

This is your Release #19 (April 2022)

Securities Law and Practice Deskbook

Sixth Edition

by
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Securities Law and Practice Deskbook remains your definitive one-volume guide to the Securities Act of 1933 (“Securities Act”), the Securities Exchange Act of 1934 (“Exchange Act”), relevant rules and regulations and key case law. The book is intended to serve as an initiation into the United States federal securities laws and the way that securities lawyers approach problems. It also is meant to serve more experienced practitioners as a general review and first resource when approaching an unfamiliar area of securities law.

After an active year of rulemaking in 2020, 2021 was relatively quiet—until the fall—and the Commission is now executing on a packed agenda.

The nineteenth supplement brings you up to date on the latest important developments in securities law.

Highlights of Release #19 include:

Chapter 1 (Approaching Securities Law). You can **no longer view documents required to be made available in electronic format by the Freedom of Information Act in the Commission’s Public Reference Room. The terminal has been removed.** Persons without access to the internet **can obtain these documents by telephone** or email request to **the Commission’s Office of FOIA Services.**

Chapter 4 (Securities Act Registration Process). The Commission **reduces the filing fees imposed** pursuant to section 6 of the Securities Act **from \$109.10 to \$92.70 per million.** The **fee tables on registration statements** also have been **revised** and soon (**May 31, 2022**) filing fees will be **payable** by **ACH and debit and credit cards—physical checks or money orders will no longer be allowed.** **Industry Guide 3 has been rescinded and replaced** with a new subpart of **Regulation S-K (Subpart 1400).** “**Competitive harm**” is **no longer a requirement for redactions or confidential treatment requests—**only that the information sought to be excluded be (i) **not material** and (ii) the type that the **company treats as private or confidential.**

Chapter 8 (Liability for Securities Act Violations). Ninth Circuit affirms ruling **accepting a “statistical tracing” theory in a Securities Act section 11 case** involving a direct listing case.

Chapter 9 (Registration and Periodic Reporting Under the Exchange Act). **Regulation FD enforcement makes a comeback.** Commission **updates Form 10-K (adding Item 9C)** to address the **Holding Foreign Companies**

(continued on reverse)

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Accountable Act of 2020. Commission also proposes rules that would require **greater disclosure** regarding **share repurchases**, including the requirement of a **new Form SR**.

Chapter 10 (Regulation of Proxy Solicitations). The Commission **proposes amendments** to the proxy rules to **remove the recently adopted provisions** requiring that **registrants be made aware of proxy voting advice** and replace it with a **simple requirement** to make **prominent disclosure of information that would be material to assessing an advisory firm’s objectivity**. The Division of Corporation Finance (“Corp Fin”) continues its **current position** that it will **not recommend enforcement action on the basis of violations of the 2019 interpretation and guidance and 2020 rule amendments regarding proxy advisory firms**. At last, the Commission adopts **universal proxies for contested director elections for shareholder meetings after August 31, 2022**; the **“short slate” rule** was also rescinded, effective that **same date**. **Perk disclosure** (or the lack thereof) and related issues surrounding **disclosure controls and procedures** continue to be a focus of the Commission’s **enforcement staff**. The **“Pay for Performance” rule** comes **off the back burner** with the **reopening of the comment period**. Possibly addressing the issue of **“spring-loading,”** the Commission staff gives **guidance on share-based awards** indicating that companies should take **share volatility into account when valuing awards**. Corp Fin also **reverses its recently adopted practice** regarding **responses to shareholder proposals** and returns to pre-2020 practice of responding to each shareholder proposal **with a written letter**. The Corp Fin staff **rescinds recently adopted SLBs 14I, 14J, and 14K** and states that it will **analyze shareholder proposals** proposed to be excluded under the **“ordinary business”** and **“economic relevance”** exclusions under its **previous methodology** and **require inclusion** of proposals that raise **issues with a broad societal impact that transcend the ordinary business and operations** of a company.

Chapter 12 (Fraud Under Rule 10b-5 and Related Issues). A district court **refuses to dismiss** what has been termed **“shadow trading”**—a person **in possession of material nonpublic information** about his company or a potential counterparty trading **in the securities of similar companies**. Securities **class action activity** falls to a **multi-year low in 2021**. In response to **concerns that Rule 10b-5(1) plans were being abused and not being entered into or terminated in good faith**, the Commission proposes **amendments to Rule 10b-5(1)**. The Commission’s **Whistleblower program** has its **biggest year ever in 2021** with awards (since inception) now **over \$1 billion**.

Chapter 13 (Disgorgements Under Exchange Act Section 16(b) and Securities Law “Clawback” Provisions). After a significant **Sarbanes-Oxley section 304** case involving an **accounting restatement at WageWorks Inc.**, attention was refocused on the **long-proposed Dodd-Frank 954 “clawback” rule**. In 2021, the **comment period** for that rule was **re-opened** and the Commission **suggested that one possible refinement** is an expansion of the concept of “restatement” to include **not only “reissuance” or “Big R” restatements** (which involve a material error and an 8-K), but also **“revision” or “little r” restatements** (or some version thereof). Remember that the **Sarbanes-Oxley “clawback” provisions apply only to CEOs and CFOs** while the **Dodd-Frank “clawback” requirements apply to any “executive officer.”**

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FILING INSTRUCTIONS

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**Release #19
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**REMOVE OLD PAGES
NUMBERED:**

- Title page to 1-30
- 4-1 to 4-34
- 8-1 to 10-84
- 12-1 to 13-40
- T-1 to I-51

**INSERT NEW PAGES
NUMBERED:**

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