

Preface	xxxiii
Acknowledgments	xxxv
Chapter 1 The Framework of Securities Regulation	1
A. Securities Transactions	1
1. Issuer Transactions	1
2. Trading Transactions	2
a. Introduction to Trading	2
b. The Structure of Trading Markets	3
B. The Legal Framework of Securities Regulation	4
1. The Federal Securities Laws	5
a. The Securities Act of 1933	5
b. The Securities Exchange Act of 1934	7
c. Federal Regulation Beyond Disclosure: The Sarbanes-Oxley Act of 2002 and Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010	11
d. The Regulation of Investment Advisers and Investment Companies	13
e. The Organizational Structure of the SEC	14
f. The Mediums Through Which the SEC Speaks	14
g. The SEC: Some Critical Perspectives	15
h. Judging SEC Rulemaking	17
2. Blue Sky Laws	18
3. Self-Regulatory Organizations	20
C. Financing Startups	21
<i>Ibrahim, The (Not So) Puzzling Behavior of Angel Investors</i>	22
Notes and Questions	24
Chapter 2 The Definition of a Security	27
A. Introduction	27
B. The Development of a Framework for Defining an Investment Contract	28
<i>Securities and Exchange Commission v. W.J. Howey Co.</i>	29
Notes and Questions	32
	xi

C. <i>Howey</i> Applied	34
1. Investment Versus Consumption	34
<i>United Housing Foundation, Inc. v. Forman</i>	35
Notes and Questions	38
Problems	40
2. Common Enterprise and Profits Solely from the Efforts of Others	40
<i>Securities and Exchange Commission v. Edwards</i>	40
a. The Meaning of Common Enterprise	42
Problems	43
b. Profits from the Managerial Efforts of Others	44
Problems	46
3. Cryptocurrencies, Blockchains, ICOs, and Beyond	47
Problem	51
D. Associational Formalities: Interests in Corporations, Partnerships, and LLCs as Securities	52
1. Stock as a Security	52
Notes and Questions	54
Problems	55
2. Partnership and Limited Liability Company Interests as Securities	55
<i>United States v. Leonard</i>	56
Notes and Questions	59
Problems	62
3. The Policy Question: Should Investment Contract Status Be Elective?	62
E. Real Estate as Securities	63
<i>Salameh v. Tarsadia Hotel</i>	65
Notes and Questions	66
Problems	67
F. Notes as Securities	68
<i>Reves v. Ernst & Young</i>	69
Notes and Questions	75
Problems	79
G. Separate Securities and Pass-Throughs	80
Problem	82
Chapter 3 Understanding Investors	85
A. Institutionalization	85
B. The Efficient Market Hypothesis: Implications and Limitations	87

Contents	xiii
1. The Meaning and Mechanisms of Market Efficiency	88
Notes and Questions	90
Problems	92
2. The Debate over Efficiency of the Market	93
<i>Young, Brief of Financial Economists as Amici Curae in Support of Respondents, Halliburton, Inc. v. Erica P. John Fund, Inc., U.S. Supreme Court</i>	93
3. Headwinds to Market Efficiency?	95
a. Passive Investing	96
b. Algorithmic Trading	97
c. Behavioral Economics and Decisions by Individual Investors	98
d. Retailization	100
C. Globalization	101
Chapter 4 The Public Offering	103
A. Underwriting and Underwriters	104
1. Methods of Underwriting	104
<i>In re National Association of Securities Dealers, Inc., Exchange Act Release No. 17371</i>	104
Notes and Questions	106
2. Underwriters: Their Culture and Their Industry	111
a. Cultural Hierarchy	111
b. The Industry over Time	114
3. Underwriting Agreements: Contracting to Reduce Risk	116
a. Agreement with the Issuer	116
b. Agreement Among the Underwriters	120
4. Underwriters' Compensation	121
a. Review by FINRA	121
b. The Problems of Fixed Price Offerings	122
B. The Market for Initial Public Offerings	124
1. Irrational or Contrived Exuberance	124
2. Underpricing of Initial Public Offerings	127
3. Reforming the IPO Process	130
C. A Panoramic View of the Registration Statement	131
D. Registration of the Unseasoned Issuer	135
1. Preparing the Registration Statement for Filing	136
<i>Schneider, Manko & Kant, Going Public: Practice, Procedure, and Consequences</i>	136

