

OUTLINE

PREFACE	V
INTRODUCTION	VII
ABBREVIATIONS	IX
TABLE OF CASES	XXIII
TABLE OF STATUTES	XXXI

Chapter 1. Overview of Securities

Regulation	1
§ 1. State and Federal Securities Laws	1
§ 2. The Securities and Exchange Commission	9
§ 3. Sources of Securities Law	12
§ 4. Where to Find the Law	18

Chapter 2. Introduction to the Securities

Markets.....	23
§ 5. Overview of the Securities Markets.....	23
A. The Nature of Securities	23
B. Securities Markets	25
C. The Securities Industry	29
D. The Securities and Exchange Commission.....	31
§ 6. The U.S. Securities Markets	32
§ 7. Market Regulation—History, Background, and Overview	38
§ 8. Market Regulation and the Antitrust Laws	40

Chapter 3. Overview of SEC and Self-Regulation	43
§ 9. Introduction to SEC and Self-Regulation.....	43
A. SEC Enforcement Authority.....	43
B. SEC Disciplinary Authority over Broker-Dealers	45
C. Self-Regulation and Disciplinary Authority.....	49
D. SRO Disciplinary Authority	51
E. Broker-Dealer Self-Policing	52
§ 10. Securities Exchanges	53
§ 11. Financial Industry Regulatory Authority (FINRA) Replaces the National Association of Securities Dealers (NASD).....	56
§ 12. Nasdaq	59
§ 13. The National Market System	60
§ 14. Clearing and Settlement of Securities Transactions	62
§ 15. Clearing Brokers and Introducing Brokers.....	63
§ 16. Brief Overview of Broker-Dealer Registration Requirements.....	65
§ 17. Broker-Dealer Operations	66
A. Net Capital Rule.....	67
B. Customer Protection Rule.....	67
C. Record-Keeping Requirements	67
D. FOCUS Reports	68
E. Just and Equitable Principles of Trade; Industry Practice	69

Chapter 4. Overview of Securities Laws’ Anti-Manipulation and Anti-Fraud Provisions	71
§ 18. Overview of Market Manipulation.....	71
A. 1934 Act § 10.....	71
B. The Section 10(b) Rules	72
§ 19. Overview of the Antifraud Provisions.....	74
A. 1933 Act § 17(a); 1934 Act § 10(b) and 1934 Act Rule 10b–5	74
B. 1934 Act § 15(c)(1)	89
C. The § 15(c) Rules	89
§ 20. State Regulation; Limited Preemption	92
Chapter 5. Broker-Dealer Definitions and Registration Requirements	95
§ 21. Broker-Dealer Registration Requirements	95
A. Broker-Dealer Registration Generally; SEC and FINRA Requirements.....	96
B. SEC Registration of Foreign Broker- Dealers	99
C. SEC “Broker-Dealer Lite”— Registration of Capital Acquisition Brokers and Over-the-Counter Derivative Dealers.....	100
D. SEC Regulation of Swap Dealers and Major Swap Participants.....	103
E. SEC Registration Exemption for Private Placement Platforms.....	106
F. Crowdfunding Platforms.....	107
§ 22. Definitions of Broker and Dealer	109

§ 23.	Exclusion for Banks but Not Subsidiaries; Regulation R	113
§ 24.	Exemptions	115
	A. Dealers of Exempt Securities	115
	B. Intrastate Exemption	115
	C. Over-the-Counter Derivatives Dealers	116
	D. Private Placement Platforms	116
	E. Investment Advisers and Financial Consultants	117
	F. Registered Representatives	118
	G. Insurance Products Dealers	120
	H. Finders	120
	I. Certain Persons Associated with the Issuer	121
	J. SEC's General Exemptive Authority	123
§ 25.	FINRA Registration for Certain Associated Persons	123
§ 26.	A Brokerage Firm's Duty to Supervise; Compliance Programs	126
	A. Duty to Supervise	126
	B. Compliance Programs	128
	C. Rogue Brokers	129
§ 27.	Protection of Customers' Privacy	130
§ 28.	State Registration Requirements for Broker-Dealers and Registered Representatives	131
§ 29.	Municipal Securities Dealers	133
	A. The Municipal Securities Markets ..	133
	B. The Municipal Securities Industry	134

