

This is your Release #9 (November 2020)

The Securities Law of Public Finance

Third Edition

Robert A. Fippinger

This release expands and updates your book with the author's expert treatment of the following subjects, among many others:

New chapter—Cybersecurity and Municipal Securities Considerations: New chapter 8A, by Cassandra Lentchner, addresses the risks that municipal governments face in light of their reliance on technology to run critical infrastructure, and their possession of personal and business data. The chapter discusses recent cybersecurity attacks, including the ransomware attack on Torrance, California; state legislation requiring state agencies to maintain cybersecurity measures; due diligence for cybersecurity programs, including the five core pillars of such programs, and the particular controls critical to municipalities; and what issuers and underwriters should consider for inclusion in disclosures.

Regulation Best Interest: In 2019, the SEC implemented the policy directives of section 913 of the Dodd-Frank Act by adopting Regulation Best Interest, together with a package of rulemakings and interpretations designed to enhance and clarify the quality and transparency of retail investors' relationships with investment advisers and broker-dealers. The common thread in these regulations was to bring the legal requirements and mandated disclosures in line with reasonable investor expectations, while preserving retail investor access to a variety of investment services and products. See new §§ 10:2.3–10:2.3[E].

Secondary market regulation: The SEC and the MSRB have overlapping jurisdiction over secondary market rulemaking. New discussion highlights the treatment of market manipulation, churning, time-of-trade disclosures, and more. See new § 10:3.6[B].

Municipal advisors—SEC enforcement actions: An SEC enforcement action for failure to register as a municipal advisor can provide a platform that allows the Division of Enforcement to define the parameters of municipal advisory activity, and this use of an enforcement action can be particularly valuable in the case of solicitor municipal advisors where the extent of solicitation activity has not always been clear. An illustration is the enforcement action against School Business Consulting, Inc., which provided general consulting services to school districts in California. See § 11:1.1[A], at note 7.2.

(continued on reverse)

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Municipal advisors—advertising: Rule G-40, adopted by the MSRB in 2018, includes general provisions on municipal advisor advertising and requires principal approval, in writing, for municipal advisor advertisements before their first use. The general provisions of Rule G-40 (1) define key terms, including “advertisement,” (2) provide content standards, and (3) set general standards for advertisements, including that a municipal advisor must not publish or disseminate an advertisement that the municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading. See new § 11:17.

Investment advisers—fiduciary duty: In 2019, the SEC released an interpretive release addressing the standard of conduct for investment advisers, in which it summarized certain aspects of the investment adviser’s fiduciary duty under section 206 of the Advisers Act. In contrast to the rules-based approach to broker-dealers under Regulation Best Interest, the SEC chose to maintain a principles-based approach to the fiduciary duty of investment advisers. See § 12:9, at note 105.3.

Form ADV: The SEC has expanded Form ADV, adding a new part 3, and has adopted new rules and forms under the 1934 Act and the Advisers Act to require registered broker-dealers and registered investment advisers to provide retail investors with a brief summary of the firm’s relationship with its customers or clients on a form entitled Form CRS Relationship Summary. See new § 12:9.3.

Injunctive relief against public officials: Bars are used in enforcement proceedings against public officials. In addition to the ancillary power in an injunctive proceeding to charge aiders and abettors, the SEC can seek ancillary relief in an injunction that specifically prevents public officials of issuers from participating in future offerings of municipal securities. Several cases illustrate the use of this enforcement mechanism. See new § 15:3.1[D].

Dodd-Frank protection for whistleblowers: Section 21F(h) protects only SEC whistleblowers as defined in the statute. In *Digital Realty Trust, Inc. v. Somers*, the Supreme Court, in a unanimous decision written by Justice Ginsburg, held that the provision did not protect a vice-president who was fired by his company after he filed several reports to senior management regarding possible securities law violations by the company, but who did not report his concerns to the SEC before he was terminated. See § 15:4.4, at note 98.

The **Table of Authorities** and the **Index** have also been updated.

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FILING INSTRUCTIONS

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REMOVE OLD PAGES NUMBERED:

VOLUME 1

- Title page to lix
- _____

VOLUME 2

- Title page to 10-154
- 11-1 to 11-132
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- T-1 to I-131

INSERT NEW PAGES NUMBERED:

VOLUME 1

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