2. Regulatory Dispensations for Emerging Growth Companies	138
a. Emerging Growth Companies	138
b. Is It a Supply or a Demand Problem?	139
3. Review by the SEC's Staff: The Letter of Comment	140
<i>Poliakoff, SEC Review: Comfort or Illusion?</i>	140
Notes and Questions	142
E. Gun-Jumping Concerns for the IPO	146
1. The Pre-Filing Period	147
a. Conditioning the Market	147
<i>Securities Act Release No. 3844</i>	148
b. Safe Harbors for Permissible Communications	152
c. Arrangements with and Among Underwriters	154
Problems	154
2. The Waiting Period	156
a. The Preliminary Prospectus	156
b. Tombstone Ads and Identifying Statements	157
c. Free Writing	158
d. Hyperlinks to the Prospectus	160
e. Road Shows	160
f. Dealing with the Media	161
g. Bookbuilding: Selling Practices During the Waiting Period	162
h. Gap Filling with Exchange Act Rule 15c2-8	163
Problems	164
3. The Post-Effective Period	165
Notes and Questions	167
Problems	168
F. Public Offers by Seasoned and Well-Known Seasoned Issuers	169
1. Integrated Disclosure for the Seasoned Company	169
Notes and Questions	173
2. Gun-Jumping Concerns for the Seasoned Issuer	175
a. Safe Harbors for Reporting Companies	176
b. Free Writing Prospectus	176
c. Research Reports	177
Problems	179
G. Shelf Registration Under Rule 415	180
1. The Regulatory Concerns and the "Traditional" Shelf	
Registration	180
2. Catching Market Windows	182

Contents	xv
3. Automatic Shelf Registration for Well-Known Seasoned Issuers	183
<i>Securities Offering Reform, Securities Act Release No. 8591</i>	183
4. Can Disclosure Be a Bad Thing?	184
Notes and Questions	185
Problems	187
H. Updating and Correcting the Registration Statement	188
Problem	188
1. Refusal Orders and Stop Orders	189
2. Post-Effective Amendments	190
a. Correcting Material Inaccuracy	190
b. Supplementing Information That Is Permitted to Be Omitted Prior to Effectiveness	192
3. Undertakings to Update	193
4. Withdrawal of the Registration Statement	193
I. The Trading Practice Rules	194
1. Purchases During a Distribution	194
Notes and Questions	195
Problems	195
2. Stabilization	196
Problem	197
Notes and Questions	197
J. The International Public Offering	199
1. Accommodating Foreign Issuers' Offerings in the United States	199
2. Offerings Outside the United States	201
a. Regulation S	201
<i>Regulation S, Securities Act Release No. 6863</i>	204
<i>Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities . . . Offshore, Securities Act Release No. 7516</i>	209
Notes and Questions	212
Problems	214
b. Offerings Falling Outside Regulation S	214
<i>Europe and Overseas Commodity Traders, S.A. v. Banque Paribas London</i>	214
K. Registration Under State Blue Sky Laws	215
<i>Securities and Exchange Commission Report on the Uniformity of State Regulatory Requirements for Offerings of Securities That Are Not "Covered Securities"</i>	217
Problems	219
L. The Debate over Mandatory Disclosure	220