	C. Overview of Municipal Securities Dealer Regulation.....	135
	D. The MSRB.....	137
	E. Enforcement.....	138
§ 30.	Regulation of Government Securities Dealers	138
	A. Definition of Government Securities	139
	B. Scope of Government Securities Dealer Regulation.....	140
	C. Types of Government Securities Dealers	141
	D. Registration of Government Securities Dealers; Definitions, Exemptions and Exclusions.....	142

Chapter 6. Broker-Dealer Financial

	Regulation	145
§ 31.	Net Capital and Reserve Requirements	145
	A. Net Capital Requirements.....	145
	B. Customers' Funds and Securities: The Customer Protection Rule and the Reserve Requirements.....	147
§ 32.	Focus Reports; Early Warning	149
§ 33.	The Margin Rules and Extension of Credit	151
	A. Margin Transactions Explained.....	151
	B. Limitations on the Extension of Credit for Securities Transactions ...	156
	C. Margin Maintenance Requirements.....	159

	D. Margin Disclosure Requirements; Suitability	160
	E. Remedies for Violations of the Margin Rules	162
§ 34.	The Securities Investor Protection Act— Broker-Dealer Insolvency	162

Chapter 7. Exchange Trading and Market

	Making	167
§ 35.	Exchange Trading	167
§ 36.	“Floor Trading”; “Off-Floor Trading”; and an Introduction to Trading Practices.....	168
§ 37.	Block Positioning and Institutional Membership.....	171
§ 38.	Specialists and Designated Market Makers	173
	A. Specialists	173
	B. Designated Market Makers and the Demise of the Specialist.....	178
§ 39.	Technological Advancements—Impact on Exchange Trading; High Frequency Trading	180
§ 40.	Nasdaq and OTC Market-Making	187
§ 41.	Market-Makers and the Obligation to Maintain an Orderly Market.....	189
§ 42.	FINRA Regulation of Market-Makers	190
§ 43.	Market-Makers’ Conflict of Interest; Disclosure Obligations	192
§ 44.	Market-Makers and Manipulation	192

Chapter 8. Retail and Other Operations.....	197
§ 45. Multiservice Brokerage Firms; the Chinese Wall or Fire Wall	197
§ 46. Execution of Customer Orders	204
A. Best Execution Obligation	204
B. Confirmation of Transactions.....	210
C. Trading Ahead of Customers.....	211
§ 47. Disclosure of Broker-Dealer Commissions.....	211
§ 48. Commissions, Mark-Ups, and Mark-Downs.....	213
§ 49. Excessive Mark-Ups and Mark-Downs....	214
§ 50. Payment for Order Flow	218
§ 51. Recommendations Generally.....	220
§ 52. Recommendations Induced by Commissions or Other Incentive.....	221
§ 53. Street Name Securities—Custodial Obligations.....	223
§ 54. Broker-Dealers and the 1933 Act.....	225
A. The Operation of 1933 Act § 5	226
B. Exemptions from 1933 Act Registration	229
§ 55. Manipulation and Price Stabilization Involving Public Offerings	242
§ 56. Aftermarket Activities, IPO Practices, Hot Issues, Workout Markets, and Controlled Markets	248
§ 57. Regulation of Short Sales	258

