

PREFACE

Our last Preface, dated September 2021 for the Tenth Edition, commented on the remarkable deregulatory push that was occurring in the second half of 2020, mostly, though not all, dealing with the transactional and exemptive focus of the Securities Act of 1933 (our Chapter 5). These reforms were put in place on the eve of the presidential election of 2020, no doubt in anticipation of it. When the Democrats took control in the aftermath of Joe Biden's electoral victory, the SEC outdid its predecessors in the ambition of its own re-regulatory agenda, marked by the ESG reforms on climate change disclosure, cryptocurrency enforcement, and the crackdown on innovative financing mechanisms like SPACs. These were bold measures, challenging the Trump agenda and provoking a more intense standard of partisan response. (We should note with respect the role of legal academics like William Birdthistle, John Coates, Renee Jones, and Erik Gerding in the senior leadership at the SEC in these years). Then came 2024, Trump 2.0, and the sudden wholesale abandonment of the work of the Biden SEC just as work on this Eleventh Edition of our casebook began in earnest. At this same time, we undertook an extensive survey of adopters' experiences, many sharing with us not just the syllabus used in the course but detailed information of the time allotted to areas covered. This edition is responsive to both the change in administrations and what we learned from the survey's input.

Another aspect of the current regime, as we point out in Chapter 1 in this edition, is that interpretive power is being exercised by the judiciary in a way that has weakened deference to the SEC, so that the making of law by regulation and enforcement was rarely the final word on policy. *Chevron* was finally abandoned, and other non-delegation strategies put to work to lessen agency authority and, perhaps, legitimacy. Most of the highlight reforms implemented during the Biden Administration were challenged in court, many successfully. The new SEC announced that it would not defend the climate change disclosure rules, comfortably hoping that the Eighth Circuit would declare them invalid without its help and not make the Commission do the formal work of regulatory repeal.

We highlight here specific organizational and substantive foci of the Eleventh Edition. Our overall goal over the years has been to keep the casebook current and uncluttered. To this end, changes in Chapter 4, The Public Offering, reflect how greatly technology and institutionalization continue to impact the public offering process, and hence regulation, especially for seasoned issuers. We have organized our discussion of regulation around how capital formation occurs on the ground. The organization and content of Chapter 5, Exempt Transactions, is substantially changed. The differing transaction exemptions are organized according to qualities a set of exemptions share—exemptions that condition an offer on a geographical focus (hence Regulation S is now covered in this section with intra-state offerings), exemptions dependent on certain qualities of the investors to be

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targeted, and exemptions that depend on a unique feature of the medium used to conduct the offering; we end Chapter 5 with an understandable template for students to address integration of offerings. In our quest to condense and reorganize topics that are conceptually linked, we no longer have a separate chapter devoted to exempt securities and public finance (formerly Chapter 8). That material has been condensed into note material in Chapter 2, The Definition of a Security, that provides a succinct, understandable evolution of *Howey* through the recent experiences with crypto assets. Chapter 8 (formerly 9) examines closely the distinction under Section 12 between “participating” in the sale and “soliciting” a sale, an area of growing importance with internet advertising. The expansive and highly nuanced area of Rule 10b-5 litigation is updated and reorganized beginning with fault (e.g., scienter, falsity, and who is the responsible party), before turning to standing, reliance, and finally damages. The implications of the Supreme Court’s recent *Macquarie* decision are set forth. Information gathered from the survey guided our decision to combine the treatment of regulating proxy solicitations and tender offers into a single chapter (15) in a themed exploration of how securities laws regulate voice and control within the public corporation. Finally, Chapter 18 concludes the edition with a streamlined focus on the important distinctions between international and domestic transactions under the securities laws.

This Eleventh Edition of our casebook was undertaken during this time of radical uncertainty. We have tried our best to capture for our users the state of securities law circa 2025, fully aware that confident predictions of its present and future are dangerous. Once again, we are grateful to those who teach from our book and help us out with things we could do better and matters that need correction. As with all editions of our casebook, occasional case, rule, and statutory citations have been omitted without indication. Most footnotes have been omitted from cases and other cited materials, also without indication, but those that remain retain their original numbering.

September 2025

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