1. How Strong Are the Incentives to Disclose Voluntarily?	220
Problem	221
<i>Easterbrook & Fischel, Mandatory Disclosure and the Protection of Investors</i>	222
2. Regulatory Competition and Issuer Choice	225
3. Global Competitiveness of U.S. Capital Markets	227
4. Implications of Vanishing Listings	228
Notes and Questions	229
Chapter 5 Exempt Transactions	231
A. Introduction	231
B. The Private Offering Exemption: Section 4(a)(2)	234
1. Mapping the Scope of the Exemption	234
<i>Securities and Exchange Commission v. Ralston Purina Co.</i>	235
Problem	237
2. The Relevance of Numbers	237
3. Offeree Qualification: Sophistication and Access to Information	238
Problem	238
Notes and Questions	239
Problems	243
4. Resales of Securities Acquired in a Private Offering	243
C. Regulation D and the Limited Offering Exemptions	244
1. An Overview of Regulation D	245
Problem	246
2. Accredited Investors	246
Notes and Questions	248
Problems	251
3. The Sophistication Standard of Rule 506(b)	252
<i>Mark v. FSC Securities Corp.</i>	252
Problems	254
4. Calculating the Number of Purchasers	255
Problems	255
5. Limitations on the Manner and Scope of an Offering	255
a. In General	255
b. What Is “General Solicitation or General Advertising”?	256
c. Activities by Broker-Dealers	257
d. “Demo Days”	258
Problem	259

Contents	xvii
e. The Internet and General Solicitations	259
Problem	259
f. Eliminating the Ban on General Solicitations: Rule 506 Offerings Limited to Accredited Investors	260
g. A Recap: The Two Tracks of Rule 506	262
Problems	262
6. Determining the Aggregate Offering Price in Offerings Under Rule 504	263
a. Calculating the Aggregate Offering Price	264
b. Relevant Amount and Time Period	264
Problems	265
7. Disclosure Obligations in Offerings Under Rule 506	265
Notes and Questions	266
8. Additional Regulation D Requirements and Features	267
a. Limitations on Resale	267
b. “Bad Actor” Disqualifiers	267
c. Form D	268
d. FINRA Filing	268
e. Substantial Compliance	269
<i>Securities Act Release No. 6825</i>	269
<i>Securities and Exchange Commission v. Ishopnomarkup.com, Inc.</i>	270
Problem	272
9. A Comparative Perspective on Private Placements	272
D. The Crowdfunding Exemption: Section 4(a)(6)	273
Problems	277
E. The Intrastate Offering Exemptions	278
<i>Exemptions to Facilitate Intrastate and Regional Securities Offerings, Securities Act Release No. 10238</i>	279
Notes and Questions	283
Problems	285
F. Employee Benefit Plans and Contracts Relating to Compensation: Rule 701	286
<i>Securities Act Release No. 33-7645</i>	286
Notes and Questions	288
Problems	290
G. Regulation A: Mini-Registration	291
Notes and Questions	293
Problems	294
H. Integration of Offerings	294
Problem	295

1. Rule 152: General Principle of Integration and Non-Exclusive Safe Harbors	296
a. Rule 152(b)'s Safe Harbors	296
b. Omnibus Approach to Integration	297
2. Rule 241 – Testing the Waters Exemption for General Solicitation of Interest	299
Problem	300
Note	301
I. State Exemptions	301
1. The Uniform Limited Offering Exemption (ULOE)	302
2. Nonuniform State Exemptions	303
Chapter 6 Secondary Distributions	305
A. The Underwriter Concept and Sales for an Issuer	306
<i>Securities and Exchange Commission v. Chinese Consolidated Benevolent Association</i>	308
Notes and Questions	310
Problems	312
B. Purchase from an Issuer	313
1. Investment Intent	314
Notes and Questions	315
Problems	316
2. Distributions and Trading Transactions Contrasted	317
Problems	318
3. Private Investments in Public Equity (PIPE)	319
<i>Sjostrom, Jr., PIPEs</i>	319
Notes and Questions	321
Problems	324
C. Control Person Distributions	324
<i>United States v. Wolfson</i>	326
Notes and Questions	328
Problems	331
D. Rule 144—Safe Harbor for Resales of Control and Restricted Securities	332
<i>Revisions to Rule 144</i>	332
Notes and Questions	336
<i>SEC v. Genovese</i>	342
Problems	343
E. Resales to Qualified Institutional Buyers (QIBs) and Accredited Investors	345