Chapter 9. Obligations to Customers; Manipulative and Deceptive Broker- Dealer Practices.....		265
§ 58.	SEC and SRO Regulation of Broker- Dealer Conduct.....	265
§ 59.	Prohibitions Against Deceptive and Manipulative Conduct—Prohibited Practices Generally	266
§ 60.	Fictitious Trades, Wash Sales, Matched Orders, and Cross Trades	268
	A. Fictitious Trades; Spoofing, Flying and Printing.....	268
	B. Wash Sales.....	269
	C. Matched Orders and Cross Trades...	270
§ 61.	Other Fraudulent and Manipulative Practices.....	271
	A. Marking the Close	271
	B. Trading Ahead of Customers.....	272
	C. Front Running	272
	D. Parking.....	273
	E. Free Riding	273
	F. High Pressure Sales, Deceptive Recommendations, Excessive Commissions and Order Execution Obligations.....	273
§ 62.	Obligations of Securities Brokers Generally	274
§ 63.	The Shingle Theory	278
§ 64.	Recommendations Generally; Know the Security Obligation	282
§ 65.	Suitability Generally.....	284
§ 66.	SEC Suitability Obligations— Regulation Best Interest.....	285

§ 67.	SRO Suitability Obligations	295
	A. The NASD and FINRA Suitability Rule	295
	B. NYSE Know Your Customer Rule....	298
	C. FINRA and Recommendations	298
§ 68.	Purported “Dram Shop” Liability and the Financial Suicide Cases	300
§ 69.	Special Suitability Problems Associated with Low Priced Securities	302
§ 70.	Suitability and Mutual Fund Sales Practices.....	302
§ 71.	Suitability and Investment Advisers	303
§ 72.	Recommendations and Conflicts of Interest; Analysts’ Recommendations	304
§ 73.	Scalping	309
§ 74.	High Pressure Sales Tactics; Boiler Rooms and Bucket Shops.....	310
§ 75.	Manipulation of IPOs.....	316
§ 76.	Pump & Dump Schemes	316
§ 77.	Microcap Fraud	317
§ 78.	Churning.....	318
§ 79.	Unauthorized Trading	321
§ 80.	Parking	323
Chapter 10. Civil Liabilities		327
§ 81.	Applicability of Antifraud and Anti-Manipulation Provisions.....	327
§ 82.	Private Remedies Against Exchanges and FINRA for Damages Resulting from Non-Enforcement of Their Own Rules....	328
	A. Actions Against Securities Exchanges	329

	B.	Actions Against the NASD and FINRA	330
	C.	Private Rights of Action for Non- Enforcement of Rules by the Commodities Markets	331
§ 83.		Private Remedies Against Market Professionals.....	333
	A.	1934 Act § 15(c)	333
	B.	FINRA, NASD, and Exchange Rules.....	334
	C.	1934 Act Rule 10b-5.....	335
	D.	1933 Act Liability	337
	E.	Investment Adviser Act Liability	338
§ 84.		Secondary Liability of Broker-Dealer Firms.....	338
	A.	Controlling Person Liability	339
	B.	Respondeat Superior	341
	C.	Failure to Supervise	341
	D.	Aiding and Abetting Liability.....	342

Chapter 11. Arbitration of Broker-Dealer

		Disputes.....	347
§ 85.		Enforcement of Broker-Dealer Arbitration Agreements.....	347
§ 86.		No Arbitration for Class Actions	350
§ 87.		The Federal Arbitration Act.....	351
§ 88.		State Laws Affecting Arbitration Clauses.....	353
§ 89.		Factors Affecting Enforcement of Pre- Dispute Arbitration Agreements.....	355
§ 90.		Which Law Controls?	358
§ 91.		Who Decides the Issue of Arbitrability?	360

§ 92.	When Are Arbitration Clauses in Brokers' Customer Agreements Contracts of Adhesion?	361
§ 93.	Use of Rules of Contract Interpretation to Determine Arbitrability.....	363
§ 94.	Claims of Unenforceability Based on Alleged Bias of the Arbitration Program	364
§ 95.	Claims of Unenforceability Based on Fraud.....	365
§ 96.	Waiver.....	366
§ 97.	Arbitration of Disputes Between Securities Professionals	368
§ 98.	Res Judicata and Collateral Estoppel.....	369
§ 99.	Review of Court Orders Compelling or Denying Arbitration or Staying Judicial Proceedings.....	370
§ 100.	Judicial Review of Arbitration Decisions	371
	Appendix. Further Reading	373
	Glossary.....	375
	INDEX.....	385