

This is your Release #22 (November 2022)

Broker-Dealer Regulation

Second Edition

Edited by Clifford E. Kirsch

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This twenty-second release to *Broker-Dealer Regulation, Second Edition* updates the treatise with the latest developments in and analysis of the regulatory framework applying to broker-dealers. Editor Clifford E. Kirsch and a team of contributing authors have updated ten chapters.

Chapter 6, Duty to Supervise. Updated to include additional factors identified by the DOJ when reviewing the adequacy of supervisory and compliance programs and deciding whether to bring a criminal prosecution against a business organization (including a broker-dealer) and its management (see section 6:3.3[A]).

Chapter 17, Research and Research Analysts. Covers the end of the SEC staff no-action letter's providing temporary relief from enforcement action under the Advisers Act to broker-dealers that provide research services that constitute investment advice to an investment manager that is subject to MiFID II's requirement to either pay for research services from its own money, from an RPA, or from a combination of the two (see section 17:2.4).

Chapter 18, Electronic Trading. Updated Regulation ATS discussion covers regulation of ATSs as exchanges (see section 18:5.1[C]); the SEC's January 26, 2022, proposed amendments to the definition of an "exchange" under Rule 3b-16 (see section 18:5.2[E]); and the 2022 SEC proposed amendment to Regulation ATS to eliminate the exemption under Rule 301(a)(4) for government securities ATSs (see section 18:5.4[D]).

Chapter 29, Financial Services Cybersecurity. Incorporates the February 2022 SEC release addressing "Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies" and covers the accompanying proposed new rules under the Advisers Act and the Investment Company Act (see section 29:5); and covers the FTC's enhanced cybersecurity requirements in its Safeguards Rule, which come into effect at the end of 2022 (see section 29:6).

Chapter 32A, Broker-Dealer Chief Compliance Officer Liability. New discussions cover regulators' increasing awareness of the importance of CCOs' expanding role in implementing compliance programs and ensuring

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they are adequately resourced: NSCP framework (see section 32A:5.1); and DOJ guidance (see section 32A:5.2).

Chapter 37A, Collateral Consequences for Broker-Dealers and Associated Persons. Extensively updated chapter covers the Regulation Crowdfunding exemption (see section 37A:3.3[B]); and amended Rule 206(4)-1 of the Investment Advisers Act, which prohibits registered investment advisers from paying, directly or indirectly, an ineligible person for making testimonials and endorsements (see section 37A:3.6).

Chapter 49, Investment Banking Compliance. Updated cybersecurity discussions of SEC guidance (see section 49:12.1[A]) and FINRA’s February 2021 report with its findings of the best practices for an effective cybersecurity program (see section 49:12.1[C]).

Chapter 52, Private Banking and Wealth Management. Updated to cover the evolving approach to determining fiduciary status under ERISA and Section 4975 for registered representatives and other client-facing professionals at broker-dealers, the standards of care that apply to these service providers when working with ERISA Plans and IRAs, and the current strictures upon their receipt of variable compensation (see section 52:3.2[A][1]); DOL’s efforts to expand the circumstances in which a Service Provider would be acting as a “fiduciary” with respect to ERISA Plans and IRAs (see section 52:3.2[B][2]); and PTE 2020-02, which provides some relief for “conflict of interest” PTs (see section 52:3.4[C]).

Chapter 53, Blockchain and Digital Assets. Updated to cover, among many developments, regulatory developments (see sections 53:6.3 and 53:6.4).

Chapter 54, Role of Federal Reserve in Broker-Dealer Regulation. Updated discussion covers developments regarding Federal Reserve Regulation O (see section 54:2.7[A]); and the Federal Reserve and systemic risk regulation (see section 54:4).

The **Table of Authorities** and **Index** have been updated to reflect the latest revisions.

Thank you for purchasing *Broker-Dealer Regulation, Second Edition*. If you have questions about this product, or would like information on our other products, please contact customer service at info@pli.edu or at (800) 260-4PLI.

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