Contents	xix
1. Facilitating an Institutional Market for Unregistered Securities with Rule 144A	345
<i>Resale of Restricted Securities, Securities Act Release No. 6862</i>	345
Notes and Questions	348
Problems	350
F. The Section 4(a) (1½) Exemption	352
<i>Ackerberg v. Johnson</i>	352
Notes and Questions	355
Problems	358
G. The Section 4(a) (7) Exemption	358
Problem	359
H. Direct Listing	360
I. Resales Under the Blue Sky Laws	363
1. Isolated Non-Issuer Resale	364
2. The Manual Exemption	364
3. Unsolicited Offer Exemption	365
4. Small Offering Exemption	365
Problem	366
Chapter 7 Recapitalizations, Reorganizations, and Acquisitions	367
A. The “For Value” Requirement	367
1. Value Is Not Always What It Seems	367
Problems	372
2. Shells and Spin-offs: Creating “Value”	372
a. Spin-offs and the ’33 Act	373
<i>Securities and Exchange Commission v. Datronics Engineers, Inc.</i>	373
Notes and Questions	375
b. The Regulation of Spin-offs Under the ’34 Act	377
<i>Publication of Submission of Quotations Without Specified Information, Securities Act Release No. 10842</i>	378
Problems	381
B. Mergers, Acquisitions, and Recapitalizations	382
1. Rule 145	382
2. Jumping the Gun in Business Combinations	383
<i>Excerpt from the Release Adopting Regulation M-A</i>	384
Notes and Questions	386
3. SPACs	388
4. Reverse Mergers	390
Problems	393

C. Exchanges Under Section 3(a)(9)	394
Notes and Questions	396
Problems	398
D. Reorganizations Under Section 3(a)(10)	399
1. Non-Bankruptcy Reorganizations	399
2. The Bankruptcy Act's Collision with the Securities Laws	401
a. Disclosure in Chapter 11 Reorganizations	401
b. Exemption for Sale and Exchange of Securities	402
c. Resales of Securities Received in a Chapter 11 Reorganization	402
d. Resales from Debtor's Portfolio	403
e. Raising Funds while in Bankruptcy?	403
Chapter 8 Exempt Securities and Public Finance	405
A. An Overview of Section 3	406
B. Municipal Securities	410
1. The Market and the Players	410
<i>The Importance of Disclosure for Our Municipal Markets</i>	410
2. Credit-Enhancing Devices	413
3. Disclosure Considerations	413
4. "Backdoor" Regulation of Offerings	414
a. The SEC and Rule 15c2-12	415
b. The MSRB and Rule G-17	418
Notes and Questions	419
Problems	420
5. "Pay to Play" Practices and Rule G-37	420
6. Public Financing for the Private Sector	421
Chapter 9 Liability Under the Securities Act	425
A. Section 11	425
1. Persons Bringing Suit	426
<i>Hertzberg v. Dignity Partners, Inc.</i>	426
Notes and Questions	427
2. The Defendants and Their Defenses	428
a. Registered Offerings Generally	428
<i>Escott v. BarChris Construction Co.</i>	431
Notes and Questions	442
Problem	445

Contents	xxi
b. Shelf Registrations and Other Seasoned Offerings	446
<i>In re WorldCom, Inc. Securities Litigation</i>	446
Notes and Questions	449
Problem	451
3. Damages	452
<i>Akerman v. Oryx Communications Inc.</i>	452
Notes and Questions	454
Problems	456
B. Section 12(a)(1)	457
<i>Pinter v. Dahl</i>	457
Notes and Questions	459
Problem	460
C. Section 12(a)(2)	461
1. By Means of a “Prospectus or Oral Communication”	461
<i>Gustafson v. Alloyd Co.</i>	461
<i>Hyer v. Malouf</i>	467
Notes and Questions	468
Problems	473
2. Liability Defense	474
Notes and Questions	476
D. Section 17	477
<i>Aaron v. Securities and Exchange Commission</i>	477
Notes and Questions	478
Chapter 10 Financial Innovation: Trading Markets, Derivatives, and Securitization	481
A. Technology and the Transformation of Securities Markets	481
<i>SEC Concept Release on Equity Market Structure</i>	481
<i>Stoll, Electronic Trading in Stock Markets</i>	484
Notes and Questions	485
B. Derivatives and Synthetic Investments	490
1. Why Derivatives?	490
2. Basic Forms of Derivatives	491
a. Options	491
b. Futures	491
c. Swaps	492
3. Clearing	494

