Ronald L. Crawford and Raquel Russell.

