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, the Securities Exchange Act of 1934, 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.

The fifth supplement brings you up to date on the latest important developments in securities law. In the fall of 2014, the Commission published its agenda with respect to upcoming rulemaking and established October 2015 as the target date for taking the following measures to implement portions of Dodd-Frank and the JOBS Act:

- adopting final rules regarding disclosure of CEO and employee pay ratios (see chapter 10);
- adopting final crowdfunding rules (see chapter 6);
- adopting final rules regarding amendments to Regulation D and Form D relating to Rule 506 offerings (see chapter 6);
- adopting final rules regarding Regulation “A+” (see chapter 6), which the Commission unanimously adopted on March 25, 2015;
- proposing rules regarding incentive-based compensation clawbacks (see chapters 9 and 10);
- proposing rules regarding disclosure of executive pay-for-performance (see chapter 10); and
- proposing rules regarding disclosure of hedging transactions (see chapter 10).

Other highlights of Release #5 include:

- Chapter 6 (Securities Act Registration Exemptions). The Commission revised one C&DI dealing with the intrastate exemption regarding whether an issuer may use its own website or social media to offer securities in a manner consistent with Rule 147.

(continued on reverse)
• Chapter 9 (Registration and Periodic Reporting Under the Exchange Act). The Commission proposed rule amendments that would modify rules governing registration and termination of registration under section 12(g) and suspension of reporting obligations under section 15(d) of the Exchange Act to reflect the more recent higher thresholds enacted by the JOBS Act.

• Chapter 10 (Regulation of Proxy Solicitations). The 2015 proxy season will be an interesting one, particularly regarding issuer requests for no-action relief allowing exclusion of shareholder proposals under Rule 14a-8. Although under appeal, a federal district court ruled that Wal-Mart improperly excluded a shareholder proposal from its 2014 proxy statement even though it received no-action relief from the Commission under the “ordinary business operations” exclusion in Rule 14a-8(i)(7)—the court also required Wal-Mart to include the proposal in its 2015 proxy statement. Second, amid criticism and uncertainty over the use of Rule 14a-8(i)(9) to exclude proposals that “directly conflict” with company proposals, the Commission Staff announced that it would not express any views during the 2015 proxy season on whether companies may exclude shareholder proposals under Rule 14a-8(i)(9).

• Chapter 12 (Fraud Under Rule 10b-5 and Related Issues). After being convicted of orchestrating a twenty-year investment fraud scheme, Sir Robert Allen Stanford was sentenced to a total of 110 years in prison, with the jury also determining that twenty-nine accounts worth approximately $330 million were proceeds of his fraud and should be forfeited. In the Amedisys case, the Fifth Circuit held that multiple partial “corrective” disclosures may collectively satisfy the requirements of pleading loss causation in a securities fraud class action, even if no single disclosure alone is sufficient. The Commission settled an insider trading case, in which a “roommate” relationship allegedly created a duty of trust and confidence. The Second Circuit’s Newman decision upset a number of past and pending tipper/tippee cases, holding that knowledge of the tipper’s personal benefit was an essential element of tipper/tippee insider trading. The Commission released its third annual report on the Dodd-Frank whistleblower program. In 2014, the Commission issued whistleblower awards to more individuals than in all previous years combined and authorized a whistleblower award of more than $30 million. Finally, 2014 saw the Commission bring its first enforcement action under the anti-retaliation provisions of the Dodd-Frank Act.

• Chapter 13 (Liability for Trading Profits Under Exchange Act Section 16(b) and Sarbanes-Oxley Section 306). Sensing lax compliance with section 16(a)’s reporting scheme, the Commission charged twenty-eight officers, directors, or major shareholders of public companies with violating section 16(a)’s reporting requirements and six publicly traded companies with contributing to filing failures by insiders or failing to report their insiders’ filing delinquencies. The Commission extracted penalties of $2.6 million from 33 of the 34 individuals and companies named in the Commission’s orders.

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FILING INSTRUCTIONS

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Release #5
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REMOVE OLD PAGES NUMBERED:

- Title page to xxii
- 6-1 to 6-75
- 9-1 to 10-56
- 12-1 to 13-25
- T-1 to I-46

INSERT NEW PAGES NUMBERED:

- Title page to xxii
- 6-1 to 6-79
- 9-1 to 10-60
- 12-1 to 13-26
- T-1 to I-46