xxii	Contents
4. The Regulation of Derivatives	495
a. Swaps and Security-Based Swaps Defined	496
b. Overview of Regulation of Swap Transactions and Their Participants	497
C. Structured Financial Products	498
1. An Overview of Securitization	498
2. Public Offerings of Securitized Products: Residential Mortgage-Backed Securities	500
<i>Federal Housing Finance Agency for Federal National Mortgage Ass'n v. Nomura Holding America, Inc.</i>	501
Notes and Questions	504
Chapter 11 Financial Reporting: Mechanisms, Duties, and Culture	507
A. The Disclosure Requirements of Public Companies	508
1. The Origins and Metrics for Financial Information	508
2. The Exchange Act's Periodic Reporting Obligations	510
a. Domestic Issuers	510
Problems	514
b. Foreign Issuers	515
c. Compelling Honesty in Mandated Reports Through Private Actions	516
B. The "Fairly Presents" Requirement	517
<i>United States v. Simon</i>	518
Notes and Questions	520
C. Internal Controls	522
1. The Meaning and Mandate for Internal Controls	522
<i>Securities and Exchange Commission v. World-Wide Coin Investments Ltd.</i>	523
Notes and Questions	527
2. Reporting on Internal Controls: SOX 404	528
Problems	529
D. Strengthening the Integrity of the Financial Reporting Process: The Marriage of the SEC and Governance	530
1. Audit Committees	530
Problem	531
2. Buttredding the Auditor's Independence	532
Problem	533
3. Executive Certifications and Directors' Signature Requirement	534
4. Reconstructing History with <i>Pro Forma</i> Financial Statements	534
Problem	535

Contents	xxiii
E. Shining a Light on Risk?	535
1. Risk Factor Disclosures	535
<i>Jaroslawicz v. M&T Bank Corp.</i>	536
Notes and Questions	540
Problems	541
2. The Management Discussion and Analysis Section of SEC Filings: Is Past Prologue?	541
a. The Scope of Item 303 Disclosure Obligation	542
<i>Panther Partners Inc. v. Ikanos Communications, Inc.</i>	542
Notes and Questions	544
Problem	546
b. Enron's Contribution to the MD&A and Other Disclosures	546
c. The SEC, MD&A, and the Environment	547
<i>Prospective Information, Financial Reporting Release No. 36</i>	548
Problem	549
Chapter 12 Inquiries into the Materiality of Information	551
A. Materiality Orthodoxy	552
Notes and Questions	553
Problem	557
B. Speculative Information and Materiality	558
<i>Basic Inc. v. Levinson</i>	558
Notes and Questions	561
Problem	565
C. The "Total Mix" of Information and Market Efficiency	565
1. Truth on the Market	566
<i>Wielgos v. Commonwealth Edison Co.</i>	566
Notes and Questions	569
Problems	571
2. "Puffery"	572
<i>Eisenstadt v. Centel Corp.</i>	572
Problems	573
Note and Questions	574
3. Opinion Statements and Half-Truths	574
<i>Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund</i>	575
Notes and Questions	581
Problems	581
D. Forward-Looking Information	582

1. The “Bespeaks Caution” Doctrine	584
<i>Kaufman v. Trump’s Castle Funding</i>	584
Notes and Questions	588
2. Statutory Safe Harbor for Forward-Looking Statements	589
<i>Asher v. Baxter International, Inc.</i>	591
Notes and Questions	595
Problems	599
E. The SEC and Corporate Governance	600
1. Integrity and the Incentives of Managers	600
<i>In the Matter of Franchard Corp.</i>	600
Notes and Questions	605
Problem	611
2. Materiality Links to Corporate Governance	611
Notes and Questions	613
Problems	615
3. Materiality of Social Matters	615
4. Disclosure Bearing on Sustainability	617
<i>SEC Concept Release, Business and Financial Disclosure Required by Regulation S-K, 205-210</i>	617
Notes and Questions	622
Problem	626
F. The Materiality of Being a “Bad” Citizen: Violations of State or Federal Law	626
<i>Securities and Exchange Commission v. Jos. Schlitz Brewing Co.</i>	627
Notes and Questions	630
Problems	633
Chapter 13 Fraud in Connection with the Purchase or Sale of a Security	635
A. Private Rights of Action Under Rule 10b-5: Creation and Controversy	636
<i>H.R. Rep. No. 104-50</i>	637
B. Fraud “in Connection with” the Purchase or Sale of a Security	640
1. The Nature of the Fraud	640
Problem	642
2. Standing to Sue	642
<i>Blue Chip Stamps v. Manor Drug Stores</i>	642
Notes and Questions	645
Problem	645

Contents	xxv
C. Scierter: <i>Hochfelder</i> and Beyond	646
1. Defining Scierter	646
Problem	648
2. Pleading Scierter	648
<i>Tellabs, Inc. v. Makor Issues & Rights, Ltd.</i>	649
<i>Makor Issues & Rights, Ltd. v. Tellabs Inc.</i>	652
Notes and Questions	654
Problem	656
D. Falsity and The Affirmative Duty to Disclose	656
<i>Gallagher v. Abbott Laboratories, Inc.</i>	656
Notes and Questions	659
Problems	664
E. Who Is Liable?	665
<i>Janus Capital Group Inc. v. First Derivative Traders</i>	666
<i>Lorenzo v. Securities and Exchange Commission</i>	670
Notes and Questions	673
Problems	674
F. Reliance	674
1. Face-to-Face Transactions	674
<i>Affiliated Ute Citizens v. United States</i>	674
Notes and Questions	675
2. Open Market Frauds: The Fraud-on-the-Market Theory	676
<i>Halliburton Co. v. Erica P. John Fund, Inc.</i>	676
Notes and Questions	681
Problems	685
3. Fraud on the Market: Some Variations	686
4. The Reasonableness of the Reliance: Due Care	687
Problem	688
G. Loss Causation and Damages	689
1. Face-to-Face Transactions	689
<i>AUSA Life Insurance Co. v. Ernst & Young</i>	689
Notes and Questions	693
Problem	695
2. Open Market Transactions	695
<i>In re Vivendi, S.A. Securities Litigation</i>	695
Notes and Questions	699
Problems	700

3. Proportionate Liability	701
Problem	701
4. Securities Litigation Reform	702
H. Federalism and Rule 10b-5: The Problem of Corporate Mismanagement	703
Problem	706
I. Manipulation	706
1. Defining Manipulation	708
<i>United States v. Mulheren</i>	708
Notes and Questions	711
Problem	713
2. Issuer Repurchases	714
3. Short Selling	715
Chapter 14 The Enforcement of the Securities Laws	719
A. More on the Private Enforcement of the Securities Laws	719
1. Champion of the Little Guy: The Class Action	720
2. Securities Actions After the Private Securities Litigation Reform Act of 1995	721
Notes and Questions	722
3. Closing the Bypass: The Securities Litigation Uniform Standards Act	726
Problems	728
B. Secondary Liability Under the Securities Laws	729
1. Aiding and Abetting	730
<i>Securities and Exchange Commission v. Apuzzo</i>	730
Notes and Questions	734
Problem	735
2. Control Person and Respondeat Superior Liability	735
<i>Donohoe v. Consolidated Operating & Production Corp.</i>	736
Notes and Questions	739
Problems	743
C. Rescission and Restitution of Contracts in Violation of the Securities Laws	744
<i>Berkeley Inv. Group, Ltd. v. Colkitt</i>	744
Notes and Questions	750
Problem	751
D. Responsibility and Its Costs	752
1. Equitable Bars to the Plaintiff's Recovery	752
2. Indemnity and Contribution	755
Problem	758

Contents	xxvii
E. Statutes of Limitations	758
Problem	760
F. Enforcement Actions by the SEC	760
1. Investigations	760
a. The Investigatory Process	760
b. Responding to the Investigation: White Papers and Wells Notices	762
Notes and Questions	764
Problems	766
2. Sanctioning in SEC Enforcement Proceedings	767
a. The Administrative Enforcement Proceeding	767
b. The Panoply of SEC Enforcement Sanctions	768
<i>KPMG, LLP v. SEC</i>	769
Notes and Questions	773
3. Injunctions	777
Notes and Questions	779
Problem	781
4. Discretion in SEC Enforcement	782
a. Whether to Charge, Who to Charge, and Waivers	782
<i>Report of Investigation Pursuant to Section 21(a) of the Securities</i>	
<i>Exchange Act of 1934 and Commission Statement on the</i>	
<i>Relationship of Cooperation to Agency Enforcement Decisions,</i>	
<i>Securities Exchange Act of 1934 Release No. 44969 (Oct. 23, 2001)</i>	782
Notes and Questions	784
Problems	787
b. Settlements	787
<i>SEC v. Citigroup Global Mkts.</i>	788
Problem	793
G. The SEC's Power to Discipline Professionals	793
Problems	796
H. The Duties of the Securities Lawyer	797
1. A Historic Step Toward Socializing the Securities Lawyer	798
<i>Securities and Exchange Commission v. National Student Marketing Corp.</i>	798
Notes and Questions	808
Problem	810
2. The SEC's Rules of Professional Conduct for Attorneys	811
<i>Implementation of Standards of Professional Conduct for Attorneys</i>	812
Notes and Questions	817
Problems	821

I. The Criminal Provisions of the Federal Securities Laws	823
<i>United States v. Dixon</i>	825
Problem	827
Notes and Questions	827
Chapter 15 The Regulation of Insider Trading	831
A. Introduction	831
B. The Source of a Duty to Abstain or Disclose	832
<i>Chiarella v. United States</i>	832
Notes and Questions	835
C. “Outsider” Trading: Corporate Connections	838
Problem	839
D. The Misappropriation Theory	839
<i>United States v. O’Hagan</i>	840
Notes and Questions	845
Problems	848
E. Tippers and Tippees	848
1. Tipper/Tippee Liability Defined	848
<i>Dirks v. Securities and Exchange Commission</i>	849
Notes and Questions	852
Problems	854
2. Statutory Reform	854
3. Selective Disclosure: Regulation FD	856
<i>Securities Act Release No. 33-7881</i>	856
Notes and Questions	859
Problems	861
F. Rule 14e-3	862
Problem	863
G. Enforcement of the Insider Trading Prohibition	864
Problem	865
H. Insider Trading and Section 16	866
1. The Scope of Section 16(b)	867
<i>Huppe v. WPCS Int’l Inc.</i>	867
Notes and Questions	869
Problems	871
2. Executive Compensation	872
3. Pension Blackout Periods	873
4. Is There a Need for Reform?	873

Contents	xxix
Notes and Questions	874
I. Insider Trading Abroad	874
Chapter 16 Shareholder Voting	877
A. The Election of Directors and Other Routine Matters	878
1. Mandatory Disclosure	878
2. Shareholder Proposals	880
Notes and Questions	882
Problem	883
B. The Voting Process	884
C. “Solicitations”	885
Notes and Questions	887
Problem	888
D. Proxy Advisors	889
E. Proxy Fraud	890
<i>Virginia Bankshares, Inc. v. Sandberg</i>	891
Notes and Questions	893
Problem	896
Chapter 17 Corporate Takeovers	899
A. Introduction: The Policy Dilemma	899
B. The Early Warning System: Section 13(d)	900
<i>Wellman v. Dickinson</i>	901
Notes and Questions	905
Problem	909
C. Tender Offer Regulation: Controlling the Bidder	909
Problem	910
1. Disclosure by Bidders and the Antifraud Prohibition	911
2. Substantive Regulation	912
a. Duration	913
b. Withdrawal and Proration	914
c. The All-Holders/Best-Price Rule	914
<i>Epstein v. MCA Corp.</i>	914
Notes and Questions	917
Problem	918
3. “Tender Offer”	919
Problem	919

D. The Williams Act and the Global Tender Offer	920
E. Tender Offer Defense: Controlling Target Management	921
1. Disclosure and Enforcement	921
<i>Varjabedian v. Emulex Corp.</i>	921
Notes and Questions	925
Chapter 18 Regulation of Broker-Dealers	927
A. Regulation of the Broker-Dealer Industry: Structure and Oversight	928
1. Entry	928
Problems	930
2. Supervising the Conduct of Broker-Dealers and Their Associated Persons	930
a. Self-Regulation	930
b. Direct SEC Supervision of Brokers and Dealers	931
<i>In the Matter of John Gutfreund et al.</i>	932
Notes and Questions	934
Problem	935
B. The Responsibilities of Brokers to Their Customers	936
1. Acting in the Customer's Best Interest	936
a. Best Execution	936
b. Advice and Recommendations	938
<i>Regulation Best Interest: The Broker-Dealer Standard of Conduct</i>	939
Notes and Questions	941
Problems	942
2. Sales Practices: Litigation and Enforcement	943
a. "Know Your Security"	944
<i>Hanly v. Securities and Exchange Commission</i>	944
Notes and Questions	945
Problem	946
b. Investment Analysts and Their Conflicts of Interest	946
Problem	948
c. Suitability	948
i. The Basic Obligation	948
<i>Brown v. E.F. Hutton Group Inc.</i>	948
Notes and Questions	951
Problem	954
ii. Suitability, Risk Disclosure, and the Sophisticated Investor	955
<i>Banca Cremi, S.A. v. Alex. Brown & Sons, Inc.</i>	955

Contents	xxxi
Notes and Questions	957
Problem	958
3. Churning and Other “Relational” Frauds	959
<i>Merrill Lynch, Pierce, Fenner & Smith v. Arceneaux</i>	959
Notes and Questions	962
Problem	964
4. Price Protection: Markups and Other Matters	964
5. Arbitration	965
C. Substantive Regulation: Credit and Financial Soundness	967
1. Margin Requirements	967
2. The Financial Soundness of Broker-Dealers	969
3. Dodd-Frank and Systemic Risk	970
4. “Fintech”	972
Chapter 19 Investment Advisers and Investment Companies	975
A. The Regulation of Investment Advisers	976
1. The Registration Requirement	976
2. Substantive Regulation	978
3. Conduct Regulation: Section 206	979
<i>Securities and Exchange Commission v. Capital Gains</i>	
<i>Research Bureau Inc.</i>	979
Notes and Questions	982
Problem	985
4. Investment Advice, Investment Information, and the First Amendment	985
<i>Lowe v. Securities and Exchange Commission</i>	985
Notes and Questions	988
Problem	988
B. Credit Rating Agencies	989
C. Mutual Funds and Other Investment Companies	990
1. The Structure and Governance of a Mutual Fund	992
<i>Investment Company Act Release No. 24,082</i>	992
Problem	994
2. Sales and Redemptions of Mutual Fund Shares	995
a. Prices and Distribution Charges	995
b. Abusive Trading Practices	996
c. Money Market Funds	997
3. The Compensation of Investment Company Affiliates	998
<i>Jones v. Harris Associates L.P.</i>	998

xxxii	Contents
Notes and Questions	999
Problem	1001
4. Self-Dealing by Investment Company Affiliates	1001
5. The Definitional Problem	1002
6. ETFs	1004
D. Hedge Funds and Other Private Investment Vehicles	1004
 Chapter 20 Transnational Fraud and the Reach of U.S. Securities Laws	 1007
A. The Extraterritorial Application of U.S. Securities Laws	1007
1. In General	1007
2. Limiting the Reach of Securities Law: The <i>Morrison</i> Decision	1008
<i>Morrison v. National Australia Bank, Ltd.</i>	1008
Notes and Questions	1015
Problems	1017
3. <i>Morrison</i> Applied	1017
<i>Absolute Activist Value Master Fund Ltd. v. Ficeto</i>	1017
Notes and Questions	1020
Problems	1024
4. Choice of Law Options: The Relevance of Foreign Law in Securities Litigation	1025
<i>Bonny v. The Society of Lloyd's</i>	1026
Notes and Questions	1027
Problem	1030
B. Enforcement Challenges Presented by an Internationalized Securities Market	1030
1. Unilateral Enforcement Efforts	1030
a. Discovery and Information Collection	1030
b. The Reach for Assets	1032
2. Bilateral and Multilateral Enforcement Efforts	1032
 Table of Cases	 1035
Index	1053